# SUPREME COURT OF THE UNITED STATES

## OCTOBER TERM, 1933

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## No. —

## FEDERAL TRADE COMMISSION, PETITIONER

vs.

## ALGOMA LUMBER COMPANY, BIG LAKES BOX COMPANY, CALIFORNIA FRUIT EXCHANGE, ET AL.

---

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

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A

## Before Federal Trade Commission

Dockets 1654, 1647, 1626, 1621, 1624, 1625, 1648, 1629, 1632, 1643, 1652, 1644

In the matters of Algoma Lumber Company, Big Lakes Box Company, California Fruit Exchange, Clover Valley Lumber Company, Davies-Johnson Lumber Company, Diamond Match Company, Ewauna Box Company, Feather River Lumber Company, Hobart Estate Company, Lassen Lumber & Box Company, Pelican Bay Lumber Company, Red River Lumber Company

*Secretary's certificate*

I, Otis B. Johnson, secretary of the Federal Trade Commission, do hereby certify that transmitted herewith is a full, true, and correct transcript of that portion of proceedings before the Federal Trade Commission in the above-entitled matters designated in stipulation entered into subject to approval of the court, and attached hereto, consisting of—

Part 1—Pleadings and Testimony (pages 1–512),
Part 2—Testimony (pages 513–1101),
Part 3—Testimony (pages 1102–2090),
Part 4—Testimony (pages 2091–2860),
Part 5—Testimony (pages 2861–3682),
Part 6—Exhibits (originals),
and separate original exhibits marked:

| | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|
| 1/1620 | 6/1620 | 11/1620 | 16/1620 | 21/1620 | 26/1620 | 31/1620 | 36/1620 | 41/1620 | 46/1620 |
| 2/1620 | 7/1620 | 12/1620 | 17/1620 | 22/1620 | 27/1620 | 32/1620 | 37/1620 | 42/1620 | 47/1620 |
| 3/1620 | 8/1620 | 13/1620 | 18/1620 | 23/1620 | 28/1620 | 33/1620 | 38/1620 | 43/1620 | |
| 4/1620 | 9/1620 | 14/1620 | 19/1620 | 24/1620 | 29/1620 | 34/1620 | 39/1620 | 44/1620 | |
| 5/1620 | 10/1620 | 15/1620 | 20/1620 | 25/1620 | 30/1620 | 35/1620 | 40/1620 | 45/1620 | |

That this transcript is certified to the United States Circuit Court of Appeals for the Ninth Circuit, pursuant to the filing in said court of petitions for review of orders to cease and desist, dated June 8, 1931, entered by the Federal Trade Commission in those proceedings.

In witness whereof, I hereunto subscribe my name and affix the seal of the said Federal Trade Commission, at its office in the city of Washington, D.C., this 18th day of February, A.D. 1932.

[SEAL] OTIS B. JOHNSON, *Secretary.*

B In the United States Circuit Court of Appeals for the Ninth Circuit

No. 6716

ALGOMA LUMBER COMPANY ET AL., PETITIONERS

vs.

FEDERAL TRADE COMMISSION, RESPONDENT

*Stipulation as to transcript of record*

This stipulation is consequent upon a desire of the parties to this proceeding to save time and expense, and in view of the following circumstances:

1. That the respective complaints before respondent Federal Trade Commission, which resulted in the several orders to cease and desist, sought herein to be reviewed by this honorable court, were identical except for their respective docket numbers, the names of the respective respondents, and the statements respecting the respective States of incorporation and the principal places of business of said respondents;

2. That the reports and orders of said Federal Trade Commission in said several proceedings before said Commission were identical, save and except in the respects hereinbelow set forth; and

3. That said several proceedings before the Federal Trade Commission were consolidated for hearing and argument before said Commission, and were tried, recorded, and argued as a single consolidated proceeding before said Commission.

Wherefore it is hereby stipulated by the petitioners and the respondent through their respective counsel, subject, however, to the approval of this honorable court, as follows, to wit:

1. That a single copy only of the transcript of the oral testimony in said several proceedings against these petitioners before said Federal Trade Commission shall be filed herein by respondent as a part of its record.

2. That the documentary and other exhibits offered and received in evidence before said Federal Trade Commission in said proceedings before it shall be filed with the court as physical exhibits.

3. That the complaints in the said several proceedings before the Federal Trade Commission differ only in their titles and in the Com-

mission's docket numbers and in averment of the respective States of incorporation and of the several places of business of said respondents, all of which are set forth below:

| Com.'s docket number | Name of respondent | State of incorporation | Principal place of business |
|---|---|---|---|
| 1654 | Algoma Lumber Company | Calif. | Klamath Falls, Ore. |
| 1647 | Big Lakes Box Company | Oregon | " " " |
| 1626 | California Fruit Exchange | Calif. | Graeagle, Calif. |
| 1621 | Clover Valley Lumber Company | Nevada | Reno, Nevada |
| 1624 | Davies-Johnson Lumber Company | Calif. | Calpine, Calif. |
| 1625 | Diamond Match Company | Illinois | Chico, Calif. |
| 1648 | Ewauna Box Company | Oregon | Klamath Falls, Ore. |
| 1629 | Feather River Lumber Company | Calif. | Delleker, Plumas County, Calif. |
| 1632 | Hobart Estate Company | Calif. | Hobart Mills, Calif. |
| 1643 | Lassen Lumber and Box Company | Calif. | San Francisco, " |
| 1652 | Pelican Bay Lumber Company | Oregon | Klamath Falls, Ore. |
| 1644 | Red River Lumber Company | Minnesota | San Francisco, Calif. |

and accordingly, that the complaint in the proceeding against petitioner Algoma Lumber Company only shall be filed by respondent Federal Trade Commission as a part of its record herein.

4. That inasmuch as the Commission on June 24, 1929, amended each of its said complaints by inserting the terms, "pondosa", in lieu of the term "ponderosa", at certain points in each of said complaints, the complaint in the said proceeding against the Algoma Lumber Company, to be filed as aforesaid, shall be the said complaint as so amended by the Commission.

5. That the answers of all the above-named respondents, except respondents California Fruit Exchange and Clover Valley Lumber Company, are identical with the answer of Algoma Lumber Company, except in their titles, docket numbers and execution; that the answer of respondent Hobart Estate Company, however, is an amended answer, and it is agreed that the answer of said company as originally filed need not be filed with this court as a part of the record of the Federal Trade Commission. The answer of respondent California Fruit Exchange differs in its preamble and in paragraph one from the preamble and paragraph one of the answer of respondent Algoma Lumber Company, the remaining portions of said answer being identical with those of the last-named respondent. The answer of respondent Clover Valley Lumber Company differs throughout from that of the Algoma Lumber Company. Accordingly, it is agreed that only the answers of the respondents Algoma Lumber Company and Clover Valley Lumber Company shall be filed herein in full, and that the preamble and paragraph one of the answer of the respondent California Fruit Exchange shall also be filed.

6. That the findings as to the facts and conclusions of the Federal Trade Commission in the proceedings against all of the above-named petitioners, except California Fruit Exchange and Red River Lumber Company, are identical with those in the case of Algoma Lumber Company, except for the titles, the Commission's docket numbers, the respective findings of the respective States of incorporation, and location of principal places of business which were found in accordance with the tabulation in paragraph 3 above. The findings as to the facts in the proceeding against respondent California Fruit Exchange differ in paragraph one from the corresponding paragraph in the findings in the case against Algoma Lumber Company. The findings as to the facts in the proceeding against respondent Red River Lumber Company differ in paragraph three, from the corresponding paragraph in the findings in the case against Algoma Lumber Company. Accordingly, it is agreed that the findings as to the facts in said group of proceedings before said Federal Trade Commission shall be filed herein only to the extent of the entire findings in the proceeding against Algoma Lumber Company, together with paragraph one of the findings in the proceeding against California Fruit Exchange and paragraph three in the findings in the proceeding against Red River Lumber Company.

7. That the Federal Trade Commission's orders to cease and desist in each of the respective proceedings against petitioners herein, except Red River Lumber Company, are identical, except in respect to the titles of the several respondents, the Commission's docket numbers, and the insertion of the respective names of the several respondents in the body of the orders. Accordingly, it is agreed that of said orders to cease and desist only the orders made with respect to respondents, Algoma Lumber Company and Red River Lumber Company, shall be filed by the Federal Trade Commission as parts of its record herein.

8. That explanatory notation in accordance with paragraphs 3 to 7 hereof shall be made at appropriate points in the record to be filed herein by said Federal Trade Commission, where the said pleadings, findings, and orders, or parts thereof, shall appear.

10. That respondent may file briefs, in consolidated form, in this proceeding in respect to any or all of said petitioners, and that said petitioners may consolidate their briefs to such extent as they may elect, and that this proceeding shall be orally presented to the court upon a single occasion.

This stipulation is entered into subject to the approval of the court.

In witness whereof, this stipulation is executed by the respective parties through their counsel.

ALGOMA LUMBER COMPANY,
BIG LAKES BOX COMPANY,
CALIFORNIA FRUIT EXCHANGE,
CLOVER VALLEY LUMBER COMPANY,
DAVIES-JOHNSON LUMBER COMPANY,
DIAMOND MATCH COMPANY,
EWAUNA BOX COMPANY
FEATHER RIVER LUMBER COMPANY,
HOBART ESTATE COMPANY,
LASSEN LUMBER AND BOX COMPANY,
PELICAN BAY LUMBER COMPANY, and
RED RIVER LUMBER COMPANY,
By WARREN OLNEY, Jr.,
ALLAN P. MATTHEW,
CARL I. WHEAT,
McCUTCHEN, OLNEY, MANNON & GREENE,
*1500 Balfour Building, San Francisco, California.*
FEDERAL TRADE COMMISSION,
By ROBERT E. HEALY, *Chief Counsel.*
MARTIN A. MORRISON, *Asst. Chief Counsel.*
EUGENE W. BURR, *Attorney.*

Dockets 1654, 1647, 1626, 1621, 1624, 1625, 1648, 1629, 1632, 1643,

Before Federal Trade Commission

Dockets 1564, 1647, 1626, 1621, 1624, 1625, 1648, 1629, 1632, 1643, 1652, 1644

(Titles omitted.)

That portion of the proceedings in the above-entitled matters designated in the stipulation entered into subject to the approval of the court.

C

Before Federal Trade Commission

Docket No. 1654

(Filed in accordance with paragraph 3 of court stipulation, supra)

In the matter of Algoma Lumber Company, a corporation, its officers and agents

*Complaint*

(Corrected in accordance with item 4 of court stipulation filed herewith)

Acting in the public interest pursuant to the provisions of an act of Congress, approved September 26, 1914, entitled "An act to

create a Federal Trade Commission, to define its powers and duties, and for other purposes", the Federal Trade Commission charges that the Algoma Lumber Company, its officers and agents, respondents named in the caption hereof, have been and are using unfair methods of competition in interstate commerce in violation of the provisions of section 5 of said act, and states its charges in that respect as follows:

Paragraph one: The respondent, Algoma Lumber Company, is a corporation incorporated under the laws of the State of California, having its principal place of business in Klamath Falls, Oregon.

Paragraph two: The respondents are engaged in the sale of logs and/or timber products and/or lumber products, all of which are hereinafter designated as "forest products", and ship their said forest products from the State of manufacture to customers located in other States in various sections of the United States, and located in some instances in various foreign countries. In causing their said forest products to be sold and transported from one State to another and from this country to foreign countries, respondents are in competition with other individuals, partnerships, and corporations producing forest products and selling and transporting the same from one State of the United States to another and to certain foreign countries.

Paragraph three: Respondents, in the course and conduct of their business as described in paragraph two hereof, for more than five years last past, have manufactured and sold, and now manufacture and sell, among other products, forest products produced from that certain species of tree native to the mountainous regions of Pacific slope, botanically designated "Pinus ponderosa" under the name and designation "white pine", with or without the addition before said name and designation of one or another of the words, "California", "Arizona", and/or "Western", and/or of the words "New Mexico", and during said period of time respondents, in advertisements inserted in trade journals and other media of national circulation, together with other forms of advertising, and/or circular letters, and/or correspondence with purchasers and prospective purchasers thereof, and/or on their respective letterheads, billheads, and invoices and orally through their respective sales forces, have designated and described such forest products as "white pine", whereas in truth and in fact, said Pinus ponderosa does not, either botanically or by common name or in the character of lumber made therefrom, belong to that group of pine species known as white pines, as set forth in paragraph four hereof.

Paragraph four: There is a certain group of pine species known both popularly and botanically as "white" pines. They are species of the genus Pinus, having certain botanical marks of distinction from other pines, and are further characterized by light, close-grained, softwood in which the early- and late-formed portions of the annual rings or layers are not sharply defined, and have thin

and nearly white sapwood. Another group of species of the genus Pinus is known both popularly and botanically as the "yellow pine" group, having certain botanical marks of distinction, and being characterized by rather hard, heavy wood, in which the early- and late-formed portions of the annual rings or layers are sharply defined.

Paragraph five: Among the species of pine belonging to the said described white pine group is that botanically known as "Pinus strobus." It is a native to the upland regions of the North Atlantic Seaboard States and of the Great Lakes States and other northern portions of the central valley of the United States. Since early colonial history, Pinus strobus has been known as a building wood, has proved its remarkable value during upwards of 250 years of general use, and has gained universal esteem under the common designation of "white pine." Pinus strobus is a genuine white pine and is the best known of the said white pine group. The approximate present annual production and sale in the United States on the part of the manufacturers of forest products made from Pinus strobus is 825,000,000 feet, b.m., and that of Pinus ponderosa 2,746,000,000 feet. Of the said annual production and sale of Pinus ponderosa, approximately an aggregate of 1,668,000,000 feet is now annually sold under the trade name and designation of "pondosa" or "pondosa pine" and the remaining portion only, or approximately 1,078,000,000 feet, is sold as "white pine" either with or without one or another of the designations mentioned in paragraph three which include the said words "white pine." To persons not skilled in the identification and distinction of various species of forest products, it is at times difficult to distinguish between forest products made from Pinus strobus, and those made from Pinus ponderosa.

Paragraph six: The wood of Pinus strobus is strongly characterized by its softness, ease of working, its ability to stay in place after being fitted, its comparative freedom from resinous substances, its durability in uses where exposed to influences of decay, and by its exceptionally high degree of uniformity of quality both locally and throughout its range, and in individual specimens of the species. In each of these respects, and especially as regards uniformity of quality, the said Pinus strobus excels Pinus ponderosa. The latter, while varying in its commercial characteristics in various portions of its range, among individual specimens within given localities, and also in many instances between heartwood and sapwood of individual specimens of the species, is botanically, by common designation, and by the average commercial qualities and characteristics of the species, a member of the aforesaid yellow-pine group. By reason of the said described comparative characteristics and excellence forest products made from the Pinus strobus have a general tendency in lumber markets to command and in general have commanded a higher average f.o.b. mill price than forest products made from Pinus ponderosa.

Paragraph seven: There is a species of pine, native to the mountainous regions of the Pacific Coast States, designated botanically as Pinus lambertiana, known universally throughout its range under the common name "sugar pine." The products made from Pinus lambertiana are likewise known and sold widely as sugar-pine products, and are in competition with products made from Pinus ponderosa. Pinus lambertiana is a genuine white pine. It is far more nearly related to the said Pinus strobus than Pinus ponderosa, both botanically and in commercial qualities and characteristics, as set forth in paragraph six hereinabove. It equals Pinus strobus in its average rating in the said described characteristics. The approximate annual production and sale of Pinus lambertiana is 282,000,000 feet board measure.

Paragraph eight: Respondents and other manufacturers of forest products made from Pinus ponderosa are in competition with manufacturers of forest products made from Pinus strobus and Pinus lambertiana. They were reluctant to use the common name of Pinus ponderosa, to wit, "western yellow pine" as a commercial or trade name for their products since they desired to avoid the market disadvantages from association and possible confusion in the mind of the public and of the trade, of forest products made from western yellow pine or Pinus ponderosa with those made from the dense, resinous, and, for the uses for which Pinus ponderosa is best adapted, the relatively inferior forest products made from Pinus palustris or the longleaf yellow pine of the Southern States, known commercially as "southern yellow pine", from which latter the commercial qualities of Pinus ponderosa on the average differ markedly, Pinus palustris being on the average harder, denser, and heavier than Pinus ponderosa. The use of the words "white pine" as the name or as part of the name given to forest products made from Pinus ponderosa was adopted and has been continued by respondents and other manufacturers thereof as a substitute for that western yellow pine, for the purpose of securing for their said products the market advantages of a name suggestive to the trade and to the public mind of the commercial species of genuine white pine and particularly of said Pinus strobus and its aforesaid high qualities and reputation, and further in order to cause the trade and buying public to minify or ignore the characteristics wherein Pinus pondersoa is inferior to Pinus strobus as in paragraph six hereinabove set forth. A confusion as more fully set out in paragraph nine herein has resulted from the said designation by respondents and other said manufacturers of Pinus ponderosa as a white pine, and, in or about the years 1924 and 1925 there was among various manufacturers of lumber an advocacy of, on the part of some, and an opposition on the part of others to, a proposal to change the trade name and designation of forest products made from Pinus ponderosa from "white pine" or from the designations named in paragraph three hereof which include the words "white pine", to some other designation and particularly to "ponderosa" pine, and the said change to ponderosa pine

was actually made for all commercial purposes by manufacturers of the major part of the forest products made from Pinus ponderosa as shown in paragraph five.

Paragraph nine: The use of the words "white pine", whether or not coupled with any one of the said words in paragraph three hereof named has the capacity and the direct tendency to result and has resulted in a wide-spread misconception of the comparative qualities, characteristics, commercial values, and even the identity of forest products made from Pinus ponderosa on the one hand and from species of genuine white pine on the other, and has actually confused the minds of many of the trade and of ultimate consumers and has misled and deceived them as to the actual and true comparative values of forest products made from the said species. The said use of the aforesaid words has the capacity and a direct tendency to produce and in many instances has produced numerous results unfair to competitors and to the public and, among other such, the results described as follows, to wit:

(a) Spurious market equality in both the trade and public estimation in certain instances has been given to forest products made from Pinus ponderosa with those made from genuine white pines for uses wherein genuine white pines excel Pinus ponderosa as herein in paragraphs six and seven set forth.

(b) There has been brought about public doubt and misapprehension as to the respective qualities of forest products made from various species of pine native to the Pacific coast and the uses which may most advantageously be made of them to the loss and detriment of the public and of competitors of respondents. The reputation and public esteem of forest products made from Pinus lambertiana have been seriously impaired as regards the qualities in which said Pinus lambertiana surpasses Pinus ponderosa as set forth in paragraphs six and seven hereinabove. Many buyers and prospective buyers, as a result of the aforesaid misnaming of Pinus ponderosa as and for white pine and as a result of their ensuing experience therewith, have come to the mistaken and erroneous belief that none of the Pacific coast species of pine possesses qualities equal to or approaching those described in paragraph six hereof as the qualities for which Pinus strobus has long been noted.

(c) Jobbers and retailers in many instances have been and still are misled into buying Pinus ponderosa in the belief that they thus secure a genuine white pine having the aforesaid qualities and characteristics thereof in the comparatively high degree described in paragraph six, and have been and are thus induced to buy forest products made from Pinus ponderosa for resale for purposes to which they are as an average comparatively ill-adapted.

(d) Such retailers as have known the distinction between forest products made from Pinus ponderosa and those made from genuine white pines, but who have desired to gain by substitution of Pinus ponderosa for genuine white-pine products in their sales to cus-

tomers, have been enabled to mislead and have been aided in misleading their customers into the belief that Pinus ponderosa was a genuine white pine with the same excellent qualities possessed by genuine white pines and in the same high degree as in paragraphs six and seven set forth, and have filled orders for genuine white pine with ponderosa pine.

(e) Such retailers as have been in ignorance of the distinction in qualities and characteristics between Pinus ponderosa and genuine white pines have been caused to sell to the public forest products made from Pinus ponderosa as and for genuine white pine to consumers desiring the qualities of lumber made from genuine white pine.

(f) Retail dealers having stocked their yards with Pinus ponderosa purchased and to be sold by them as and for genuine white pine in various instances have not desired and do not desire to stock their yards with forest products made from said genuine white pine, thus depriving manufacturers of genuine white-pine products of numerous market outlets.

(g) Numerous builders, contractors, architects, and ultimate consumers have been and are misled into the advocacy, recommendation, adoption, and use of Pinus ponderosa in the belief that it is genuine white pine and has the aforesaid high degree of said described qualities.

(h) Respondents and other manufacturers by misnaming and misbranding Pinus ponderosa as a genuine white pine have been enabled on numerous occasions and now are enabled to secure a higher price for their said forest products than they could secure therefor in competition with genuine white-pine products if a true name and designation of their said products were used; and have been enabled to fill and have actually filled orders for genuine white pine with consignments of ponderosa pine.

(i) Manufacturers of forest products made from said genuine white pine, frequently through the ignorance of the buyer or of the public as to the commercial qualities distinguishing genuine white pine from Pinus ponderosa, are unable to sell their said products to customers at a higher price than customers will pay for forest products made from Pinus ponderosa when the latter are misnamed and misdescribed as white pine.

(j) The average f.o.b. mill cost of forest products made from said genuine species of white pine exceeds the average f.o.b. mill cost of forest products made from Pinus ponderosa and the said misdescription of Pinus ponderosa as white pine has a direct tendency to cause and has at times caused manufacturers of genuine white pine products to lose sales and has at times caused them to make sales at or below actual cost of production and distribution.

(k) Manufacturers of forest products made from Pinus ponderosa who describe their products as pondosa pine as hereinabove in paragraph eight described are at a sales disadvantage as contrasted with such competitors, respondents and others, as misname and mis-

describe their products, likewise made from Pinus ponderosa, as white pine, and who wrongfully imply and at times declare that their products possess the aforesaid superior commercial qualities for various uses that are possessed by genuine white pine.

(1) The employment of Pinus ponderosa in lieu of genuine white pine by builders, contractors, architects, and the general public for uses wherein it is exposed to decay, and for which genuine white pine, by virtue of its aforesaid greater durability was and is preferred and desired in contrast with Pinus ponderosa, has conduced to and resulted in and still conduces to and results in the waste of forest products through the necessity to replace Pinus ponderosa more frequently than replacements would be or would have been necessary had white pine been used in the first instance.

Paragraph ten: The practices and methods of competition engaged in by respondents as hereinabove set forth have the capacity and a direct, substantial, and dangerous tendency to mislead and deceive the trade and public with regard to the identity and the comparative qualities and values of said above-described forest products and have actually so misled and deceived in such regard. The said practices and methods of competition of respondents are against the public interest and constitute unfair methods of competition in commerce between the States and with foreign nations in violation of section 5 of the aforesaid act of Congress known as the Federal Trade Commission Act.

Wherefore, the premises considered the Federal Trade Commission on this 23d day of May, 1929, now here issues this, its complaint against said respondents.

NOTICE

Notice is hereby given you, respondents herein, that the 5th day of July, 1929, at 10:30 o'clock in the forenoon, is hereby fixed as the time, and the offices of the Federal Trade Commission, in the city of Washington, D.C., as the place, when and where a hearing will be had on the charges set forth in this complaint, at which time and place you shall have the right, under said act, to appear and show cause why an order should not be entered by said Commission requiring you to cease and desist from the violation of the law charged in the complaint.

You are notified and required within thirty (30) days from service of the complaint, unless such time be extended by order of the Commission, to file with the Commission an answer to the complaint. After filing answer you will be given reasonable notice of the time set for hearing. The Rules of Practice adopted by the Commission with respect to answers and failure to answer (rule III) provide as follows:

(1) In case respondent shall desire to contest the proceeding such answer shall contain a short and simple statement of the facts which constitute the ground of defense. Respondent shall specifically ad-

mit or deny or explain each of the facts alleged in the complaint, unless respondent is without knowledge, in which case respondent shall so state, such statement operating as a denial. Any allegation of the complaint not specifically denied in the answer, unless respondent shall state in the answer that respondent is without knowledge, shall be deemed to be admitted to be true and may be so found by the Commission.

(2) In case respondent desires to waive hearing on the charges set forth in the complaint and not to contest the proceeding, the answer may consist of a statement that respondent refrains from contesting the proceeding or that respondent consents that the Commission may make, enter and serve upon respondent an order to cease and desist from the violations of the law alleged in the complaint or that respondent admits all the allegations of the complaint to be true. Any such answer shall be deemed to be an admission of all the allegations of the complaint and to authorize the Commission to find such allegations to be true.

(3) Failure of the respondent to file answer within the time as above provided for shall be deemed to be an admission of all allegations of the complaint and to authorize the Commission to find them to be true and to waive hearing on the charges set forth in the complaint.

In witness whereof, the Federal Trade Commission has caused this complaint to be signed by its secretary, and its official seal to be hereto affixed, at Washington, D.C., this 23d day of May, 1929.

By the Commission.

[SEAL] OTIS B. JOHNSON, *Secretary.*

D

Before Federal Trade Commission

Docket No. 1654

(Filed in accordance with ¶ 5 of court stipulation (supra))

In the matter of Algoma Lumber Company, a corporation, its officers and agents

*Answer of Algoma Lumber Company*

Filed July 15, 1929

Comes now the respondent, Algoma Lumber Company, in its own behalf and in behalf of its officers and agents, and answering the complaint herein, admits, denies, and alleges as follows:

Paragraph one: Admits the allegations of paragraph one of the complaint.

Paragraph two: Admits the allegations of paragraph two of the complaint.

Paragraph three: Admits the allegations of paragraph three of the complaint with the exception of the allegation that said species of tree botanically designated as "Pinus ponderosa" does not, either botanically or by common name or in the character of lumber made therefrom, belong to that group of pine species known as white pines; in this behalf respondent admits that said Pinus ponderosa does not botanically belong to said group of pine species known as white pines, but respondent denies that the same does not by common name or in the character of lumber made therefrom belong to said group; respondent alleges that the forest products manufactured from said Pinus ponderosa are, and for more than forty years last past have been, known by common name as white pine, and that the character of lumber made therefrom is truly designated as white pine, all as hereinafter more particularly set forth.

Paragraph four: Respondent is without knowledge sufficient to answer the allegations of paragraph four of the complaint, except that it admits that there is a certain group of pine species known both popularly and botanically as "white" pines, having certain botanical marks of distinction from other pines, and that there is another group of species of the genus Pinus known both popularly and botanically as the "yellow pine" group, having certain botanical marks of distinction.

Paragraph five: Admits the allegations of paragraph five of the complaint, except that respondent is without knowledge sufficient to answer the allegations therein contained respecting the approximate present annual production and sale in the United States of forest products made from Pinus strobus and Pinus ponderosa, respectively, and respecting the approximate aggregate of forest products made from Pinus ponderosa sold annually under the trade name and designation of "pondosa" or "pondosa pine" and the approximate amount sold as "white pine" either with or without one or another of the designations mentioned in paragraph three of the complaint.

Paragraph six: Admits the allegations of paragraph six of the complaint, except that respondent denies that said Pinus strobus excels Pinus ponderosa in any of the respects specified in the first sentence of said paragraph; respondent admits that Pinus ponderosa varies in its commercial characteristics in various portions of its range, and among individual specimens within given localities and that it is botanically a member of the said yellow pine group, but respondent denies that said Pinus ponderosa is a member of such yellow pine group either by common designation or by the average commercial qualities and/or characteristics of the species. In this behalf respondent alleges that lumber and other forest products manufactured from said species of pine designated botanically as "Pinus ponderosa" are, both in appearance and in physical and mechanical properties, in the uses to which they are adapted and in their essential characteristics, truly and fairly known and designated as "white pine"; that such lumber and other forest products so

manufactured from said Pinus ponderosa are not known and cannot be truly or correctly designated as "yellow pine" with respect to appearance or any other of the characteristics or properties last hereinabove set forth; respondent alleges that by common designation, and by the average commercial qualities and characteristics of the species, said lumber and other forest products manufactured from said Pinus ponderosa are properly known and designated as "white pine."

Paragraph seven: Admits the allegations of paragraph seven of the complaint, except that respondent denies that Pinus lambertiana is more nearly related to the said Pinus strobus than Pinus ponderosa in commercial qualities or characteristics; and except that respondent is without sufficient knowledge to answer the allegation in said paragraph contained as to the approximate annual production and sale of Pinus lambertiana.

Paragraph eight: Admits that respondent has not used, and has been reluctant to use, the term "western yellow pine" as a commercial or trade name for products manufactured from Pinus ponderosa, but denies that such reluctance is or has been due to a desire to avoid any market disadvantages either as alleged in paragraph eight of the complaint or otherwise; respondent denies that the common name of Pinus ponderosa is "western yellow pine." Respondent admits that it now desires, and at all times has desired, to avoid association and possible confusion in the mind of the public and of the trade of forest products made from Pinus ponderosa with those made from the dense resinous and, for the uses for which Pinus ponderosa is best adapted, the relatively inferior forest products made from Pinus palustris or the long leaf yellow pine of the Southern States known commercially as "southern yellow pine"; respondent admits that the commercial qualities of Pinus ponderosa on the average differs markedly from Pinus palustris and that said Pinus palustris is on the average harder, denser, and heavier than Pinus ponderosa. Respondent denies that the use of the words "white pine" as the name or as part of the name given to forest products made from Pinus ponderosa was adopted or has been continued by respondent and/or other manufacturers thereof as a substitute for that of western yellow pine for the purpose of securing for their said products the market advantages of the name suggesting to the trade and to the public mind of the commercial species of said alleged genuine white pine and/or particularly of the said pinus strobus or its alleged qualities or reputation, or in order to cause the trade or buying public to minify or ignore the characteristics or any of them wherein the complaint alleges that Pinus ponderosa is inferior to Pinus strobus. In this behalf respondent alleges that the use of the words "white pine" as a name or as part of the name of forest products made from Pinus ponderosa has been adopted and has been continued by respondent for the reason that such forest products are more nearly similar in their properties to forest products manufactured from Pinus strobus than to forest products manufactured from said

"southern yellow pine"; that the properties of the forest products manufactured from said Pinus ponderosa are markedly dissimilar to the forest products manufactured from said "southern yellow pine" and that it would be misleading to the lumber trade and to lumber consumers and unfair to manufacturers of and dealers in said "southern yellow pine" to describe forest products manufactured from Pinus ponderosa by the term "yellow pine" or by any other term including the word "yellow." Respondent denies that a confusion has resulted, either as set out in paragraph nine of the complaint or otherwise, from the said designation by respondent and/or said other manufacturers of Pinus ponderosa as a white pine, as alleged in the concluding sentence of paragraph eight of the complaint. Respondent is without information sufficient to answer the remaining allegations contained in said concluding sentence of paragraph eight.

Paragraph nine: Respondent denies that the use of the term "white pine", whether or not coupled with any one of the said words named in paragraph three of the complaint, has the capacity or the direct or any tendency to result, or that it has resulted, in a widespread or any misconception of the comparative qualities, characteristics or commercial values or the identity of forest products made from Pinus ponderosa on the one hand, and from species of alleged genuine white pine on the other, or has actually confused the minds of many or any of the trade or of ultimate consumers or has misled or deceived them or any of them as to the actual or true comparative values of forest products made from the said species. Respondent denies that the use of said words has the capacity or a direct or any tendency to produce and/or that it has in many or any instances produced numerous or any results unfair to competitors and/or to the public in the respects set forth in paragraph nine or otherwise.

Answering subdivision (a) to (l), both inclusive, of paragraph nine of the complaint, respondent admits, denies, and alleges as follows:

(a) Denies that spurious market equality either in the trade or in public estimation has in any instance been given to forest products made from Pinus ponderosa with those made from alleged genuine white pines for uses wherein such white pines are alleged to excel Pinus ponderosa either as set forth in paragraphs six or seven of the complaint or otherwise or at all.

(b) Denies that there has been brought about public doubt or misapprehension as to the respective qualities of forest products made from various species of pine native to the Pacific coast or the uses which may most advantageously be made of them either to the loss or detriment of the public or of competitors of respondent; denies that the reputation or public esteem of forest products made from Pinus lambertiana has been seriously or at all impaired as regards the qualities in which said Pinus lambertiana is alleged to surpass Pinus ponderosa either as set forth in paragraphs six

or seven of the complaint or otherwise; denies that any buyers or prospective buyers, either as a result of the alleged misnaming of said Pinus ponderosa as and for white pine, or as a result of any ensuing experience therewith, or by reason of any circumstance, have come to the mistaken or erroneous or any belief that none of the Pacific coast species of pine possess qualities equal to or approaching those described in paragraph six of the complaint as the qualities for which Pinus strobus has been noted as therein alleged.

(c) Denies that jobbers or retailers in any instance have been or still are misled into buying Pinus ponderosa in the belief that they thus secure an alleged genuine white pine having the said qualities and characteristics described in said paragraph six of the complaint, or have been or are induced to buy forest products made from Pinus ponderosa for resale for purposes to which they are comparatively or at all ill-adapted, either as an average or otherwise.

(d) Denies that such or any retailers as have known the distinction between forest products made from Pinus ponderosa and those made from said alleged genuine white pines have been able to mislead or have been aided in misleading or have misled their customers into the belief that Pinus ponderosa was such white pine, as alleged in the complaint, with the same qualities possessed by such white pines and in the same degree as in the complaint set forth. Respondent is without sufficient knowledge to answer the allegation that certain retailers, as in subdivision (d) set forth, have desired to gain by the substitution of Pinus ponderosa for alleged genuine white-pine products in their sales to customers, or the further allegation that such retailers have filled orders for such genuine white pine with ponderosa pine.

(e) Respondent is without sufficient knowledge to answer the allegations of subdivision (e).

(f) Respondent is without sufficient knowledge to answer the allegations of subdivision (f).

(g) Denies that numerous or any builders, contractors, architects, or ultimate consumers have been or are mislead into the advocacy, recommendation, adoption, or use of Pinus ponderosa, in the belief that it is such alleged genuine white pine, as alleged in subdivision (g) or otherwise or at all.

(h) Denies that respondent has at any time misnamed or misdescribed Pinus ponderosa; denies that it has on any occasion or is now enabled to secure a higher price for its said forest products, either in competition with alleged genuine white pine products or otherwise, than it could secure if a different name or designation of its said products were used, excepting, however, that inasmuch as the term "white pine," with the addition of the word "California" or some other qualifying word indicative of the State or region of production, has been established for many years, as herein elsewhere alleged, and the lumber and other forest products marketed under such term have justly acquired high repute with the trade

and with the public, the abandonment of such term would tend to cause lower prices for such lumber and other forest products, to the damage of respondent and other manufacturers of lumber and forest products from Pinus ponderosa; denies that it has been enabled to fill or has actually filled any order for alleged genuine white pine with any consignment of ponderosa pine.

(i) Respondent is without sufficient knowledge to answer the allegations of subdivision (i), excepting, however, that respondent denies that forest products made from Pinus ponderosa have been misnamed or misdescribed as white pine.

(j) Respondent is without sufficient knowledge to answer the allegations of subdivision (j) except that respondent denies that such Pinus ponderosa has been misdescribed as white pine.

(k) Denies that manufacturers of forest products made from Pinus ponderosa who describe their products as ponderosa pine are, or that any such manufacturer is, at a sales disadvantage as contrasted with such competitors, respondent or others, as name and/or describe their products made from Pinus ponderosa as white pine; respondent denies that it has at any time misnamed or misdescribed its products made from Pinus ponderosa; respondent alleges that its products made from Pinus ponderosa possess the superior commercial qualities for various uses that are possessed by alleged genuine white pine, but denies that it has wrongfully or otherwise implied or declared that its said products are in fact identical with products made from Pinus strobus.

(l) Denies that the employment of Pinus ponderosa in lieu of alleged genuine white pine by builders, contractors, architects, or the general public for uses wherein it is exposed to decay, has conduced to or resulted in, or now conduces to or results in, the waste of forest products through the necessity to replace Pinus ponderosa more frequently than replacements would be or would have been necessary had such white pine been used in the first instance either as alleged in subdivision (l) or otherwise; respondent denies that such alleged genuine white pine has greater durability than Pinus ponderosa.

Paragraph ten: Denies that any practice or method of competition in which it is engaged, as alleged in the complaint, has the capacity or a direct, substantial, or dangerous or any tendency to mislead or deceive the trade or public with regard to the identity or the comparative qualities or values of the forest products described in the complaint, or has misled or deceived in such or any regard; denies that it has engaged in any practice or method of competition, as alleged in the complaint, or otherwise, which is against the public interest or which constitutes an unfair method of competition in commerce between the States and/or with foreign nations, in violation of section 5 or any other provision of the act of Congress known as the Federal Trade Commission Act, or otherwise or at all.

Paragraph eleven: Further answering the complaint, respondent alleges that lumber and other forest products manufactured from Pinus ponderosa have the appearance and essential physical and mechanical properties of white pine; that such lumber and other forest products manufactured from Pinus ponderosa do not have the appearance or the physical or mechanical properties of yellow pine; that lumber and other forest products manufactured from Pinus ponderosa are more correctly designated by the term "white pine" than by the term "yellow pine"; that for more than forty years last past the term "white pine", either with or without the addition of the word "California" or the word "Western" or some other qualifying word indicative of the State or region of production, has been employed to designate the lumber and other forest products manufactured from Pinus ponderosa; that said term was adopted, has continuously been used, and is still used in order clearly to distinguish said lumber and other forest products manufactured from Pinus ponderosa from lumber and other forest products manufactured from yellow pine, and particularly from southern yellow pine, all to the end that neither the trade nor the public might be confused or misled as to the essential physical and mechanical properties of said lumber and other forest products and that manufacturers of and dealers in southern yellow pine might not be subjected to unfair competition; that if the respondent and other manufacturers of lumber from Pinus ponderosa were to describe their product as "California yellow pine", "Oregon yellow pine", "Western yellow pine", or by any other term including the word "yellow", the trade and the public would in many instances be confused and misled with respect to the character of such product and particularly with respect to the uses to which it is best adapted, and manufacturers of and dealers in "southern yellow pine" would be subjected thereby to unfair competition; that the term "white pine", with or without the addition of the word "California" or some other word indicative of the State or region of production, has been used for more than forty years as hereinbefore alleged, has become well known to the trade, is truly descriptive of lumber manufactured from the species of pine tree known as Pinus ponderosa, and is indicative of the uses to which it is best adapted; that the abandonment of such term would occasion confusion and damage to the trade and to the public; that the continued employment of such term is more appropriate and less calculated to cause confusion than the use of any other term, and that the same does not and will not result in unfair competition.

Wherefore, respondent prays that said complaint be dismissed.

ALGOMA LUMBER COMPANY,

*Its officers and agents.*

By McCUTCHEN, OLNEY, MANNON & GREENE,

*Its Attorneys, 1500 Balfour Building, San Francisco, California.*

Dated at San Francisco, California, July 15, 1929.

E

Before Federal Trade Commission

Docket No. 1621

(Filed in accordance with ¶5 of Court stipulation, supra)

In the matter of Clover Valley Lumber Company, a corporation, its officers and agents

*Answer*

Filed June 25, 1929

Comes now Clover Valley Lumber Company, the respondent above named, by its attorneys, Price & Hawkins, and answering the complaint in the above-entitled matter, admits, denies, and alleges as follows:

I

The respondent, answering paragraph one of said complaint, admits the allegations contained in said paragraph.

II

The respondent, answering paragraph two of said complaint, admits the allegations contained in said paragraph, beginning with line 1 thereof and ending with the word "countries" in line 6 of said paragraph, and respondent admits that it is in competition with the manufacturers of lumber on the Pacific coast who are selling the same character of lumber as that sold by respondent, but respondent avers that it is without knowledge as to any competition by it with any other manufacturers and/or dealers in lumber.

III

The respondent, answering paragraph three of said complaint, admits that it is engaged in the manufacture and sale of lumber from a species of pine known as Pinus ponderosa as well as from other species of pines, but respondent denies it has advertised and/or sold the products of its manufacture from Pinus ponderosa under the designation "white pine" alone, and that in all cases so far as respondent is aware it has advertised and sold its "forest products" manufactured from Pinus ponderosa with the prefix "California" added to the designation "white pine", which designation, California white pine, has been a well known commercial term applied to the lumber from the Pinus ponderosa and so used by Pacific coast lumbermen for more than twenty-five years last past, and respondent further avers that it is without knowledge that Pinus ponderosa does not botanically or by common name or in the character of lumber made therefrom belong to that group of pine species known as white pines.

The respondent, answering paragraph four of said complaint, avers that it is without knowledge as to any and all of the allegations set forth in said paragraph.

V

The respondent, answering paragraph five of said complaint, avers that it is without knowledge as to any and all of the allegations set forth in said paragraph.

VI

The respondent, answering paragraph six of said complaint, avers that if is without knowledge as to any and all of the allegations set forth in said paragraph.

VII

The respondent, answering paragraph seven of said complaint, avers that it is without knowledge as to any and all of the allegations set forth in said paragraph.

VIII

The respondent, answering paragraph eight of said complaint, avers that it is without knowledge as to any and all of the allegations set forth in said paragraph.

IX

The respondent, answering paragraph nine of said complaint, avers that it is without knowledge as to any and all of the allegations set forth therein, and more specifically answering the subdivisions of said paragraph nine, respondent avers that it is without knowledge as to all the allegations contained in subdivision (a) thereof; that it is without knowledge as to all the allegations contained in subdivision (b) thereof; that it is without knowledge as to all the allegations contained in subdivision (c) thereof; that it is without knowledge as to all the allegations contained in subdivision (d) thereof; that it is without knowledge as to all the allegations contained in subdivision (e) thereof; that it is without knowledge as to all the allegations contained in subdivision (f) thereof; that it is without knowledge as to all the allegations contained in subdivision (g) thereof; that it is without knowledge as to all the allegations contained in subdivision (h) thereof; that it is without knowledge as to all the allegations contained in subdivision (i) thereof; that it is without knowledge as to all the allegations contained in subdivision (j) thereof; that it is without knowledge as to all the allegations contained in subdivision (k) thereof; and that it is without knowledge as to all the allegations contained in subdivision (l) thereof.

## X

The respondent, answering paragraph ten of said complaint, denies each and all the allegations therein contained.

## XI

The respondent, further answering the complaint in said matter, alleges that it has been engaged for more than ten years last past in logging and manufacturing into lumber of pines and other conifers growing in the State of California, and that it has engaged in no lumbering operations outside of said State; that in its business it has used the term "California white pine" and applied the same to the lumber produced from species of pines growing in California other than sugar pines; that said term "California white pine" so used by respondent has been in continuous and general use among lumbermen and lumber dealers of the Pacific coast for more than twenty-five years last past to distinguish the lumber manufactured from the species of pine known as ponderosa and other species from the species commonly known as sugar pine; that the term so used is not and has not been intended as a botanical expression but as a commercial distinction well known to the lumber trade, and that the use thereof has not been intended to be and is not misleading.

In witness whereof the respondent has caused this answer to be signed by its duly authorized attorneys this 21st day of June 1929.

PRICE & HAWKINS.

F

Before Federal Trade Commission

(Filed in accordance with paragraph 5 of court stipulation, supra)

*Preamble and paragraph one of answer filed in docket 1626 in the matter of California Fruit Exchange*

Comes now the respondent, California Fruit Exchange, in its own behalf and in behalf of its officers and agents, and appearing specially herein, and not otherwise, files this its answer to this complaint for the information of the Federal Trade Commission only, but without admitting the jurisdiction or any jurisdiction of said Federal Trade Commission over it or over its operations, officers, or agents, or any of them. With this express qualification respondent answers the complaint herein and admits, denies, and alleges as follows:

Paragraph one: Admits that it is a corporation incorporated under the laws of California, but alleges that it was not organized to carry on business for profit either for itself or for its members; denies, therefore, that the Federal Trade Commission possesses jurisdiction over it or over its operations, officers, or agents, or any of them, either under section five (5) or any other section of the act of Congress

Federal Trade Commission Act, or otherwise; denies that its principal place of business is in Graeagle, Plumas County, California, but alleges that its principal place of business is in the California Fruit Building, Sacramento, California.

G

Before Federal Trade Commission

Commissioners: Edgar A. McCulloch, chairman; Garland S. Ferguson, Jr., C. W. Hunt, William E. Humphrey, Charles H. March

In the matter of Long-Bell Lumber Company, et al., docket no. 1620; Clover Valley Lumber Company, et al., docket no. 1621; Hess Lumber Company, et al., docket no. 1622; Castle Crag Lumber Co., et al., Docket no. 1623; Davies-Johnson Lumber Co., et al., docket no. 1624; Diamond Match Company, et al., docket no. 1625; California Fruit Exchange, et al., docket no. 1626; Likely Lumber Company, et al., docket no. 1627; Penman Peak Lumber Co., et al., docket no. 1628; Feather River Lumber Company, et al., docket no. 1629; California Door Company, et al., docket no. 1630; Kesterson Lumber Company, et al., docket no. 1631; Hobart Estate Company, et al., docket no. 1632; Fruit Growers Supply Company, et al., docket no. 1633; Michigan-California Lumber Co., et al., docket no. 1634; McCloud River Lumber Co., et al., docket no. 1635; Siskiyou Lumber Company, et al., docket no. 1636; Swayne Lumber Company, et al., docket no. 1637; Paradise Lumber Company, et al., docket no. 1638; Sugar Pine Lumber Co., et al., docket no. 1639; Quincy Lumber Company, et al., docket no. 1640; Pickering Lumber Company, et al., docket no. 1641; Spanish Peak Lumber Company, et al., docket no. 1642; Lassen Lumber and Box Company, et al., docket no. 1643; Red River Lumber Company, et al., docket no. 1644; Owen-Oregon Lumber Company, et al., docket no. 1645; Tomlin Box Company, et al., docket no. 1646; Big Lakes Box Company, et al., docket no. 1647; Ewauna Box Company, et al., docket no. 1648; Forrest Lumber Company, et al., docket no. 1649; Klamath Lumber & Box Company, et al., docket no. 1650; Lamm Lumber Company, et al., docket no. 1651; Pelican Bay Lumber Company, et al., docket no. 1652; Shasta View Lumber & Box Company, et al., docket no. 1653; Alcoma Lumber Company, et al., docket no. 1654; Chiloquin Lumber Company, et al., docket no. 1655; Shaw Bertram Lumber Company, et al., docket no. 1656; Braymill White Pine Company, et al., docket no. 1657; California-Oregon Box & Lumber Co., et al., docket no. 1658; Klamath Pine Manufacturing Co., et al., docket no. 1659; Arizona Lumber & Timber Co., et al., docket no. 1660; Saginaw & Manister Lumber Co., et al., docket no. 1661; Cady Lumber Corporation, et al., docket no. 1662; George E. Breece Lumber Co., et al., docket no. 1663; White Pine Lumber Company, et al., docket no. 1664; Blair

Bros. Lumber Company, et al., docket no. 1665; Oak Valley Lumber Company, et al., docket no. 1666; Harry Horr, et al., docket no. 1667; Henry A. Kurns, et al., docket no. 1668; Berry & Sons, et al., docket no. 1669

*Order appointing examiner and fixing time and place for taking testimony*

Sept. 17, 1929

This matter being at issue and ready for the taking of testimony,

It is ordered that John W. Addison, an examiner of this Commission, be, and he hereby is, designated and appointed to take testimony and receive evidence in this proceeding and to perform all other duties authorized by law.

It is further ordered that the taking of testimony in this proceeding being on Friday, October 4, 1929, at 10:00 o'clock in the forenoon of that day, at room no. 331, Young's Hotel, Boston, Massachusetts.

Upon completion of testimony for the Federal Trade Commission, the examiner is directed to proceed immediately to take testimony and evidence on behalf of the respondents. The examiner will then close the case and make his report.

By the Commission.

OTIS B. JOHNSON, *Secretary.*

H

Before Federal Trade Commission

(Titles omitted.)

*Substitute order appointing examiner*

Oct. 3, 1929

Whereas Mr. John W. Addison, an examiner of this Commission, was heretofore appointed to take testimony and receive evidence in this proceeding and to perform all other duties authorized by law, and whereas Mr. Addison has requested that he be relieved of the assignment by reason of the serious illness of Mrs. Addison,

It is ordered that William W. Sheppard, an examiner of this Commission, be and he hereby is designated and appointed to take testimony and receive evidence in this proceeding and to perform all other duties authorized by law in the place and stead of the said John W. Addison.

By the Commission.

[SEAL]

OTIS B. JOHNSON, *Secretary.*

(Titles omitted.)

*Substitute order appointing examiner and fixing time and place for taking testimony*

Jan. 3, 1930

Whereas William W. Sheppard, an examiner of this Commission, was heretofore appointed to take testimony and receive evidence in this proceeding, and whereas the said William W. Sheppard, by reason of other duties to perform, will be unable to continue the taking of testimony herein on the Pacific coast at this time,

It is ordered that Ellis DeBruler, an examiner of this Commission, be and he is hereby appointed to take testimony and receive evidence in this proceeding and to perform all other duties authorized by law, at all hearings scheduled to be held, or hereafter scheduled to be held, on the Pacific coast, in the place and stead of the said William W. Sheppard; Mr. Sheppard to resume charge of the case when, and if, hearings are to be held in a locality or localities other than the region of the Pacific coast, and to prepare the trial examiner's report upon the facts.

It is further ordered that the taking of testimony before Mr. DeBruler begin on Monday, January 20, 1930, at 10:00 o'clock in the forenoon of that day, at room no. 401, U.S. Post Office Building, Spokane, Washington.

By the Commission.

[SEAL]

OTIS B. JOHNSON, *Secretary.*

Before Federal Trade Commission

Dockets Nos. 1620, 1621, 1623–1633, 1635–1652, 1654–1658, 1662–1665

In the Matter of White Pine Cases

*Stipulation as to consolidation*

Whereas in order to obviate the necessity for a multiplicity of trials, these proceedings, by mutual consent, have been tried simultaneously and as a consolidated proceedings, and it is now desired that the understanding thus acted upon be reduced to a written stipulation and that an understanding respecting the applicability of certain general testimony to these specific proceedings be reduced to writing;

Now therefore, subject to the approval of the Federal Trade Commission, it is hereby stipulated by counsel for the Commission and by counsel for respondents in such of the above numbered proceedings as are named below in the subscription hereof, as follows, to wit:

That these proceedings may be consolidated for the purposes of a unified report by the trial examiner, for the submission of exceptions and briefs, and for final argument before the Commission on a single occasion;

That nothing herein contained shall be taken to deprive any respondent of the right of presenting an individual petition for review of any order herein to any Circuit Court of Appeals of the United States having jurisdiction in the premises;

That the evidence received in the several hearings in these proceedings relating to the subjects listed below may be deemed to have been received for and/or against each of the respondents in the above numbered proceedings, to wit:

(a) The botanical and commercial nomenclature of the several varieties of conifers of interest herein, and the factors to which consideration is given by botanists in the determination of botanical nomenclature or classification, and the considerations affecting commercial nomenclature or classification;

(b) The appearance, quality, characteristics, repute, and utility of lumber and other forest products manufactured from both the so-called "white" and the "yellow" groups of pine species, and the appearance, quality, characteristics, repute, and utility of lumber and other forest products manufactured from the several species of pines of interest herein and the distinction between said groups and species, including their botanical, common, and commercial names, commercial practices respecting such lumber and other forest products, their mechanical and physical characteristics and the uses to which they are put and to which they are adapted;

(c) The origin, purpose, extent, duration, tendency, and results of the use, in the lumber trade, of various terms including the word "white" for forest products made from that species of pine known as Pinus ponderosa (respondents, however, not being precluded from denying that there is competent evidence of record respecting any of such matters or from relying upon their objections to any such evidence), and the circumstances giving rise to the said trade terms;

(d) The extent of the official recognition of said trade term for Pinus ponderosa forest products which include the term "white", together with the occasion for partial discontinuance of certain said trade terms and the extent of such discontinuance, counsel for respondents, however, not thereby admitting that evidence relating to the occasion for such partial discontinuance and the extent thereof is material or relevant or that it may be used against respondents; and

(e) The conditions of competition in the manufacture and sale of forest products manufactured from pine varieties of interest herein;

provided, however, that this stipulation shall not constitute a waiver of any objection which was made in behalf of any party respecting the admissability or pertinence of any evidence of record herein; and provided further that nothing herein shall be taken to render appli-

cable the doctrine of admissions as said doctrine is susceptible of being invoked against joint conspirators, no conspiracy among these several respondents being charged or proved herein.

Dated December 19, 1930.

FEDERAL TRADE COMMISSION,
By ROBT. E. HEALY,
*Chief Counsel,*
EUGENE W. BURR,
*Attorney.*

*Respondent in Dockets 1621, 1624–1626, 1629, 1631–1633, 1636, 1640, 1642–1645, 1647, 1648, 1650–1652, 1654, and 1656.*

By McCUTCHEN, OLNEY, MANNON & GREENE,
ALLAN P. MATTHEW,
CARL I. WHEAT,
*Attorneys.*

Approved: December 19, 1930.
FEDERAL TRADE COMMISSION,
By OTIS B. JOHNSON, *Secretary.*

K

Before Federal Trade Commission

(Filed in accordance with ¶ 6 of court stipulation (supra))

Docket No. 1654

In the matter of Algoma Lumber Company, a corporation, respondent

*Report, findings as to the facts, and conclusion*

June 8, 1931

Acting in the public interest, pursuant to the provisions of an act of Congress approved September 26, 1914 (38 Stat. 717), the Federal Trade Commission on May 23, 1929, issued and served a complaint upon the respondent above named, charging it with the use of unfair methods of competition in interstate commerce in violation of the provisions of section 5 of said act.

The complaint herein is one of a group of fifty complaints (dockets 1620 to 1669, both inclusive) issued by the Commission against corporations, partnerships, and individuals, charging the use of one or more trade terms inclusive of the phrase "white pine" to designate lumber, logs, and other forest products manufactured and sold in interstate commerce from the pine species hereinafter described, known as "Pinus ponderosa."

Respondent appeared and filed an answer. Thereafter this group of fifty cases by mutual consent, in the interest of economy and for the avoidance of a multiplicity of hearings, was tried as a consolidated proceeding. Hearings were had and evidence was introduced,

both in support of the complaints and in defense, before an examiner of the Federal Trade Commission, duly appointed, beginning October 4, 1929, at Boston, continuing at New York; Detroit; Indianapolis; Chicago; Madison, Wisconsin; Spokane; Portland, Oregon; San Francisco; Albuquerque, New Mexico; and Flagstaff, Arizona; and closing at Chicago on February 20, 1930. All of the evidence was recorded, duly certified, and transmitted to the Commission.

Thereafter this proceeding came on for final hearing, and the Commission having duly considered the pleadings and all the evidence taken herein and the record herein and being fully advised in the premises, makes this its report, stating its findings as to the facts and its conclusions drawn therefrom.

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## *Findings as to the facts*

Paragraph one: The respondent is incorporated under the laws of the State of California and has its principal place of business at Klamath Falls, Oregon.

### I. RESPONDENT USES NOMENCLATURE WHICH INCLUDES THE PHRASE "WHITE PINE" FOR ITS PINUS PONDEROSA PRODUCTS IN INTERSTATE TRADE

Paragraph two: The respondent is engaged in the manufacture and sale of lumber and timber products and ships said products from the State of manufacture to customers located in other States in various sections of the United States and, in some instances, located in various foreign countries. In causing its said products to be sold and transported from one State to another and from this country to foreign countries, respondent is in competition with other corporations, partnerships, and individuals producing forest products and selling and transporting the same from one State of the United States to another and to certain foreign countries.

Paragraph three: Respondent in the course and conduct of its business, as described in paragraph two hereof, for more than five years last past, has manufactured and sold, and now manufactures and sells, among other products, forest products produced from that certain species of tree botanically designated "Pinus ponderosa" under the name of "California white pine"; and during said period of time respondent, in advertisements inserted in trade journals and other media of national circulation, together with other forms of advertising, circular letters, correspondence with purchasers and prospective purchasers thereof and on letterheads, billheads, and invoices and orally through its sales forces, has designated and described such forest products made from Pinus ponderosa as "California white pine."

### II. GROUPING OF PINE SPECIES

Paragraph four: Pine trees, the genus pinus, have for a long period been divided by botanists, wood technologists, foresters, and the public generally into two groups, namely the "white pine" and "yellow pine" groups.

Paragraph five: In the classification of conifers including the pines, in so far as it is of purely botanical character, the number and grouping of needles, the nature of the cones and the character of the bark are the primary considerations. The qualities and uses of the lumber produced by the trees classified are not considered for such botanical classification and the botanical classification of species of trees into a given genus does not always bring together a group of species producing lumber of closely related qualities and uses. After the above mentioned botanical and practical grouping of the pines

had been made, a microscopic study and classification of the cellular structure of the pines revealed that pine species belong to two distinct groups as regards their cell structure and that the division on microscopic bases is identical with the botanical and practical classification into the "white pine" and the "yellow pine" groups.

Paragraph six: The microscopic distinction in cell structure between the members of the white pine group on the one hand and the members of the yellow pine group on the other, bears no known causal relation to the practical qualities of the lumber produced by the various pine species. The utilities of lumber have been learned by experience.

Paragraph seven: Experts are able to determine microscopically whether a fragment of wood came from one of the white pines or from a yellow pine. They are not able thus to ascertain whether a given piece of white pine lumber was taken from a tree of one or another species of white pine and conversely they cannot be sure of the species of any given piece of yellow pine. In large quantities experts and experienced lumbermen would in most instances be able to state with fair degree of certainty by what species of pine the lumber was produced. In the forest there is generally no uncertainty in distinguishing the species by differences in the bark and in the cones and by the presence of five needles in each bundle in white pines—the yellow pines having a less number.

### III. CHARACTERISTICS OF THE WHITE PINE GROUP

Paragraph eight: The white pine group includes, by common consent, the following commercial species of interest herein:

(a) The Northern white pine, known also by various other trade names, all of which include the phrase "white pine", botanically known as Pinus strobus:

(b) Sugar pine, botanically known as Pinus lambertiana; and

(c) Idaho white pine, known botanically as Pinus monticola.

These are the leading commercial species. The word "white" as part of the common name given to the members of the white pine group is not in origin descriptive of the outward appearance of these trees in the forest but of the lumber made therefrom.

Paragraph nine: The white pine group has (a) a high degree of uniformity of lumber qualities as a group and is (b) preeminent for its high average of the following lumber characteristics:

Durability under exposure to weather and to other conditions of moisture, a great proportion of heartwood content as contrasted with sapwood content, lightness of color, lightness in weight, softness and evenness of texture, closeness and fineness of grain, freedom from resinous content, from shrinkage, "checking" (i.e., the forming of minute fissures in the grain of the wood), and warping. Consequently the white pines have great ability to stay in place, exceptional ease of working, and exceptional ability to hold nails without splitting when driven close to the end or edge of any given piece of lumber, and also to receive and retain paint.

### IV. CHARACTERISTICS OF THE YELLOW-PINE GROUP

Paragraph ten: The species of the yellow-pine group are in general and as an average far harder, heavier, stronger, more subject to shrinkage and warping, darker in color, more resinous, denser in fibre, and coarser and more difficult to work than any of the members of the white-pine group. The typical species of the yellow-pine group are valuable for purposes where structural strength of timber is required whereas the species of the white-pine group are not adapted to heavy construction.

Paragraph eleven: In contrast with the white pines the yellow pines vary widely. The most typical and commercially important of the latter is the long leaf yellow pine (Pinus palustris) of the Southern States. From this species, the hardest of the group, the yellow pines vary to Pinus ponderosa which produces the softest lumber of any of the group. The characteristics of the Pinus ponderosa lumber are set forth in section X below. The typical yellow pines of the South do not produce lumber in "shop" grades (see parag. 49) to any marked extent.

### V. NORTHERN WHITE PINE

Paragraph twelve: The white pine known over far the longest period and most widely is Pinus strobus. It is native to the Northeastern States and westward to the Great Lakes region, including Minnesota, together with great sections of the eastern Canadian Provinces. Its range extends also along the Appalachian highlands into the Southeastern States.

Paragraph thirteen: This lumber is often referred to merely as "White pine." Of its other names, the commonest is "Northern white pine." It is also given various designations, including "New England white pine", "Maine white pine", "Michigan white pine", "Michigan cork pine", "Wisconsin white pine", "Minnesota white pine", "Canadian white pine", "New Brunswick white pine", among others.

#### Present production

Paragraph fourteen: American production of white pine was formerly immense. As the virgin stands of the species became depleted in eastern sections, supplies from further north and west came into use and additional virgin stands were from time to time depleted.

Paragraph fifteen: While some virgin northern white pine remains in New York State and elsewhere, there remain only small areas in the United States outside of Minnesota. In the latter State the virgin stands are still extensive and of high quality.

#### History

Paragraph sixteen: White-pine lumber was the almost universal building material of the settlers of New England from the earliest days. From this section, moreover, it was marketed throughout the

country as settlement developed and became and remained for generations the leading softwood of the country. Many ancient buildings constructed from this lumber, 1636 to 1780, are still in use and are in a high state of preservation. Among these are certain famous buildings, including Christ Church in Cambridge, the Longfellow house, the James Russell Lowell house, the Fairbanks house, among others. In numerous cases the original shingles or clapboarding are still exposed to the New England climate. In certain instances the white-pine lumber was not protected by paint and is still in a good state of preservation.

### Qualities and reputation

Paragraph seventeen: White-pine lumber from adult growth possesses precisely the qualities enumerated, as characteristics of the white-pine group, in paragraph nine hereof. It has long held and still holds an exalted reputation among the consuming public for the said enumerated qualities and in general esteem is the highest type of lumber as respects the excellences desired in softwood materials. These views of white pine are widely shared by the consumers, builders, dealers, architects, millwork manufacturers, and professional foresters and technologists. This species is coming more and more to be a specialty wood, largely devoted to special purposes, as it becomes scarcer and higher in price. It is in great demand.

### Commercial future of the species

Paragraph eighteen: The importance of white pine is enhanced by reforestation efforts by the National Government, State governments, and by private persons. Great areas have been planted in many parts of the country.

## VI. MEANING ATTACHED TO "WHITE PINE" BY THE PUBLIC

Paragraph nineteen: As a result primarily of the aforesaid high qualities and reputation, the long continued and the wide-spread use of white-pine lumber under numerous trade names, above mentioned, which include the phrase "white pine", the public long ago came to associate and still associates with the phrase "white pine" the said qualities above in paragraph nine described.

## VII. SUGAR PINE

Paragraph twenty: Sugar pine (Pinus lambertiana), the second species of the commercial white pines (supra parag. 8), is native to upland regions of California, southern Oregon, and small parts of Nevada.

Paragraph twenty: Sugar pine (Pinus lambertiana), the second been sold as "sugar pine." Its producers advertise it, and other-

wise promote its sale, as a genuine white pine, with the qualities of true white pines. It has been in the market of the country widely for about 30 years and has an annual production of about 280,000,000 feet.

Paragraph twenty-two: Sugar-pine lumber is preponderantly a heartwood and has in high degree the qualities typical of the true white pines outlined in paragraph nine hereof. This species is closely akin as a tree and as lumber to white pine.

Paragraph twenty-three: Sugar pine has a high reputation for durability, particularly when exposed to the weather or to other processes of wetting and drying and in actual use has endured exposure for long periods. Original lumber made from sugar pine is still in place where exposed to the weather and is in good condition after many years use in numerous instances. This is true occasionally even where the wood has been left unpainted. This species is highly valued for exterior uses. Sugar pine is the most largely used and most highly valued of any species for industrial patterns on account of its exceptionally high degree of softness, uniformity of texture, the large dimensions in which it is obtainable, its freedom from warping, checking, and shrinkage and its consequent exceptional ability to stay in form. For similar reasons it is highly valued for interior woodwork of pianos and organs. There is a tendency for sugar pine to become a specialty wood.

### VIII. IDAHO WHITE PINE

Paragraph twenty-four: Idaho white pine (Pinus monticola), the third species of commercial white pines, is indigenous to the mountainous sections of northern Idaho, Washington, and Oregon, western Montana, and portions of British Columbia. Northern white pine and Idaho white pine resemble one another closely.

Paragraph twenty-five: Lumber cut from this species is characterized by the qualities of the true white pines described in paragraph nine hereof. Idaho white pine has come into general use only within about 20 years; it has shown excellent durability under weather exposure. It has an excellent reputation for durability, and is recognized as a true white pine.

### IX. PINUS PONDEROSA

Paragraph twenty-six: Having described the commercial species of true white pine, we turn now to Pinus ponderosa, the lumber designated by respondent and numerous other producers by names which include the phrase "white pine." The term ponderosa is not used in the trade but is employed herein for convenience. Ponderosa is fully recognized as belonging, both by botanical classification and its cellular character to the yellow-pine group.

Paragraph twenty-seven: This species has a range extending over a wide area from British Columbia to the Northern States of Mex-

ico and from the Pacific Coast States to the mountainous sections of Montana, Colorado, and New Mexico. Ponderosa averages a larger growth than northern white pine or Idaho white pine but is smaller than the sugar pine. This tree is readily distinguishable from true white pines by its bark, cones, and the number of its needles to each sheath. It is given the designation "Western yellow pine" by the United States Forest Service. It is generally known by the residents of its home regions and by loggers merely as "yellow pine."

Paragraph twenty-eight: The annual production of Pinus ponderosa is 2,800,000,000 feet, b.m., while that of true white pine is 1,600,000,000 feet.

## Trade terms for ponderosa

Paragraph twenty-nine: The lumber from this species has been given the names in controversy in the above described group of cases (see page 2) by respondent and various other producers, to wit, California white pine, New Mexico white pine, and Arizona white pine. Ponderosa lumber, by many of the producers in the so-called "inland empire" (i.e. eastern Washington and Oregon, Idaho, and western Montana), was formerly given the name "western white pine", which however was abandoned by these producers (see infra, parag. 33) and the term "pondosa pine" adopted for their ponderosa products. The term, western white pine, is now used only by a few producers in Arizona and New Mexico and as an alternate term only. The ponderosa producers using the terms in controversy, in contrast with the retailers, have almost always refrained from advertising, invoicing, or selling this lumber as "white pine" without prefixing one or another of the said geographical terms. Occasionally, however, the term "white pine" has been used alone by the producers. Nor have these producers supported their designation of ponderosa products by terms which include the phrase "white pine" by express declarations to their customers that said products are true white pine.

## Origin and extent of terms, which include "white pine", for ponderosa

Paragraph thirty: Ponderosa lumber came to be given terms which include the phrase "white pine" for local markets in California, New Mexico, and Arizona about 1880. By 1886 it was being generally marketed under terms including "white pine" in California, Nevada, and Utah points with occasional shipments further east. By about 1900 it was coming into middle western territories and about 1915 ponderosa completed its national distribution by entering New England in a limited way. (But see parag. 74, infra.)

Paragraph thirty-one: But as ponderosa lumber gradually spread eastward it came into competition more and more with true white

pine in markets long occupied by true white pine. Accordingly ponderosa producers came to value the use of trade terms which include "white pine" for ponderosa products, and they now desire to continue such use, since these trade terms classify and associate ponderosa in the market with the true white pines and afford producers of ponderosa a substantial monetary sales advantage.

Paragraph thirty-two: Terms for ponderosa which include the phrase "white pine" are now in use by almost every producer from and including the Klamath section of southern Oregon, California, Nevada, Arizona, and New Mexico. In the last two named States, however, these terms were partially dropped before these proceedings began.

More than half of ponderosa output is no longer sold under "white pine" trade terms

Paragraph thirty-three: The ponderosa of the "inland empire" did not enter midwestern and eastern markets as early as the more southerly supplies. When it did it was under various terms, of which western white pine was most employed (see supra, parag. 29). In 1924 the majority of "inland empire" producers of ponderosa adopted the name "pondosa pine" and abandoned all other terms for this lumber. The same term is used by a very few California producers whose chief product is sugar pine. Pondosa pine is the term employed for ponderosa by the representatives of the producers of slightly more than half of the ponderosa marketed. Certain Arizona and New Mexico producers use it as an alternative term. Pondosa pine is used for the same purposes as before the change of name but whether in the same proportions the record does not reveal. It is used in general for the same purposes as such ponderosa as is marketed under terms which include the phrase "white pine" but not in the same proportions.

### X. COMPARISON BETWEEN TRUE WHITE PINE AND PONDEROSA LUMBER

Paragraph thirty-four: The importance to the buyer of the confusion, hereinafter found, is due in large measure to certain differences between the lumber of the genuine white pines and that made from Pinus ponderosa. Report on those distinctions next ensues:

#### A. Variability of qualities

Paragraph thirty-five: The ponderosa species grows readily under an unusual variety of conditions of soil, drainage, temperature, latitude, altitude, and of high precipitation or semiaridity. The true white pines are far more restricted and more exacting in their requirements in the foregoing respects. They do not thrive under conditions so widely varying.

Paragraph thirty-six: Correspondingly ponderosa has a high degree of variability in characteristics as lumber. Ponderosa products from different parts of California vary widely, some sections producing light colored wood of soft texture, while in other districts the product is far harder, darker, heavier, and denser. The ponderosa of the "inland empire" is a smaller tree as an average and produces lumber differing in some respects, including the average character of its knots. "Inland empire" ponderosa also presents varied lumber characteristics. The higher elevations of Arizona and New Mexico produce soft, pale types of ponderosa, varying in color and texture from California types. These variations in ponderosa lumber are far greater than the variations in the species of true white pine.

Paragraph thirty-seven: There are also greater variations in given individual localities in the same stand of ponderosa than in the corresponding stands of the genuine white pines.

Paragraph thirty-eight: Moreover, in the same tree and in the same piece of lumber there are greater average variations in the softness, ease of working, appearance, and color of ponderosa than in the case of true white pines. These latter variations are of two kinds: There is a greater variation in general between the spring and summer portions of the annual rings of ponderosa than in the white pines. The texture of the white pines is more uniformly smooth and relatively unbroken by differences in characteristics between the two portions of each annual ring, while in the case of the average ponderosa there is a greater hardness of the summer growth of the tree as contrasted with the spring growth.

Paragraph thirty-nine: Further and more notably there is a greater difference in ponderosa than in the true white pines between the color, texture, density, weight, and resinous content of the heartwood and of the sapwood. As an average the heartwood of ponderosa is notably darker, heavier, and more resinous than either the sapwood of the same tree or the heartwood of genuine white pines.

Paragraph forty: True white-pine lumber is far more durable than ponderosa lumber, especially when exposed to weather conditions. The ponderosa pine has on an average a far greater amount of sapwood than trees generally used for lumber. It has a far greater percentage of sapwood than the true white pines. The sapwood of the ponderosa is less durable than any other part of the tree—especially when exposed to weather conditions. It is the sapwood of the ponderosa that most closely resembles the heartwood of the true white pines in appearance and softness. It is the sapwood of the ponderosa that is usually sold for uses and purposes for which the heartwood of the true white pines is celebrated. The close resemblance between the heartwood of the true white pines and the sapwood of the ponderosa above noted is one of the greatest causes of the confusion and deception in the marketing of the two species.

Paragraph forty-one: Accordingly, an order for ponderosa lumber may be correctly filled by material having a considerably greater diversity of characteristics than an order for true white pine. Furthermore, if orders for "white pine" (see parag. 62) are interpreted by the dealer to permit the delivery not only of true white pine but also of ponderosa purchased by him under names which include the phrase "white pine" (see parags. 65–69), there is far more risk of the buyer receiving lumber either of characteristics differing from those desired or of characteristics widely varying within the consignment than in the case of an order for "white pine" when interpreted so as to require true white pine exclusively.

B. Comparison of the so-called mechanical properties

Paragraph forty-two: The findings as to "mechanical properties" made under above heading exclude the comparative variability of the lumber produced by the species in question, the respective proportions of their heartwood and sapwood content and the relative durability of the species compared. In mechanical properties, so restricted in meaning, ponderosa is found as an average to compare with the true white pine as follows:

Paragraph forty-three: The genuine white pines distinctly excel ponderosa in freedom from shrinkage and "checking" (i. e., the formation of minute fissures). Checking is a partial cause of the warping and twisting of lumber and conduces to decay. It also promotes a more frequent failure of ponderosa lumber to "stay in place."

Paragraph forty-four: Genuine white pines as an average excel ponderosa in softness of texture, freedom from resinous content, in paleness of color and lightness of weight, ease of working and ability to hold nails close to the edge or end of the lumber. The white pines also as an average excel ponderosa as regards their ability to hold paint.

C. Comparative proportions of heartwood and sapwood

Paragraph forty-five: Growing timber is divided into the heartwood and the sapwood portions, the heartwood of trees in general including the four pine species hereinabove described, constituting that portion of the product which possesses the greater durability, where exposed to weather conditions or in other ways to moisture.

Paragraph forty-six: The proportion of heartwood has an important bearing here. The sapwood of none of the varieties here in question has a long life where exposed to conditions inducing decay. (But see parag. 57.)

Paragraph forty-seven: Ponderosa has a far less proportion of heartwood than each of the true white pines.

Importance of the proportion of heartwood for remanufacturing purposes

Paragraph forty-eight: The difference between the proportions of the heartwood to the sapwood content in ponderosa and in the true white pines is important in the remanufacture of the lumber into mill-work products and in the utility of the products.

Paragraph forty-nine: In sawing the tree into lumber the preliminary process is "slabbing." Thereby a far greater proportion of the sapwood content of the average true white-pine log is removed than of the sapwood content of the average ponderosa log. The lumber thereafter first taken constitutes in high proportion what is sold as the "select" grades of lumber both in the white pines and in ponderosa. These grades consist to a substantially larger extent of heartwood in true white pines than in ponderosa. Proceeding further into the log more knotty portions are encountered. These are used as the "shop grades" for remanufacturing into both inside and outside finish. In true white pine these shop grades consist of heartwood to a much larger extent than is the case in ponderosa shop lumber.

Paragraph fifty: For this reason manufacturers of outside finish from true white pine can and some of them actually do so mill the lumber as to turn the sapwood portions toward the inside and to present a complete heartwood surface to the weather. This it is not possible to do with ponderosa shop lumber since the sapwood content is too great.

Paragraph fifty-one: Still further in the inter or the great number of knots unfit the lumber for shop use and it is used as common lumber. In the "common" grades ponderosa and true white pine are some times sold together as "pine common."

Paragraph fifty-two: The heartwood content constitutes the typical lumber of true white pine. But in ponderosa the heartwood content is much smaller in percentage, as an average, and is harder, heavier, darker, denser and more resinous than the sapwood of ponderosa or either the heartwood or sapwood of true white pine. Accordingly ponderosa heartwood is not as an average highly adapted in amount, appearance, and texture to compete with true white-pine lumber.

D. Comparative durability under weather exposure

Paragraph fifty-three: Climatic conditions of moisture, precipitation, and humidity have a direct effect upon the durability of exposed lumber. Other things being equal the greater the exposure to moisture, the greater tendency of any given species to decay.

Paragraph fifty-four: The reputation of ponderosa for durability, and its actual durability, in uses where exposed to the elements is far

below that of the true white pines in general. Ponderosa is not sought by buyers for its durability for exterior uses. It is not recommended for such purposes by architects. While the United States Forest Service has conducted no investigations of the comparative durability of lumber which have resulted in dependable data, that bureau, in common with experts generally, deems ponderosa to have notably lower durability under weather exposure than true white pine. This is also asserted by practical lumbermen generally.

Paragraph fifty-five: Said low comparative standing of ponderosa as to durability results from experience with it in various parts of the country and the contrasting experience with the true white pines, and over the far longest period, with northern white pine. Ponderosa has failed to endure in exterior uses under conditions of high precipitation and humidity in various sections east of the Mississippi River. It has become unserviceable through decay in about seven years in various cases. Prompt painting has not always prevented the decay of ponderosa.

Paragraph fifty-six: In some sections of California, there are houses constructed of ponderosa of many years standing. Although still serviceable the exterior of these has rotted to considerable extent and the "shakes" have rotted badly. California users and architects prefer sugar pine to ponderosa for exterior use because experience has shown that sugar pine endures longer. In the arid regions of the Southwest, ponderosa has a record of centuries of use in structures made by the Spanish and Mexican settlers, but even in that section the long life experienced as regards this lumber is where not exposed to the weather. Rotting has occurred in this section where there was weather exposure."

Paragraph fifty-seven: Where sugar pine and ponderosa have been compared as to durability of standing dead timber, in stumps of cut timber and in dead and down logs, in the same localities and under similar conditions, the ponderosa has decayed and become wholly unmarketable after periods of one to four years, while sugar pine has endured for many years. A comparison of dams, each subject to daily depletion and replenishment of the supply of water, built of ponderosa and of sugar pine respectively showed a life of about two years in the case of the former material and about 39 years for the sugar pine. The sapwood of sugar pine outlasts the sapwood of ponderosa and the heartwood of the white pines outlasts that of ponderosa.

### XI. UTILITIES OF PONDEROSA LUMBER

Paragraph fifty-eight: Ponderosa lumber as an average resembles true white pine in appearance and general texture and it competes actively with true white pine in many markets and for many purposes for which true white pine has long been used.

Paragraph fifty-nine: Ponderosa is excellent for many uses and has sold and continues to be sold in great quantities upon its merits. It has fine characteristics as inside finish for which it is widely used

on account of its lower market price. Another reason for preferring it over true white pine for interior use is that numerous architects, members of the trade and consumers desire the ponderosa type of grain. Ponderosa is distinctly inferior, however, to true white-pine lumber, for reasons set forth hereinabove, for outside uses including exterior trim (paragraphs 53 to 57), and for numerous purposes requiring the acme of characteristics enumerated hereinabove in paragraphs nine and twenty-three. The true white pines do not supply enough of the shop grades to make all of the exterior millwork normally needed by the building trade.

### XII. EXTENT OF CONFUSION THROUGH THE USE OF TRADE TERMS INCLUDING "WHITE PINE" FOR PONDEROSA

#### A. Market conditions

Paragraph sixty: As the eastern stocks of virgin northern white pine diminished, Michigan and Wisconsin "white pines" came into the market. As these stocks in turn diminished, Minnesota and Canadian "white pines" have come increasingly into the market. All of these were of the northern white pine or strobus species. Idaho white pine and sugar pine also advanced with the recession of the supply of northern white pine, entering the markets in a gradual eastern progress. The character and qualities of each of these species possess and were presented to the trade and public as those of a true white pine. Ponderosa, under names which included the phrase "white pine", entered the same markets during the same general period.

Paragraph sixty-one: Throughout the competitive relations among the white pines and between them and ponderosa there has, with practical uniformity, existed a price differential in favor of each of the true white pines. The white pines have maintained and still maintain a higher price than ponderosa products.

Paragraph sixty-two: The character and reputation of true white pine as above set forth (parags. 9, 17, 19, 22, 23, 25) have led the general public, builders, architects, and the trade over a long period to call for and specify "white pine", and this demand continues to the present time. The dealers, architects, and consuming public are influenced by the common names given to lumber products and not by the botanical names. They seldom know the Latin terms for the respective species, although of late there has been a tendency on the part of certain architects to use "strobus" in their specifications of northern white pine. Nor are these classes of buyers informed of or concerned over the purely botanical distinctions considered by scientists in the classification of species. They buy by common names and are concerned over distinctions between the characteristics of the lumber of the various species.

Paragraph sixty-three: The general public associates certain qualities as above found (parag. 19) with the term "white pine",

but does not have sufficient knowledge of lumber species to be able to distinguish by appearance between the true white pines and ponderosa. Even experienced retailers cannot always be certain as to whether lumber is ponderosa or true white pine, and architects, as a class, do not have the special technical knowledge required for them to distinguish between the two. This is true of the lighter and softer types of ponderosa and particularly of its sapwood lumber.

B. Extent of the resulting confusion to wholesalers and remanufacturers

Paragraph sixty-four: Some wholesale lumber merchants and millwork concerns are apprised of the fact that ponderosa products, in the market under terms which include the phrase "white pine", are not true white-pine products, but they have little opportunity to inform themselves directly as to camparative durability.

C. Extent of resulting confusion to retail dealers

Paragraph sixty-five: Some retailers of lumber know the species and quality distinctions among these varieties of pine lumber and of this number a portion make it their practice to deliver genuine white pine upon orders for "white pine." The various terms which include the phrase "white pine" for ponderosa are thoroughly familiar to the retail trade as well as the appearance of the lumber they receive under said terms, but many retailers do not know whether ponderosa products sold under said terms are true white-pine products or not. Some retailers believe them to be genuine white-pine products. Ponderosa under names which include the phrase "white pine" is sold by many retailers upon orders for "white pine." Numerous dealers in various parts of the country do not distinguish between ponderosa so named and true white-pine lumber in their respective qualities and utilities. Many dealers sell ponderosa and the genuine white pines on orders for "white pine" according to the stocks they may chance to have on hand. The use of the phrase "white pine" as part of terms for ponderosa is confusing to and misleads a substantial portion of the retail lumber trade.

D. The use of the phrase "white pine" by distributors of ponderosa as an aid to dealers to mislead consumers

Paragraph sixty-six: The practice by retailers of selling ponderosa, when designated by a term which includes the phrase "white pine" on orders for "white pine" is not confined to dealers who do not know the distinctions of quality between ponderosa so named and true white pine. Dealers who know that white pine excels ponderosa in important respects frequently sell either product to fill orders for "white pine" according to their own interest or the exigencies of their yards.

Paragraph sixty-seven: Some dealers who know that ponderosa products purchased under trade terms which include the phrase "white pine" are not genuine white pine prefer to stock their yards with such ponderosa as comes to them so named, rather than with ponderosa otherwise named, on account of the sales value which the word "white" so used possesses. Some retailers feel justified or safer in selling ponderosa products on orders for "white pine" on account of the inclusion of the phrase "white pine" in the term under which they purchase.

Paragraph sixty-eight: When an order comes for "white pine" dealers sometimes make an effort to learn to what use the lumber is to be put and supply ponderosa or true white pine accordingly. Others make no such effort. Dealers, however, quite generally omit to pass to their customers the information that ponderosa is not a true white pine. Even ponderosa sold to the retailer under the trade term "pondosa pine" is sometimes sold to the consumer on orders for "white pine." The latter sales are aided and made more frequent by the fact that "pondosa" lumber is cut from the same tree as ponderosa lumber sold under names which include "white pine", and by the further fact that representatives of "pondosa" producers, meeting in competition the salesmen of ponderosa, offered under said names, urge that "pondosa" is as much entitled to be sold as "white pine" as ponderosa so named.

Paragraph sixty-nine: There is a powerful motive for the retailer's substitution of ponderosa under terms which include "white pine" for true white pine in the lower cost of ponderosa and there is excellent opportunity afforded by the fact that architects and consumers cannot ordinarily check the material furnished.

### E. Extent of the resulting confusion to architects

Paragraph seventy: Architects desire for exterior uses lumber from such species as possess primarily the quality of durability; for interior purposes they desire such lumber as possesses the qualities of beauty. The members of the profession prize the qualities of true white pine and particularly of northern white pine, which has an exceedingly high reputation among them. Accordingly architects for many years have specified "white pine" and are still so specifying, particularly for exterior use.

Paragraph seventy-one: The majority of architects desiring true white-pine quality specify in terms "white pine." Under such specification some architects would knowingly accept nothing but strobus; others would knowingly accept any genuine white pine; still others would accept Idaho white pine but not sugar pine.

Paragraph seventy-two: The majority of architects do not know whether ponderosa lumber when given names which include the phrase "white pine" is true white pine with true white-pine qualities or not, particularly as to durability. Nor do architects possess the knowledge necessary to apply the microscopic test between true

white pines and yellow pines, nor do they have sufficient experience to accurately distinguish between true white pine and ponderosa, particularly in the softer and lighter products of the latter species. They unwittingly accept ponderosa on behalf of their clients when true white pine and its qualities are desired and when "white pine" is ordered. This is caused by the advertisement and use of names, including "white pine" for ponderosa products.

### F. Extent of the resulting confusion to the general public

Paragraph seventy-three: The qualities and reputation of the true white pines has led the consuming public to desire and order "white pine" for many years. This desire persists to the present time, and retailers are constantly called upon to furnish "white pine." Consumers, however, have less training and opportunity than architects for distinguishing by appearance ponderosa products from true white pine.

Paragraph seventy-four: Consumers are constantly buying ponderosa pine under terms which include the phrase "white pine" when they order "white pine" and desire it for purposes for which true white pine excels ponderosa. Although ponderosa products have been sold under names which include the phrase "white pine" in certain markets outside of the regions of production for thirty years, there is still almost complete confusion resulting in the mind of the consuming public as to the distinction between ponderosa products so named and true white-pine products. This confusion on the part of the consuming public is to be found even among a substantial proportion of California buyers in spite of the use of the term "California white pine" in local markets since about 1880.

## XIII. Effect of the use of terms which include "white pine" for ponderosa products upon competition

Paragraph seventy-five: The producers of ponderosa products marketed under trade terms which include the phrase "white pine" sell their said products to the wholesale and retail trades and to millwork manufacturers. In this trade they compete in selling to the same customers with producers of true white pine and also with producers of ponderosa who use the term "Pondosa pine."

Paragraph seventy-six: The use of the phrase "white pine" in names for ponderosa products has a positive monetary advantage for the producers in marketing the product. This is due to the association with and the suggestion of true white pine by means of that phrase.

### A. Upon true white-pine competitors

Paragraph seventy-seven: Manufacturers of true white pine have found it more difficult to dispose of their products in competition with the lower-priced ponderosa sold under terms which include

the phrase "white pine." Retailers frequently desiring to purchase so-called "white-pine" products at a low price, accept ponderosa sold under terms which include the phrase "white pine" for the reason that such lumber can be sold upon orders for "white pine" better than ponderosa products otherwise named. The retail customer buyers of true white-pine products encounter a similar difficulty in competition with retailers selling lower-priced ponderosa products under names which include "white pine", and this affects their purchases of true white pine.

B. Upon "pondosa pine" competitors

Paragraph seventy-eight: The manufacturers of ponderosa products who are using the trade term "pondosa pine" have also found it more difficult to dispose of their products in competition with ponderosa products sold under names which include the phrase "white pine." This is due in material degree to the use of the phrase "white pine" in the trade term. Dealers frequently desire to buy lumber products sold under a trade term which includes the phrase "white pine" and yet can be marketed competitively at prices lower than the prices of true white pine.

Paragraph seventy-nine: This results in the purchase by certain retailers of ponderosa products designated by terms which include "white pine" in preference to the competing ponderosa products designated "pondosa." Salesmen of "pondosa" products try to protect themselves by pointing out that pondosa lumber is cut from precisely the same species of tree as ponderosa lumber sold under terms which include the phrase "white pine." Nevertheless the preference remains for a product the trade name for which includes "white pine." Certain retailers cannot be convinced that "pondosa" and California, etc., "white pine" products are made from the same species of tree. Others can be convinced but still prefer a product under a trade name which includes the phrase "white pine" because the latter sells more readily.

XIV. THE RELATION OF THE USE OF TRADE TERMS WHICH INCLUDE THE PHRASE "WHITE PINE" FOR PONDEROSA TO PUBLIC GOOD WILL

Paragraph eighty: When dissatisfaction occurs from the use of ponderosa lumber delivered under orders for "white pine" there is a direct tendency toward the discrediting of "white pine" generally without public discrimination between true white pine and ponderosa products marketed under trade terms which include the phrase "white pine." The tendency from the practice of selling true white pine and ponderosa products, all as "white" pines, is to lessen and destroy the especial public confidence in, and the public regard for, the true white pines with respect to the important purposes for which true white-pine lumber is especially fitted. Such

tendency exists without at the same time availing to establish a well-defined and independent reputation and esteem in favor of ponderosa for the important uses to which it is peculiarly adapted. The tendency is to lessen the ability of each of these products to hold the market, as contrasted with lumber substitutes, to the best advantage. The result is further to promote public doubt and confusion as to identity, qualities, and comparative excellences of the respective species for various important uses to the market detriment of each.

SUMMARY AND CONCLUSIONS OF FACT

(a) Respondent is a corporation producing and marketing Pinus ponderosa products which it designates, nationally advertises, and sells in trade between the States under a term including the phrase "white pine."

(b) Certain pine species have long been known to botanists, lumber technologists, and the public as the white-pine group.

(c) The most widely known of the white-pine group is the northern white pine. The lumber made from this species has for more than 200 years held and still holds a preeminent reputation with the public for certain qualities. It has been widely known under many trade terms which include the phrase "white pine."

(d) As a result of said high and long sustained reputation of the white-pine group, the consuming public understands and has long understood by the phrase "white pine" as applied to lumber, not merely a white colored pine wood, but lumber made from a true white pine species and having the qualities and uses of northern white pine.

(e) Pinus ponderosa does not belong either botanically or in public understanding to the white-pine group. Its lumber, in certain important qualities and for certain important uses, is inferior to the white-pine group.

(f) A substantial number of retail dealers frequently sell ponderosa lumber purchased by them under trade terms which include the phrase "white pine," upon orders for "white pine," not knowing that ponderosa so named is not a true white pine nor wherein it differs from the latter. Other retail dealers also substantial in number substitute ponderosa so trade-named for higher priced true white pine on such orders, knowing that the latter is not a true white pine and that it differs in certain important qualities therefrom. Both of the foregoing classes of sales are directly promoted by the circumstance that the ponderosa so sold is purchased by the dealer under trade terms which include the phrase "white pine." And in making the latter class of sales dealers are partially protected by the trade names in question. Still other retailers sell only true white pine on orders for "white pine."

(g) An inducement for the substituting of ponderosa so named on orders for "white pine" exists in the lower prices paid by the dealers for ponderosa lumber than for true white pine.

(h) The use of the phrase "white pine" as employed for ponderosa products frequently results in the purchase by the general public unknowingly of ponderosa under orders for "white pine" and as and for true white pine and results in the approval of ponderosa products unknowingly by architects, when true white pine and the qualities thereof are sought by the buyer and the architect. It results also in the employment of ponderosa products for uses for which it is less adapted than true white pine.

(i) Trade terms which include the phrase "white pine" have been used for about thirty years in marketing ponderosa products in districts beyond those of its production. But, so long as the public associates the phrase "white pine" with true white pines and the distinctive lumber qualities of these species, the use of the phrase in question for ponderosa products is inherently misleading and deceptive to the public.

(j) The said confusion is increased by the fact that ponderosa lumber frequently closely resembles that of the true white pines in several of its immediately obvious qualities and in several of its utilities.

(k) The employment of said phrase for ponderosa has a tendency toward the adoption of the latter lumber for uses for which it is comparatively lacking in durability.

(l) The employment of said phrase for ponderosa products has a tendency toward a lower public estimation of true white pine lumber.

(m) The use of trade terms which include the phrase "white pine" for ponderosa products by concerns marketing said products in interstate commerce has caused a diversion of trade from their competitors selling true white pine products and truthfully representing them to be true white pine.

(n) The use of trade terms which include the phrase "white pine" for ponderosa products by concerns marketing said products in interstate commerce has caused a diversion of trade from their competitors who sell ponderosa products under trade terms which do not include the said phrase and who do not give them a deceptive and misleading trade name.

(o) The use of trade terms which include "white pine" for ponderosa products has caused and still causes many retailers, architects, and consumers to buy ponderosa products when they have believed themselves and still believe themselves to be purchasing true white pine products.

*Conclusion of law*

The acts and things done by respondent under the conditions and the circumstances described in the foregoing are to the injury and prejudice of the public and are unfair methods of competition in interstate commerce, and constitute a violation of the act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes."

By the Commission.

[SEAL] C. W. Hunt, *Chairman.*

Dated this 8th day of June, A.D. 1931.

Attest:

Otis B. Johnson, *Secretary.*

L Before Federal Trade Commission

(Filed in accordance with ¶ 6 of Court stipulation, supra)

*Paragraph one of the findings as to the facts in docket 1626, in the matter of California Fruit Exchange*

Paragraph one: The respondent is incorporated under the laws of the State of California and has its principal place of business at Sacramento, California. It was formed to market the fruit products of its approximately 7,500 member-growers which it does on a commission basis without profit to the respondent corporation as such. It also owns and operates two lumber mills as an incidental line of business. The box shook products from its lumbering operations respondent sells to its members. The better grades of lumber respondent sells competitively on the market. The commissions for fruit marketing are collected in advance and each year respondent refunds to its members the excess of these collections over the costs of its operations as actually and yearly experienced. All profits made on the better grades of lumber go to increase the said refund to its members.

M Before Federal Trade Commission

(Filed in accordance with ¶ 6 of Court stipulation, supra)

*Paragraph three of the findings as to the facts in docket 1644, in the matter of Red River Lumber Company*

Paragraph three: Respondent in the course and conduct of its business, as described in paragraph two hereof, for more than five years last past, has manufactured and sold, and now manufactures and sells, among other products, forest products produced from that

certain species of tree botanically designated "Pinus ponderosa" under the name of "California white pine"; and during said period of time respondent, in advertisements inserted in trade journals and other media of national circulation, together with other forms of advertising, circular letters, correspondence with purchasers and prospective purchasers thereof and on letterheads, billheads, and invoices and orally through its sales forces, has designated and described such forest products made from Pinus ponderosa as "California white pine" and occasionally merely as "white pine."

N

Before Federal Trade Commission

(Filed in accordance with ¶ 7 of Court stipulation, supra)

Commissioners: C. W. Hunt, chairman; William E. Humphrey, Charles H. March, Edgar A. McCulloch, Garland S. Ferguson, Jr.

Docket No. 1654

In the matter of Algoma Lumber Company, a corporation, respondent

*Order to cease and desist*

June 8, 1931

This proceeding having been submitted to the Federal Trade Commission upon the complaint of the Commission, the answer of respondent and the evidence received by the trial examiner for the Commission, and the matter having been presented to the Commission through written and oral argument, and the Commission having made its findings as to the facts and its conclusion that respondent has violated the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties, and for other purposes";

It is now ordered that the Algoma Lumber Company, a corporation, its officers, agents, representatives, and employees, in connection with the advertising, offering for sale, and/or sale in commerce among the several States of the United States, or with foreign countries, of lumber, logs, or other forest products made from the pine species known as Pinus ponderosa, which have been designated by respondent in its trade as "California white pine" products, do cease and desist from using, either orally or in writing, the word "white" in connection, combination or conjunction with the word "pine" or in connection with other word or words used in combination or conjunction with the word "pine."

And it is further ordered, that the said respondent, within sixty (60) days from the receipt of this order, shall file with the Commission its report in writing, setting forth in detail the manner and

form in which it has complied with the order to cease and desist hereinabove set forth.

By the Commission.

[SEAL]

OTIS B. JOHNSON, *Secretary.*

O

Before Federal Trade Commission

(Filed in accordance with ¶7 of Court stipulation, supra)

Commissioners: C. W. Hunt, chairman; William E. Humphrey, Charles H. March, Edgar A. McCulloch, Garland S. Ferguson, Jr.

Docket No. 1644

In the matter of Red River Lumber Company, a corporation, respondent

*Order to cease and desist*

June 8, 1931

This proceeding having been submitted to the Federal Trade Commission upon the complaint of the Commission, the answer of respondent and the evidence received by the trial examiner for the Commission and the matter having been presented to the Commission through written and oral argument, and the Commission having made its findings as to the facts and its conclusion that respondent has violated the provisions of an act of Congress approved September 26, 1914, entitled "An act to create a Federal Trade Commission, to define its powers and duties and for other purposes";

It is now ordered that the Red River Lumber Company, a corporation, its officers, agents, representatives, and employees, in connection with the advertising, offering for sale and/or sale, in commerce among the several States of the United States, or with foreign countries, of lumber, logs, or other forest products made from the pine species known as Pinus ponderosa, which have been designated by respondent in its trade as "California white pine" and "white pine" products, do cease and desist from using, either orally or in writing, the word "white" in connection, combination or conjunction with the word "pine" or in connection with other word or words used in combination or conjunction with the word "pine."

And it is further ordered that the said respondent, within sixty (60) days from the receipt of this order, shall file with the Commission its report in writing, setting forth in detail the manner and form in which it has complied with the order to cease and desist hereinabove set forth.

By the Commission.

[SEAL]

OTIS B. JOHNSON, *Secretary.*

P Before Federal Trade Commission

Dockets Nos. 1620 to 1621, 1623 to 1633, 1635 to 1652, 1654 to 1658, 1662 to 1666, all inclusive

In the matter of the White Pine cases

*Stipulation as to Commission's exhibits 35 and 36*

May 27, 1930

Whereas in the course of the trial of the above-entitled proceedings, on January 21, 1930, action upon the Commission's offer of Commission's exhibits marked "35" and "36" for identification was inadvertently omitted and these exhibits were not received in evidence.

Now, therefore, it is hereby stipulated that Commission's exhibits for identification numbered 35 and 36 may be deemed a part of the record, under the same numbers, in the above-entitled proceedings.

FEDERAL TRADE COMMISSION,
By ROBT. E. HEALY, *Chief Counsel*,
By EUGENE W. BURR, *Attorney*.

*Respondents in Dockets 1621, 1624–1626, 1629, 1631–1633, 1636, 1640, 1642–1645, 1647, 1648, 1650–1652, 1654, and 1656.*

By McCUTCHEN, OLNEY, MANNON & GREENE,
*Attorneys*.

1 Before Federal Trade Commission

(Titles omitted.)

2 *Statement of evidence*

BOSTON, MASS., ROOM 331, YOUNGS HOTEL,
*October 4th, 1929*.

Met pursuant to notice, 10:00 a.m.
Before William W. Sheppard, examiner.
Appearances:
Eugene W. Burr and J. G. Birks, attorneys for the Commission.
McCutcheon, Olney, Mannon & Greene, by Allan P. Matthew and Carl I. Wheat, attorneys for the respondents, Clover Valley Lumber Company, et al.; Davies-Johnson Lumber Co., et al.; Diamond Match Company, et al.; California Fruit Exchange, et al.; Penman Peak Lumber Co., et al.; Feather River Lumber Company, et al.; Kesterson Lumber Company, et al.; Hobart Estate Company, et al.; Fruit Growers Supply Company, et al.; Quincy Lumber Com-
3 pany, et al.; Spanish Peak Lumber Company, et al.; Lassen Lumber and Box Company, et al.; Red River Lumber Com-

pany, et al.; Owen-Oregon Lumber Company, et al.; Big Lakes Box Company, et al.; Ewauna Box Company, et al.; Klamath Lumber & Box Company, et al.; Lamm Lumber Company, et al.; Pelican Bay Lumber Company, et al.; Algoma Lumber Company, et al.; Shaw Betram Lumber Company, et al.

4 PROCEEDINGS

Examiner SHEPPARD. The hearing in dockets nos. 1620 to 1669, inclusive, generally referred to as the "White Pine cases", will now be convened, in accordance with the Commission's direction, ordering the first hearing to be held in the city of Boston, Massachusetts, on Friday, October 4th, 1929, in Youngs Hotel at 10:00 a.m. of said date.

Mr. MATTHEW. If the examiner please, for respondents in docket no. 1621 and the others which I have listed and handed to the reporter, I desire to note the appearance of McCutcheon, Olney, Mannon & Greene and Allan P. Matthew and Carl I. Wheat.

Examiner SHEPPARD. Now, Mr. Matthew, you have indicated some of the respondents that you represent; are there any appearances by attorney or otherwise for any of the respondents who have not been indicated as being represented by Mr. Matthew?

Mr. MATTHEW. Perhaps you will allow me to state, Mr. Examiner, that there will be appearances for other respondents at later meetings, but so far as I am personally advised there will be no other attorney appearing for any other respondents at this time.

Examiner SHEPPARD. Very well, you may call your first witness.

5 WILLIAM D. SAWYER was thereupon called as a witness and, having been first duly sworn, testified as follows:

Direct examination by Mr. BURR:

Q. Give your name to the reporter, please.

A. William D. Sawyer.

Examiner SHEPPARD. Mr. Sawyer, you will have to speak up loud so we will all hear, even the men in the back of the room.

Q. Mr. Sawyer, what is your business?

A. Retail lumber.

Q. With what concern are you connected?

A. E. D. Sawyer Lumber Corporation.

Q. Where do you buy your supplies, your pine, from what localities?

A. All of them, some from California, Idaho, Maine, New Brunswick.

Q. Where do you get your white pine?

A. Some from Maine, Idaho, New Brunswick, except sugar pine, which I get from California.

Q. Do you deal in California white pine at all?

A. No; I do not carry it at all.

Q. How long has that been the case?
A. We tried one car about eight or ten years ago, but it was not satisfactory to the customers; it was too hard.
6 Q. What part of the country did you get that from?
A. That came from California.
Q. How did you sell that, did you sell that as white pine?
A. I think so, or California white pine—it is so long ago that I have forgotten.
Q. You never bought any since or before, of California white pine?
A. No.
Q. Did you deal in what is called pondosa pine?
A. No, sir.
Q. Did you realize that that is the same as California white pine or don't you know?
A. I thought it was about the same thing.
Q. Do you know whether it is the same species of white pine, botanically?
A. I don't know about that.
Q. How large a percentage of your supply of white pine do you get from Maine, would you estimate roughly—I don't want the exact figures?
A. Are you talking about at this time, now?
Q. Yes; at the present time.
A. Oh, a very small percent, not over 10.
Q. Ten percent of your total white pine?
A. Yes.
Q. Do you call sugar pine white pine?
7 A. No; we call that sugar pine.
Q. You always call that separately sugar pine?
A. Yes.
Q. Do you regard that as a white-pine species?
A. Yes; I should.
Q. If someone came into your place of business and asked for a certain specification of white pine you would not sell them sugar pine unless you told them that it was sugar pine, would you, or what is your policy?
A. If they came in and looked at it and said it was sugar pine, but if they did not it might go for white pine.
Q. Do you handle any pattern stock?
A. Yes, sir.
Q. To whom do you sell that, to the man who makes the patterns?
A. Yes.
Q. You do not make any patterns yourself, do you?
A. No.
Q. What stock do you sell for pattern purposes?
A. Nine times out of ten sugar pine.

By Examiner SHEPPARD:

Q. What do you mean by "pattern stock"?

A. For making patterns for castings.

Q. That is not plain to me.

A. You take this pine, and if you want to cast it into a certain shape you make it out of pine first and put it in sand
8 boxes, and then you take it apart.

Q. You mean for making castings?

A. Yes; these are patterns for castings.

Examiner SHEPPARD: I see; proceed

By Mr. BURR:

Q. Now, for the pattern stock, what do you sell?

A. Usually the sugar pine.

Q. Is that preferable to the Idaho white pine, do you know?

A. Yes.

Q. Why?

A. It is a little softer and an easier handling wood?

Q. Don't you use northern pine for that?

A. Cannot get it soft enough, for one thing.

Q. There are too many knots in it?

A. Yes.

Q. How about California white pine; did you ever try that for patterns?

A. Never, but once.

Q. Did you try that for patterns or pattern stock, when you handled it?

A. Yes.

Q. What happened?

A. They used it, but did not want any more.

Q. Now, where do you buy your northern pine, except Maine?

A. New Brunswick and around the Ottawa Valley.

9 Q. Is the bulk of your white pine supply Idaho white pine?

A. Yes; now.

Q. Do you happen to know the botanical name of the Idaho white pine?

A. No; I don't.

Mr. MATTHEW. That can be stipulated, but I do not think that there is any question about it.

Mr. BURR. I guess so.

Q. How long did you say you were in the retail business here?

A. We have been here over fifty years, father, brother, and myself; my father and brother are now dead.

Q. What is your address in Boston?

A. 24 East Cambridge Street.

Q. Can you tell us somewhat of the history, from your long experience, of the course of the northern white pine in the Boston market?

A. Well, we used to get the principal part of it from Maine.
Q. Up to what time would you say that was, roughly estimating it?
A. Well, we get some now, but not very much.
Q. Your ten percent that you referred to.
A. Yes. It has gradually drifted out to Michigan, and then when we got pretty well cut out there, we bought the Idaho in preference to what is called the eastern pine. It runs better and is also cheaper in price.
Q. The early buildings in this part of the country, from what kind of lumber were they made?
A. They were made mostly from pine that came from around here and Maine.
Q. Was that practically universally so at one time?
A. I should think so.
Q. Up to when would you say?
A. Seventy-five to a hundred years ago.
Q. It was bought until around about 75 to a hundred years ago?
A. Yes.
Q. For what purposes was it used, or was it used for all purposes?
A. They used it for all purposes, even the timbers.
Q. Even the timbers?
A. Yes, sir.
Q. Didn't you use oak for inside work?
A. Occasionally. What do you mean, for finish?
Mr. MATTHEW. Is the witness talking about fifty or seventy-five years ago, or the present time?
Mr. BURR. I am satisfied, under the rule, that reputation feature is admissible; there is no other way in the world to prove it. I happened to consult the authorities on that last night, to determine whether it was admissible, and I think it is clearly so, of course, taking into consideration the fact that there is no other way of proving such matters of public interest.
Mr. MATTHEW. If it is a matter of public interest; if not, I think it is clearly objectionable, but I shall not offer an objection, as long as it is confined to anything that is pretty well known in any event.

By Mr. BURR:

Q. For softwood purposes, was pine the universal wood up to 75 or a hundred years ago, would you say?
A. I think so; yes.
Mr. BURR. I think that is all; you may cross-examine.

Cross-examination by Mr. MATTHEW:

Q. Mr. Sawyer, do you frequently receive orders for white pine, without any other designation?
A. Yes, sir; either white pine or soft pine; it is used both ways.
Q. What lumber do you customarily supply, in response to an order for white pine?
A. Well, for the ordinary uses, we supply the Idaho.

Q. I think you intimated, in response to a question from counsel for the Commission, that you were not familiar with the botany of these various pine trees?

A. Not particularly; no.

12 Q. You do not know whether the so-called Idaho white pine is identical, from a botanical standpoint with the old northern pine that you had here originally in Maine and later in the Northern States and in the Middle States?

A. I do not know; I could not say.

Q. But it is the practice, nevertheless, to furnish Idaho white pine in response to an order for white pine?

A. Yes, sir.

Q. You stated that you also carry sugar pine?

A. Yes, sir.

Q. And if I got one of your answers correctly, you said that in certain cases, that pine might be supplied in response to an order for white pine?

A. Yes, sir.

Q. So that we are to understand, that in response to orders for white pine, you may supply either Idaho white pine or California sugar pine?

A. Yes, sir.

Q. Or perhaps the white pine of Maine or New Brunswick?

A. That is correct.

Q. Indiscriminately?

A. No; because we only carry the sugar pine in the high grades.

Q. But if there was an order for white pine in the higher grades——

13 A. Then it would be sugar pine.

Q. You would feel free to furnish either sugar pine or northern pine or Idaho white pine?

A. Yes; that might be so.

By Examiner SHEPPARD:

Q. Where do you get your sugar pine from?

A. From California.

By Mr. MATTHEW:

Q. I assume that in response to those orders, Mr. Sawyer, you use your best judgment as to what particular variety of pine you will supply?

A. Yes, sir; it depends on what it is going to be used for.

Mr. MATTHEW. That is all.

Redirect examination by Mr. BURR:

Q. Now, Mr. Sawyer, can you tell the difference between a stack of Idaho white pine and a stack of northern white pine?

A. Yes, sir.

Q. You can tell which is which?

A. Yes.

Q. What are the distinguishing marks between them?

A. It is a little different in the knot character; the knots are a little more red and hard in the Idaho.

Q. Suppose somebody were to cut a small piece of wood,
14 would you be able to tell which variety of white pine—admitting that it was white pine—would you be able to tell which variety it was?

A. Sometimes you can and sometimes you could not; it is according to the grain and texture of the wood.

Q. In the last two answers you made, do you include in white pine, sugar pine?

A. No.

Q. Could you tell sugar pine from northern pine?

A. I think so, most of the time.

Q. What is the marked distinction there?

A. There are microscopical pitch pockets, probably it isn't pitch, but it looks like it.

Q. How about the California white pine, can you tell the difference between that and the northern white pine?

Mr. MATTHEW. Pardon me, as long as the witness says that he has only handled one shipment and that was ten or twelve years ago, I think he ought to be qualified.

Mr. BURR. All right, I will qualify him.

The WITNESS. Sometimes in buying the Idaho they run in one, two, four, or five pieces of pondosa which is practically the same thing.

By Mr. BURR:

Q. Pondosa is just about the same thing as what?

A. Practically as California white pine.

15 Q. You are more or less familiar with California white pine and pondosa?

A. Yes, sir.

Q. Do you have occasion to see the supplies of lumber of your competitors occasionally?

A. Yes, sir.

Q. How do you get to see the supplies of your competitors?

Mr. MATTHEW. Is this recross-examination or redirect?

Examiner SHEPPARD. It did not come out in the direct or cross, but without objection, I will let it go in.

Mr. MATTHEW. I rather think we have had an intimation of an objection just now, if the examiner please.

Examiner SHEPPARD. If you insist upon your objection, I shall support you.

Mr. MATTHEW. I prefer to stand upon that objection.

Examiner SHEPPARD. I will support you.

Mr. BURR. That is all.

By Examiner SHEPPARD:

Q. Mr. Sawyer, I want to ask a couple of questions. Do you do business under the name of William D. Sawyer?

A. No, sir; E. D. Sawyer Lumber Corporation.

Q. You are located here in Boston?

16 A. Practically—it is Cambridge, just about a mile from Boston.

Q. Mr. Burr asked you some questions regarding northern pine; where does that come from?

A. Either the Ottawa Valley, New Brunswick, or around that country. We call Maine pine eastern pine.

Q. They come from this northern country then?

A. Yes; the northeastern country.

Examiner SHEPPARD. Anything else, Mr. Matthew?

Recross-examination by Mr. MATTHEW:

Q. Just one question about this term "eastern pine", you just stated in response to a question from the examiner that you refer to Maine pine as eastern pine.

A. Usually.

Q. Is that confined to Maine pine or does it include pine from New Brunswick?

A. Not very often. Practically Maine and New Hampshire; we get some from New Hampshire, too.

Q. I thought you said you got some from New Brunswick?

A. Yes; but that is called New Brunswick pine.

Q. The term "eastern pine" when it is employed here, customarily means Maine and New Hampshire pine?

A. Yes, sir; but sometimes they get the New Brunswick in as the same thing as eastern pine.

17 Q. I beg your pardon.

A. I say occasionally they put in New Brunswick as eastern pine.

Q. That is just a matter of local usage?

A. That is all.

Q. And is the pine which comes from either Michigan, Wisconsin, or Minnesota ever referred to as eastern pine?

A. No, sir.

Q. What term is used?

A. I think ordinarily they use the term "western pine" for that; that is what they used to use.

Q. The term used to be "western pine"?

A. Yes.

Q. Do you obtain any of that pine now?

A. Very little; once in a while.

Q. You referred to Ottawa pine.

A. Yes.

Q. Is that referred to as eastern pine?
A. No; that is called northern pine.
Q. That you call northern pine?
A. Yes.
Q. So then, as I understand you, we have these terms: Eastern pine, New Brunswick pine, northern pine, and western pine, all of which are used to refer to lumber, which is white-pine lumber.
18 A. Yes, sir.
Q. Produced in these several localities, and I think counsel will stipulate, from the tree which is botanically the same, called Strobus.
Mr. BURR. Yes; I will stipulate that.

By Examiner SHEPPARD:

Q. Mr. Sawyer, do you wish to claim your fee for coming up here under subpena?
A. No, sir.
Examiner SHEPPARD. We are much obliged to you for coming.
(Witness excused.)

WILLIAM E. WALL was thereupon called as a witness, and having been first duly sworn, testified as follows:

Direct examination by Mr. BURR:

Q. Will you state your name, please.
A. William E. Wall.
Q. Mr. Wall, you live in what city, Boston?
A. No, sir.
Q. Where do you live, in Cambridge?
A. No.
Q. Where do you live?
19 A. Somerville.
Q. How long have you lived there?
A. Forty-three years last July, in one house.
Q. Can you tell us if you ever held office in Christ Church, Cambridge?
A. Yes.
Q. How long?
A. Forty-two years.
Q. What office is that?
A. Vestryman and chairman of the committee on public property.
Q. When was that church built, to the best of your knowledge?
A. It is a matter of record, sir. Of course, I was not there. It began in 1759 and was finished in 1761.
Q. What lumber materials were used in the erection of that building?
A. Chiefly white pine.
Q. What else was used besides white pine?
A. Oak.

Q. What was the oak used for?

A. Rafters mostly and occasionally as crosspieces, as my observation goes.

Q. Will you state what your observation has been of that structure which was erected, as you say, in 1759?

A. From what angle, do you mean, architecturally?

Q. I mean from the standpoint of the materials used and
20 the condition of the building.

A. I think the building is in a remarkable state of preservation, considering its age and standing in the New England climate, to which I attribute largely the fact that its chief composition is made of white pine.

Q. In little more detail, what is the condition of the church? Is it partly rotted through age or what is the situation? Describe that to the examiner.

A. I will do my best, but it is a pretty large order.

Structurally, the timber seems to be white pine, and hewn, and around some of the sills there has been decay and some of the sills have been replaced and the outer covering boards in many cases, especially on the east side, have been replaced. They were originally white pine and white pine has been used to replace them—to replace the old white pine that was there.

The white pine in the interior of the finish is altogether, as I can see white pine, including the columns, which are all twelve inches or more in diameter at the top and perhaps fourteen or fifteen inches at the base. Let me say, if I do not trespass too much on your time, a peculiar condition exists in these columns, discoverable through the records of the church, not by any examination of them, and that is that they were bored with a pump augur on the center, inside,
21 and that takes up the checking and cracking that would have occurred on the outside had they been solid. That was an old custom, which is coming into vogue again, but I do not want to discuss the mechanics of this, but I only want to say that in 1856 the chancel end of the church was moved to the southern section of the building, and in between it included two other columns on either side—there are four columns in that section and they were originally the masts of old vessels, which was the only timber that they could get at that time—very solid, and they are standing as sound as they were when they were put in 1759 to 1761, but the finish and the joinery works on the inside——

Q. I am not so much interested in the inside as the outside.

A. On the outside, on the westerly side, nine tenths of the covering boards of that church are the original boards, from the cornice down to within two feet of the water table.

Q. You mean below the surface of the soil?

A. No, no; the water table is eighteen inches above the surface of the soil—that is an angle that comes out, but the covering boards from the cornice, including the cornice down to the water table, that

sheds the water away from the basement of the original boards on the easterly side. However, the majority of the boards have been replaced there from the time of '57 or subsequently, and many of them in my own time

22 Q. By "57" you mean 1857?

A. Yes. An observation would be the best way, a personal observation, to get into your mind what I am trying to say; but it is remarkable that the wood on the outside of the church, in the least exposed portions, is in the condition that it is mechanically so good and sound.

The upper portion of the tower had gotten in bad shape, and three or four or five years ago we wanted to cover it over, but we could not find boards of the kind we wanted to use, of white pine boards, so we had to use cypress. They are there now.

Q. Cypress is wearing well, of course?

A. Well, it isn't long enough to tell how it is wearing.

Q. Aside from the cypress, has the exterior replacement been of white pine in every case?

A. In every case.

Q. How much experience, if any, have you had in handling or observing wood?

A. I have been a student of wood, sir, from my boyhood. I am still a student. It is my business to match the grains of wood and the structure of all woods, in ordinary finish, is known to me, but the mechanical side of it, the working of the wood, I have only from hearsay and observation, but I have seen a great deal of woodwork, and I know that men prefer some kinds to others because of its usefulness.

23 Q. You have been a grainer; is that the term you used?

A. Yes; for fifty-seven years.

Q. What is a grainer?

A. An imitator of the grains of wood.

Q. Do you imitate grains of wood by external application of stain and varnish; is that the idea?

A. Yes; we use colors of different sorts and a little bit of gray.

Q. Have you had any observation as to the durability of the pine joists as compared with the oak pin?

A. I recall one instance, sir, when the organ was taken from the gallery, where it was installed in the early days of the building, and a new organ was put on the westerly side of the church; that my brother-in-law, who is a carpenter, had sawed a piece out of the sill so that a projection could be made on that side, and he brought home to me a piece of pine wood that angled or braced, as we call it over a sill up to an upright, and driven through that to hold it in place was an oak pin. The oak pin was found to be powder posted and worm-eaten, almost to a shred, while the pine through which it was driven seemed to be in as good condition as when it was erected.

I don't know whether it was the upper section or the lower of the sill; I had it in my possession, but it got displaced.

Q. I hand you a pamphlet marked "White Pine Preeminent Today, as Always, in Home Building", and call your attention to page 30, and ask you if that is a picture of the structure you have been telling us about?

A. Yes, sir; that is old Christ Church on the eastern exposure, the churchyard is there and on the other end is the Unitarian Church, and there is the cemetery that Longfellow called "God's Acre", Christ's Church the nest and the Unitarian Church he calls the sentinel.

Mr. BURR. I ask that that be received and marked "Commission's Exhibit No. 1."

Mr. MATTHEW. I have no objection to the photograph of Christ Church being received of record, but the publication from which it is taken is obviously an advertisement.

Mr. BURR. I see the force of that, and if you will permit me, I will cut that portion off.

Examiner SHEPPARD. Any objection to that, Mr. Matthew?

Mr. MATTHEW. None whatever.

Examiner SHEPPARD. Let it be received in evidence and marked "Commission's Exhibit No. 1.")

(The document referred to was thereupon received in evidence and marked "Commission's Exhibit No. 1.")

By Mr. BURR:

Q. Have you had an opportunity to observe the other ancient houses in Cambridge?

A. Yes, sir.

Mr. MATTHEW. May I perhaps offer a suggestion: If it is the purpose of counsel merely to show that this white pine of the Northern and Eastern States, that is the pine yielded by the tree of the genus strobus, has an excellent record of durability, that may be conceded, and that will save time, but if he prefers to put it in the testimony, I have no objection.

Mr. BURR. If the examiner please, if counsel represented all the respondents, or if I knew that no respondent, not represented by counsel would file a petition for review in the Circuit Court of Appeals, in the event the Commission should happen to issue an order to cease and desist in this matter, I would be very glad indeed to accept the suggestion of counsel and make the stipulation, but inasmuch as counsel here present represent only about one half, numerically, of the parties respondent in this group of cases, I feel that I want to make a reasonably strong case on the various points in issue, because it might be that some other respondent might file a petition to review.

Mr. MATTHEW. The examiner will understand that I have no objection to the evidence going in; I was simply endeavoring to expedite matters.

Examiner SHEPPARD. Yes; I understand.

26 By Mr. BURR:

Q. What other ancient houses are you personally familiar with in the vicinity of Boston?

A. I worked in the Longfellow house, better known as the Craigie house, thirty or forty years ago, when Longfellow was alive, and I worked in all sorts of houses in my trade around Boston in the last forty-five years.

Q. What were these old houses built of?

A. These old houses, without exception, are all of white-pine construction. Some of the older houses have spruce clapboards, but the old New England houses have pine clapboards, which in my opinion, are immeasurably better than the spruce clapboards.

Q. Without encumbering the record too much, can you tell us the condition of the various individual houses, naming them, and just give us a short paragraph as to the conditions of these houses?

A. The James Russell Lowell house—old Lieutenant Governor Oliver, the last of the lieutenant governors under the Crown, if I remember, and the house is now called Elmwood—purchased and occupied by James Russell Lowell, who died there some thirty years ago. I know that house and I know its construction is of white pine, as far as human observation can decide, over a painted surface, because there was no other available wood in that locality in

27 the days when that house was erected.

Q. What is the condition of that house? What sort of condition is it in?

A. It is in excellent condition, as is the Longfellow house; exteriorly, anyway.

Q. Do you mean that the original boards are still there?

A. So far as my observation goes, they are the original boards.

Mr. MATTHEW. It seems to me that answer should be stricken out, unless the witness knows.

By Mr. BURR:

Q. What is the local reputation of the character of the outside of that building as to its original or replaced character?

Mr. MATTHEW. I object to that.

Examiner SHEPPARD. That is pretty broad—but I will let you do the best you can with that.

The WITNESS. I will answer it in two words; it is in good condition.

By Examiner SHEPPARD:

Q. Have you personally examined the boards and seen them yourself?

A. I have passed within a few feet of them.

By Mr. BURR:

Q. How recently?

28 A. Well, the Longfellow house and the James Russell Lowell house both within a month—only from the street it might be more than ten feet, perhaps.

Q. Did you ever work in either of those houses?

A. In both of them.

Q. How long ago?

A. The Longfellow house would be over thirty years ago, and a longer period of time for the Russell Lowell house.

Q. Handing you a portion of the same pamphelt referred to a few moments ago, will you be kind enough to see whether one of the houses you described is pictured on that? [Document handed to witness.]

A. Yes; this house was built by Henry Vassel, known as the Craigie House, otherwise known as the Longfellow house, built about the time Christ Church was built.

Mr. BURR. I offer that in evidence and ask that it be marked "Commission's Exhibit 2."

Mr. MATTHEW. No objection.

Examiner SHEPPARD. Let it be received and marked "Commission's Exhibit 2."

(Document referred to was thereupon received in evidence and marked "Commission's Exhibit 2.")

By Mr. BURR:

Q. Are you familiar with the so-called Cooper-Austin house in Cambridge?

29 A. Yes; I worked in that house over forty years ago.

Q. What is that house built of?

A. White pine, with beams protruding through the corners in many places.

Q. Has that been replaced or is that the original?

A. That is the original material.

Q. Are there any other ancient houses that you worked on in that vicinity?

A. A brother of Henry Vassel, John Vassel, built a house across the street, on Vassel Street—Henry Vassel built the Longfellow house, and John Vassel built the house across the street from his brother; the house is still standing and is in good condition and was built of white pine.

Q. What sort of condition is that in?

A. Excellent.

Q. Do you know whether there have been any replacements there?

A. Not to my knowledge; there have been no replacements. I would not say, sir, but what there might have been a board or two.

Q. But no general replacements?

A. No, sir; no, sir.

Q. That is the reputation in the community, that there has been no replacement there?

A. Yes, sir. That is intact, just as it has been built.

30 Q. That is of white pine?

A. Yes, sir.

Q. When was that built?

A. That was built before Christ Church was erected, because both John and Henry Vassel were wardens and incorporators of the church, I should say in the early '50's—1750's. They were both planters in the West Indies and made their money largely there.

Q. Do you know anything about the Bernard Capin house?

A. I do not remember the name, sir. I have worked in many houses, and in many other places, such as Salem, but I do not recall that by name. Is that a Cambridge house? I worked in the Inman house in Cambridge, which was sawed into three sections and moved three quarters of a mile and put together again. Ralph Inman was one of the incorporators of Christ Church, a wealthy man who had one of the largest houses between Harvard house and Boston. That is also in good condition.

Q. Have there been any replacements there?

A. No; except making it into a tenement house from what it originally was, a mansion.

Q. Have there been any changes in the house exteriorly?

A. The exteriors are original.

Q. Are you familiar with the structure that I mentioned before?

31 A. No; I don't recall that, sir.

Mr. BURR. You may examine.

Cross-examination by Mr. MATTHEW:

Q. Mr. Wall, you stated in the course of your direct testimony that at one time it was necessary to replace a certain portion of Christ Church and that you could not get white-pine boards which were suitable, and for that reason you obtained cypress.

A. Yes; that was on the tower of the church, the upper tower, the belfry.

Q. Why were you unable to get white-pine boards which were suitable for that purpose?

A. The carpenter reported that he could not buy white pine of the size of the boards to correspond with those already on the other portion and the nearest he could do was to get the cypress.

Q. Then the available supply of the old white pine which you had in New England in the early days was pretty well exhausted?

A. Yes.

Examiner SHEPPARD. I was going to ask you, Mr. Matthew, to ask this witness where the original white pine came from for those churches and buildings, and who they were manufactured by.

32 Mr. MATTHEW. I think that question can be properly put to the witness at this point.

Q. What was the source of the white pine generally used in this territory, Mr. Wall?

A. It was New England pine, sir, in this vicinity; almost entirely Massachusetts pine. We have some records of the purchase and the charge that was made in pounds, shillings, and pence for running the logs up the Charles River—the log of the dimensions sufficient in

size to make the columns of the church. They had been made from masts of vessels that were rafted up the Charles River, and the charge is there on the books for having them run, and there was an old turner's shop on Cambridge Common where those logs were cut.

By Examiner SHEPPARD:

Q. As I understand you, in the ancient days, a hundred or two hundred years ago, the white pines that entered into the construction of Christ Church and these other buildings, which you have been so interestingly telling us about was obtained from this very neighborhood?

A. Absolutely.

Examiner SHEPPARD. That is sufficient on that.

By Mr. MATTHEW:

Q. There is comparatively little of that pine cut in Massachusetts today, is there, Mr. Wall?

A. There is none to be cut, sir.

33 Q. It is gone. And there is comparatively little that is obtained from New Hampshire, Maine, or any other New England States?

Mr. BURR. Mr. Examiner, I doubt very much if a man not in the lumber business is competent to answer that.

Examiner SHEPPARD. I will leave it to you, Mr. Wall, if you have sufficient knowledge to answer that question.

Mr. BURR. I would like to have some qualifying questions put by Mr. Matthew to see if he knows where the white-pine supply from New England come from and whether this gentleman has direct knowledge of it himself.

Examiner SHEPPARD. I think this is quite in line with the questions asked on direct.

By Mr. MATTHEW:

Q. Are you familiar with the sources of supply of white pine, which is commonly used in New England?

A. Such as is used in buildings, I see it every day of my life, but I do not want to pose as an expert on lumber; but I do know something about woods, because I have worked on woods for over fifty-odd years.

Q. Are you able to answer the question as to the principal sources of supply of the white pine which is commonly used here in New England today?

A. It has not been obtainable in New England, as New Eng-

34 land pine, for forty-odd years, of any quality. I might add, if you care to hear it, that I was in the shipyard in Bath, Maine, in 1891, and I saw a stock of two-inch white pine lumber and I asked the gentleman who was showing me through whether that was Maine pine or Canada pine. He said it was Michigan pine. The date of that was 1891—but perhaps I am exceeding my authority, sir, in saying this.

By Mr. MATTHEW:

Q. The fact that you were unable to get white pine boards in the dimensions required for replacement in the steeple of the church indicates, I take it, that it has been impossible to get the white pine of the quality and size that was available a number of years ago?

Mr. BURR. From where do you mean?

Mr. MATTHEW. In any section, so far as this witness knows.

Mr. BURR. I do not believe the witness is qualified to answer that question.

Mr. MATTHEW. He just spoke of Michigan pine.

Mr. BURR. Does he know where the pine comes from, is the question, but if you will qualify him I have no objection.

By Mr. MATTHEW:

Q. Do you know of the sources of supply of white pine that is commonly used in New England today?

35 A. Yes.

Q. Name them.

A. Mr. Sawyer has answered all of that as effectively as I could. I have a piece of white pine that I brought home, which I worked on, stamped "Idaho white pine." I know Arkansas white pine is a reddish pine. I do occasionally see some Idaho pine, but the white pine of New England can very easily be distinguished from it and any man who works on it can tell it at once.

Q. All right; what are the sources of supply, then, of the white pine commonly used in New England today? You have spoken of Idaho white pine; is there a great amount of Michigan pine, so far as you know?

A. I think there is, yet I think we get as much from Canada as we do from Michigan.

Q. Is the quality of the Canada white pine as good as the white pine that was used in the early days?

A. I could not answer that definitely or correctly, but my observations show me that it is much the same, clear and free from knots and sap.

Q. What is the Arkansas pine?

A. That has red streaks through it; it makes a variegated wood for a finish in the natural state, but it is not of even texture.

Q. You don't know whether that is true white pine or not?

36 A. I think it is not, sir.

Q. You said certain replacements were made in Christ Church. How do you know that the white pine which was used for the replacements came from any particular source?

A. I don't know, sir.

Q. You don't know what kind of white pine was used in replacements. You said some of the boarding had been replaced, particularly on the east side?

A. Yes; in 1857; and there can be no question but what the pine was of New England origin.

Q. All right; let us grab [grant] that. We will assume that, but take more recent replacements; can you tell where they came from?

A. I could not say, sir.

Q. You don't know as to that?

A. No, sir.

Q. Has your observation been sufficient to enable you to state whether or not the bulk of so-called white pine which is now used comes from Idaho?

A. No, sir.

Q. You don't know?

A. I would be willing to say that it does not.

Q. You think it does not?

A. No.

Q. From what source does the bulk of the white pine come?

37 A. From New Brunswick, Ottawa, from the Ontario Provinces, and nearer here than Idaho.

Mr. MATTHEW. That is all.

(Witness excused.)

HENRY I. FAIRBANKS was thereupon called as a witness, and having been duly sworn, testified as follows:

Direct examination by Mr. BURR:

Q. Mr. Fairbanks, you live where?

A. Dedham, Massachusetts.

Q. What house do you live in there?

A. I live in the house just in the rear of the old Fairbanks house, on the homestead there.

Q. How long have you lived there?

A. Steadily since 1912, and for three years previous to that I came in regularly during the summer.

Q. Did you live for a time in the old Fairbanks house itself?

A. Never.

Q. You never did?

A. No, sir.

Q. What is the old Fairbanks house; will you describe that a little more fully?

A. What is it?

Q. Yes; is that a historic relic?

38 A. It is said to be the oldest frame structure now standing in the United States.

Q. How much investigation has been made, to lead to that belief?

A. Well, five years previous to 1896, at the time the Fairbanks genealogy was written, Lorenzo Fairbanks gave five years of his time to look up writings, records, and things, and that is his conclusion from his work.

Q. That house was built in what year?

A. It is believed to have been built in 1636.

Q. What sort of records or what sort of a foundation do you have for saying that it was probably built in 1636?

A. Personally I do not know why I came to that conclusion other than the fact that the man who received that grant of land in 1637 came there and signed the Dedham covenant for three of his sons and himself. He settled there with his wife and six children, so that it is reasonable to believe, I suppose, that the first thing he would provide for his family would be a shelter for them, and the man who looked up the record of the family in the Fairbanks genealogy states that a section of the house was built in 1636.

Q. The original settler and builder was a Fairbanks, you say?

A. Yes, sir; Jonathan Fairbanks.

Q. That is an ancestor of yours?

39 A. Yes, sir; I am the ninth generation direct.

Q. And they have all occupied the premises?

A. Eight generations of the Fairbanks family up to this time did.

Q. That was a white-pine structure, was it?

A. I don't know what is underneath the present clapboarding; about forty years ago that was replaced, but the lining to the kitchen is still of the old white pine.

Q. When was the replacement made; what was taken off from the clapboarding?

A. I could not tell you, sir, because that was done before——

Q. Is there any reputation about it?

A. The clapboarding, they tell me, that came there were of varying widths.

Q. Were those clapboards reputed to be white pine that came off originally?

A. They said they were, but I have no personal knowledge of it.

Q. They said they were; the people that took them off knew?

A. Yes; but I am no authority on woods.

Q. When was that replacement made?

A. About forty years ago.

Q. Do you know anybody still alive who was familiar with it at that time?

A. No, sir.

Q. Are there any clapboards on any part of that structure

40 that are the original clapboards?

A. There are a few up in the end of one of the L's that was built on the back; that was said to be built on in 1648, and up in one end there are a very few of those old clapboards.

Q. Would you be kind enough to tell me whether this picture I now hand you is an accurate photograph of the Fairbanks house? [Picture handed to witness.]

A. That is a photograph of the Fairbanks house; yes, sir.

Mr. BURR. I ask that that be marked "Commission's Exhibit No. 3."

Mr. MATTHEW. No objection.

Examiner SHEPPARD. Let it be so marked.

(Picture referred to was thereupon received in evidence and marked "Commission's Exhibit No. 3.")

Q. Now, handing you Commission's Exhibit 3, would you be kind enough to describe more fully where those original clapboards still are to be found.

A. There are a few up in this section here and a very few up in this end here.

Examiner SHEPPARD. Let the record show that the witness refers to the left-hand portion of the house in the picture.

Q. That portion facing forward in the picture, is that correct?

41 A. That is correct. These here [indicating] you can see evidently were at one time of the character of these. [The witness refers to the right-hand side of the picture.] This house was struck by lightning at this corner and shattered those, and some were taken off and modern, up-to-date clapboards were put on.

Q. How about that structure as to paint; was it ever painted?

A. No, sir; it never had any paint.

Q. It never had any paint on at all?

A. No, sir.

Q. How do you know that to be the case?

A. Well, it has come down from family tradition.

Q. When the replacement was made forty years ago were the boards that were taken off at that time unpainted?

A. Unpainted, they said, just the same as those there now.

By Examiner SHEPPARD:

Q. Is the house occupied now?

A. No, it is kept as a family treasure.

Q. It is now being used as a place of general interest for the public to visit?

A. Yes; as a place of general interest for the public. About 8,000 visitors come every summer from all over the country.

By Mr. BURR:

42. Q. I hand you another picture; will you be kind enough to state whether that also is a picture of the same structure? [Photograph handed to witness.]

A. It is; yes, sir.

Q. Can you point out any of the original clapboards from that view?

A. No, sir; not from that view.

Mr. BURR. I ask that that be received as Commission's Exhibit 4, for the record.

Examiner SHEPPARD. Any objection?

Mr. MATTHEW. No objection.

Examiner SHEPPARD. It may be received in evidence and marked "Commission's Exhibit No. 4."

(The picture referred to was thereupon received in evidence and marked "Commission's Exhibit No. 4.")

Q. Do you know whether there are any beams or rafters made from white pine in that structure?

A. I do not, sir. The rafters in the old house itself, the central section, are of oak.

Mr. BURR. That is all.

Mr. MATTHEW. No questions.

(Witness excused.)

43 FRANK A. BOURNE was thereupon called as a witness, and having been first duly sworn, testified as follows:

Direct examination by Mr. BURR:

Q. Mr. Bourne, will you state your full name?

A. Frank A. Bourne.

Q. You are located at what place?

A. 177 State Street, Boston.

Q. In what business are you engaged?

A. Architect.

Q. How long have you been an architect?

A. I hate to say how long—about 30 years.

Q. You have been in Boston and vicinity all that time, have you?

A. Always, since 1899.

Q. Have you ever had any experience or done any professional work with old colonial houses in this vicinity?

A. Yes; on Beacon Hill, in Scituate and Ipswich.

Q. What houses were they, if you can name any particular cases?

A. Something that would apply to what has been under discussion here, that I have heard. At Ipswich there is a house called the Emerson house, built in 1640; there is another house there that I personally had nothing to do with, built in 1638, and I know

44 there is a great deal of pine used in those houses.

Q. What kind of pine do you mean?

A. White pine. At Scituate there is a house that I own, built in 1810, where the finish was undoubtedly white pine; on Beacon Hill—61 Beacon Street, there is a house that was built in 1837, that was done over very thoroughly, and there is some white pine in there.

Q. What sort of condition does the white pine in these various structures reveal when you have had occasion to examine them?

A. Could I add, before answering the question——

Q. I suppose that is not a very good question.

A. I don't mean that, but could I add Charles Street Meeting House?

Q. Where is that?

A. That is at the corner of Mount Vernon Street——

Q. Here in Boston?

A. Yes; in Boston. Now, to your question.

Q. Let me put it this way: What kind of evidence is there as to the durability, or lack of durability, of white pine that has been used in the construction of these colonial houses that you have had to do with? We can probably save the record by asking a general question without going into each house that you have mentioned.

A. I consider the white pine to be more durable than any
45 other wood to be found in the house. There were clapboards on the outside of this so-called "Emerson house" at Ipswich that we always assumed to be original from the way they were cut, and they are still there. Now, those had been given a coat of paint at sometime, but the paint had worn off, and in fact for many years stood without paint.

Q. Which house did you say that was?

A. The Emerson house at Ipswich.

Q. Have you given us the date on that?

A. 1640. The antecedents of Ralph Waldo Emerson lived there.

Q. You mean the original wood stood unpainted there since 1640?

A. No; it had been painted and had received several coats of paint, but had been without paint for a long time, and the clapboards are still there.

Q. What condition were they in, somewhat rotted, I suppose?

A. Not rotted, but weatherworn, but still in good condition. The finish of the house, the window frames, some of them had rotted and been replaced, some parts of them, but there were still a good deal of what seemed to be original wood in the house. The sashes had, I think, all been replaced. Those were undoubtedly white pine.

Q. I understand you to say, then, that the white pine seemed to outlast the other lumber materials; what other lumber
46 materials do you find in those old colonial structures?

A. Spruce.

Q. Does that go back—is that comparable with white pine, in the age of the structure?

A. The framing was largely of spruce and oak. There was some white pine.

Q. Some white-pine rafters?

A. In the frame. I think some of the large beams in the old-fashioned frame were of pine; some were of oak. I think the oak and the white pine were in good condition.

Q. Both the oak and white pine?

A. Both the oak and white pine were in good condition.

Q. How about the spruce?

A. Well, I remember some of the spruce framing that were still strong enough, but it was not so permanent appearing nor in so good condition as the oak and white-pine framing.

Q. Did you find anything else that had been used on the outside of these structures besides white pine?

A. I don't recall anything else.

Q. How about the ancient white-pine doors?

A. I might qualify that last answer by saying that where there had been some piecing out they might have used other materials.

Q. You mean the replacement work, do you?

A. Yes; some replacement and some additions, where they
47 would use other material, but the original that I am speaking of is white pine.

Q. Have you ever had an opportunity to observe ancient white-pine doors?

A. Yes, as far back as 1810; I have one in my house that was taken out of a building that was put up probably in 1806 in Boston, and I kept it as a sample of a door and frame; it was in perfect condition as far as the quality of the wood is concerned.

Q. Do you happen to know whether that was an outside door—a front door or an inside door?

A. It was a front door of a house on Lynde Street and is a very good example of colonial work of those days, in the early 1800's.

Q. Had that been painted on the outside surface?

A. Yes; that had always been painted, but probably had been allowed to weather; that is, the paint had gotten off. It is a beautiful example of colonial work.

By Examiner SHEPPARD:

Q. That was white pine?

A. White pine: I am very sure it could not have been anything else.

By Mr. BURR:

Q. As an architect, you have occasion to prepare specifications as to the materials to be used?

48 A. Yes.

Q. And what do you recommend for building purposes, in the way of lumber?

A. For window frames and sash—the sash particularly—white pine is still specified; in doors that are of good quality, if they are to be painted, white pine is specified.

Q. Why, if they are to be painted; if they are not to be painted, what do you use?

A. In that case you use oak or mahogany or some other material or a veneer, that would probably be veneer over white pine.

Q. And do you specify what is to be beneath the veneer in your specifications?

A. Yes.

Q. Does that specification generally call for white pine by its botanical name, or do you just say white pine?

A. I never knew the botanical name to be used.

Q. In the specifications, you mean?

A. Yes, sir.

Q. What do you get when you order white pine in your specifications; do you get Idaho white pine or Northern white pine or California white pine?

A. Now they are getting California white pine.

Q. On specifications calling for white pine?

A. Yes.

49 Q. Where does that come from?

A. There might be certain cases of particularly good wood, where you could get the white pine, the local white pine, but that is rather rare; then we get what is called country pine; that is used a good deal particularly for interior finish.

Q. Do you know what that pine is?

A. That is second or third growth with lots of knots in it.

Q. That is second or third growth of white pine?

A. That is what we suppose it is.

Q. When you get California white pine, you accept that, do you, as complying with the specification?

A. Yes; depending on where it is going. You would accept a certain quality of white pine for some places where you could not for others.

Q. Will you specify a little more in detail what you mean by that?

A. I am afraid specifications ought not to go into that, because you get in too deep for our ordinary work here.

Q. But you do accept California white pine when you order white pine?

A. It is generally accepted now.

Q. That is the general practice among your profession?

50 A. I think so, so far as I know.

Q. How long has that been the case?

A. I should say between five and ten years it has been coming into the market as other materials for exterior finish were going out. The original white pine has been out of the market for a good many years for a great deal of the exterior finish of the house, and then cypress came into the market and now cypress is getting so scarce that they are using California white pine.

Q. Have you had occasion to observe the durability of California white pine, or has that not come within your knowledge?

A. We have had some exterior finish that has not stood very well, but I have been unable to find out where the material came from, because after six or eight years there was no record of what was actually used.

Q. Can you testify as to any particular structures where something of that nature has happened?

A. I don't know whether I would want to have that get into the record.

Q. We are here to make an investigation and we have a right to ask for that information, no matter whom it hits or how it turns out to be.

A. Well, there was one case where we had some exterior finish, that I supposed was put up in white pine——

51 Q. Had you specified white pine?

Mr. MATTHEW. The witness is not certain that it is California white pine or some other wood and I hardly think it ought to go into the record. The witness says he supposes it was white pine.

Mr. BURR. I may tie that in. If the court please, I may not be able to prove my entire case with one witness, but I will connect it up.

Examiner SHEPPARD. Very well, I will give you the opportunity.

By Mr. BURR:

Q. Can you give me the address?

A. I could; yes.

Q. Can you look up the address for me or do you recall it now?

A. I could state the circumstances, then if you want it, I can put it in.

Q. All right, please state the circumstances and if counsel wants to make a motion to strike on the ground of materiality——

Examiner SHEPPARD. I will let you state.

The WITNESS. This is a case where some exterior finish was put up about eight years ago and last year, when the building was being repainted, a small amount of this was found to be rotted and had to be taken down and replaced. The carpenter or contractor
52 who put it up, the general contractor, knew nothing about it; the foreman was dead and I had no way of tracing where they got the original material.

By Mr. BURR:

Q. Do you know what the specifications were?

A. Yes; the specifications were for—in that case were either white pine or cypress. The material that came down was not cypress, but it was a wood that resembled white pine, but we never carried the investigation so far as we would have if we had known what might depend on it.

Q. Have you the address of that place?

A. Yes.

Q. What address is it?

A. Is this for publication?

Q. It is not for publication; it is for the information of the Commission.

A. It was the Charles Street Meeting House that I was telling you about a moment ago.

Q. The balance of the material was not replaced?

A. No; that is still there, and that could be investigated.

Q. That could be examined to see what variety of pine it is?

A. Who could tell? I could not.

Q. You could not, but a technologist of wood could tell.

A. It would be interesting, and I would like to know myself.

Q. You don't know where that lumber shipment came from?

53 A. I could not tell you. I could give you the name of the contractor; he might replace it for you.

Q. Who was the contractor?

A. A. Hathaway Company. Of course, you understand, I do not want to get the contractor into any difficulty, and I don't want to get into any difficulty myself. I think they all did the best they could under the circumstances. The finish that was taken down was one of the large urns on the tower.

Q. That is Charles Street and what other street?

A. Charles Street at the corner of Mt. Vernon, Boston. It is only about twelve or fifteen minutes' walk from here.

Q. Are you a member of any architectural societies?

A. Yes; the American Institute of Architects, since 1901.

Q. Have you ever held any office in that society?

A. I have been treasurer of the local chapter and am now on the executive committee.

Q. Of the local chapter?

A. Of the local chapter.

Q. This society has chapters in all parts of the country?

A. All over the United States.

Q. Do the architects, as a rule, make themselves responsible for the genuineness of the variety of lumber which they specify as regards what goes into a building eventually?

A. I think they try to get what they specify, but they hold
54 the contractor responsible. I do not see how the architect could be held responsible.

Q. Are they technically trained, so that they could tell the difference in lumber or varieties that closely resemble each other, on close observation?

A. I do not believe that there are five architects out of a hundred that you would call technically trained to tell the difference between one wood and another; on the other hand, the other 95 percent would be in a situation, if they were asked to report on it, they could not give the correct information, one way or the other.

Q. Do they actually, when there is a shipment of lumber delivered for building purposes, check up on the character of the lumber that is delivered, that is, check it up with the specifications to see whether it is of the same species that they asked for?

A. I doubt if that would be done on ordinary work, unless there was an appearance of inferior material, then they would check it up very vigorously. Ordinarily if the material furnished reaches the general tone or general character of the specification, it is likely to be accepted, if it is properly handled. That is to say, they might use an inferior quality in certain places, where it would fit the work, provided the best quality were used in places where the best
55 quality should be used. For instance, on a front entrance, if you have wood carving in white pine, that would be where the contractor commonly would use the best quality of material; on the other hand, wood which is to be painted in a great many places in the building, where you would not need to use clear pine of the best quality, I don't think the specification would ever go into detail quite as much as that, except to see that wood for fine mouldings or carvings would be of best quality that the market affords.

Q. Does the National Association of Architects——

A. The American Institute of Architects is the name, that is a national association.

Q. Does it have rules of practice or rules of ethics outlining the duties of architects?

A. Oh, yes.

Q. Do those rules require that the architect himself be a sufficient wood technologist to be able to tell the difference between various varieties of woods?

A. I don't think so. They have got to depend, in a modern building, to get standard material and——

Q. It would be expecting too much of the architect to ask him to be a wood technologist?

A. Yes; but I believe the architect should be able to find out for the owner's benefit every detail that goes into a building.

Q. Would you be able to differentiate between California
56 white pine and Idaho white pine, if that material were placed ready to go into a building?

A. I would come pretty near finding out before I got through. But if you put two pieces side by side, I would not be able to say that I could tell, and I do not think it is too much to say that I doubt if ten percent of architects or even men in the lumber business could tell. I doubt if you could pick ten men out of a hundred who could tell if you put two pieces side by side.

Q. Do you, as a matter of practice, trust to the lumber man regarding the identity of the material which you get, as to the character of the lumber?

A. If the contractor is a man that you deal with, so that you know the quality of the work and material he is in the habit of furnishing, you would trust him in ordinary work.

Q. Aside from this Charles Street Meeting House, do you know of any other cases where pine that has been ordered as white pine, has failed to show durability when exposed to the weather?

A. Not any particular instance at this moment. There are cases that I know from hearsay, that I could name.

Q. I shall not ask that. I just want cases within your own experience.

A. No, sir.

Q. Would you be able by consulting your records, to find
57 out from your notes whether there are any such other cases?

A. I do not recall anything at this moment where anything has gone wrong.

Q. I would like to make a suggestion that you let me know this afternoon, if that would be time enough for you to look at any records you have of that character, or do you not make records of that description?

A. I don't remember of any other case that has gone wrong, and I would remember it if it had gone wrong, that is, as to the material.

Mr. BURR: That is all, you may examine.

Cross-examination by Mr. MATTHEW:

Q. You stated, Mr. Bourne, that it is quite difficult to distinguish Idaho white pine from California white pine?

A. I did not intend to say so.

Q. That is as I understood you, sir.

A. I said I was not sure that I could tell the difference if two pieces were laid on the table. I might, but I am not sure that I could.

Q. I thought you added that not one man out of ten could probably distinguish between two pieces, one of which was California white pine and the other Idaho pine.

A. From the sample that is lying on the table, I am not sure that he could.

58 Q. Can you readily distinguish California white pine from southern yellow pine?

A. Oh, yes.

Q. There is a marked difference there?

A. From what I have been told is California white pine; yes.

Q. You have stated that California white pine is customarily accepted and has been accepted in the last five or ten years in response to specifications calling for white pine?

A. I guess so.

Q. You would not accept southern yellow pine on specifications calling for white pine, would you?

A. No; except I believe we might put it in certain places, if the market would be crowded. There are places where you could use it, and you would not insist on the specification where the market could not furnish just exactly what you wanted.

Q. We admit, of course, that there are exceptional cases.

A. Yes; you have to give the architect and contractor a certain amount of leeway, depending on the market.

Q. But, speaking generally, you would not accept southern yellow pine in response to specifications calling for white pine?

A. No; I should say not.

Q. Would a lumberman deliver yellow pine on a specification calling for white pine?

59 A. They would not.

Q. Southern yellow pine differs in marked degree from California white pine and eastern white pine, does it not?

A. Yes. May I ask a question? When you referred to Idaho white pine you mean the same white pine that you are supposed to get from Michigan and Minnesota?

Q. I understood you to refer to Idaho white pine, and I am using the same term.

A. I consider it the same as Michigan or this other white pine.

Q. Then you make no distinction between Idaho white pine and Michigan white pine?

A. I do not know Idaho white pine.

Q. Do you know California sugar pine?

A. I would not be able to tell it; I have heard it is sometimes used.

Q. Can you say whether or not California sugar pine would be accepted by architects in response to specifications calling for white pine?

A. Depending on where it was going. It might be, as I said before, used in certain places as a substitute, but for good work, where you wanted clear white pine, even California white pine you would hesitate to use.

Q. Now, coming to my question as to sugar pine, ordinarily you would not accept California sugar pine in response to

60 specifications calling for white pine, would you?

A. Not if you knew it, or saw it when it was going in. Could I qualify that? I said two or three times that you have to accept what is on the market and it would depend on individual cases whether or not you would accept these substitutes.

Q. That will be understood to be the qualification in your answers, Mr. Bourne. All I am desirous of ascertaining is your inclination in this matter. You have referred to certain woods used for fine moulding or carving——

A. And very fine exterior front entrances of doors and sash.

Q. To some extent, you have these mouldings for interior work?

A. We have it for interior work, too.

Q. Likewise you have carvings in the interior?

A. Yes, as for mantles and cornices.

Q. Would you customarily accept California white pine for such work if the specifications called for white pine?

A. I doubt it. I think that would depend a good deal on the particular places where they are going.

Q. You said that you understood or assumed that the Idaho white pine is the same thing as Michigan white pine?

A. Yes.

Q. That is, you do not distinguish between them?

A. No, sir.

61 Examiner SHEPPARD. I thought the witness said he was not familiar at all with Idaho white pine.

Mr. MATTHEW. The witness said so.

The WITNESS. I asked the question before if by Idaho white pine, you mean what we would call Michigan or Minnesota white pine. Is it of the same quality?

By Mr. MATTHEW:

Q. That is you do not know, or are you asking the question here?

A. We do not use the expression Idaho white pine around here.

Q. I understood a question was put to you by counsel for the Federal Trade Commission as to whether you could readily distinguish between California white pine and Idaho white pine; am I in error in so recalling the question?

Mr. BURR. I think that is about the way I put it.

The WITNESS. My recollection is he did not use the expression Idaho white pine. I should say that there is a distinction between

California white pine and between white pine that I have seen growing in Minnesota, which is, I believe, real white pine.

By Mr. MATTHEW:

Q. That is, botanically, there is that distinction in the first instance?

A. Yes.

Q. Are you familiar with the lumber which is marketed
62 under the general name of Idaho white pine?

A. I should immediately raise the question if that was the same as the white pine I had seen in Minnesota.

Q. I am asking you if you are familiar with that lumber?

A. Not under that name, Idaho.

Q. You are not familiar with the term Idaho white pine?

A. No.

Q. And if it is a lumber which is actually yielded by a tree in Idaho, then you don't know whether you would accept lumber designated as Idaho white pine, in response to specifications calling for white pine?

A. I would have to look into it.

Q. I take it, that as an architect, you are not primarily interested in the botany of trees, but you are essentially interested in the quality and utility of the lumber from those trees?

A. I could not express it so well. That is true.

Mr. MATTHEW. That is all.

Redirect-examination by Mr. BURR:

Q. Do you regard varieties of pine, which are not white pine, as equally durable as white pine?

Mr. MATTHEW. Are you going into the botany of the case?

63 Mr. BURR. No; I am going into the particular distinction he has testified to.

Mr. MATTHEW. I think the question is objectionable on the ground of its indefiniteness.

By Mr. BURR:

Q. Do you regard California white pine as white pine?

A. No.

Q. You don't?

A. No.

Q. Do you regard the durability of California white pine as equal to the durability of northern white pine?

A. I have not any real instances to make me say absolutely that it is not so durable, but I should immediately hesitate to use it if the question were brought up by a contractor and I should tell him to try again to secure the northern pine.

Q. You mean on the ground of durability or on other grounds in the difference between the two woods?

A. I would question the durability, but I think the quality would show for a certain kind of finish. It is different in quality as to

hardness and evenness of the grain and those are the things that I would immediately question.

Q. You would question regarding California white pine, so-called, would you?

A. Yes. I would want to see samples that go into the particular construction.

64 Q. Do you regard a shipment of lumber made from sugar pine as compliance with specifications calling for white pine?

A. I have not had any instances of that, where that question has come up, so I don't attempt to answer that.

Q. I believe you did testify that you would regard a shipment of California white pine as compliance with specifications calling for white pine; did you say that?

A. No; I say, California white pine is often specified now for work where we previously would specify white pine, for the simple reason that the California white pine is in the market and so-called white pine is not—that is, for certain things, it is more difficult to get.

Q. I think, right in the beginning of my direct examination of you, that you testified that when specifications were made calling for white pine, that California white pine was frequently accepted as white pine.

A. That is very true, but we also specify California white pine.

Q. You also specify it by name?

A. We specify it by name.

Q. I am not interested in the question where California white pine is specified as California white pine, but I am interested, and my question is directed to the proposition where white pine is specified and California white pine is delivered; is that acceptable in

65 this vicinity as compliance with a specification for white pine?

A. I think it is often accepted when they don't know where it comes from.

Q. You mean it is accepted, not knowing that it is California white pine?

A. Absolutely.

Recross-examination by Mr. MATTHEW:

Q. Is the term, "California white pine", now pretty well known?

A. Yes; it is put in specifications.

Q. You said, in answer to a question by counsel for the Federal Trade Commission, that you might desire, in particular instances, to examine the particular supply of lumber that was offered in response to an order?

A. Yes.

Q. And if, upon examination, that seemed to satisfy your requirements as to quality, you would accept it even if you knew it was California white pine?

A. That often happens, depending on the market and depending on the place where the material is to be used.

Q. Depending on the market and the use to which it is to be put?

A. Yes, sir.

66 Redirect examination by Mr. BURR:

Q. Would you accept it as compliance with specifications, as regards interior finish quicker than you would for exterior use?

A. That depends on other things; it depends on the quality, and if it is for natural finish, or depends on the way it receives paint. A good many things have to be taken into consideration; you want to see samples of the material that is coming, before you accept it.

Q. Suppose you specify for your client white pine and it is for external use, and they deliver California white pine, would you regard that as compliance with your specification and accept it?

A. No.

Q. Now, then, if it was a specification for interior work and they supplied you with California white pine, would you accept it as compliance?

A. That would depend on the material that they actually supplied. You would not accept it as compliance with the specification absolutely, but I can imagine a good many instances where if the market was such, that California white pine was delivered, where white pine had been ordered, that the California white pine would be accepted rather than compel the contractor to go outside and perhaps

67 wait for the material. I imagine there would be places where the average architect here in Boston and anywhere in the United States——

Q. And yourself?

A. And myself would accept it.

Q. You are talking about interior work or both interior and exterior now?

A. Interior work. If I may add a word, I can imagine California white pine of a certain quality or grain, for certain purposes that might be better than an inferior quality of white pine.

Q. Referring still to interior use?

A. Yes; but, on the other hand, if you are specifying white pine, you want to know what you are getting, and you are expecting to get white pine, and I think that the best thing that could be done for the architect would be to enable him to get these things nailed down so that you know what you are getting when you specify it, by some simpler method than by this long way of hunting through the contractor or material man or supply man and finding out where this material is coming from and thus trying to ascertain in that way whether the material that you get is the material asked for. It is what is needed by every architect because the average architect cannot tell first off when the material appears on the building where it comes from or how long it is going to last, and he has to

68 depend on the standing of the material man who is furnishing the material. That happens all the way through the work, and they fall back—it is assumed they do—on the man that gets out

the material. You have, to a large extent, to trust your supply man all the way through, and I think the average architect does that in the ordinary practice.

Recross-examination by Mr. MATTHEW:

Q. It comes back substantially to this, does it not, that quality and utility are the essential criteria from the architect's standpoint?

A. Absolutely. You don't care whether a piece of wood grew in Michigan or Kamchatka providing it meets his requirements; the architect wants to be fair to his client, and if he specifies a certain thing he wants to get either that thing or something that is known and guaranteed in connection with it. In other words, he is given a certain amount of freedom and that kind of freedom is the difference between what I should say an engineer allows who insists that if a certain thing is specified you must get that certain thing, but an architect in Boston or all over the United States, for that matter, if they specify a certain thing they want a certain result and if you can get that result in quality or get it in durability you will have to make up your mind to take it, and it is quality that you

69 want in the interior and durability is what you want for the exterior. That is what you want, whether it is grown in a swamp or on the hillside.

Q. That is, it is immaterial what the botanical name of the particular tree might be if you get the quality and utility of what you desire; is that it?

A. Yes; but you should have a name for what you want, so that when you name a thing in your specification and when you contract for it you get it by name.

Redirect-examination by Mr. BURR:

Q. As an architect, you are interested in the difference between species to the extent that they represent differences in quality and other characteristics of the wood?

A. Certainly.

Mr. BURR. That is all.

(Witness excused.)

70 GEORGE R. TODD was thereupon called as a witness, and, having been first duly sworn, testified as follows:

Direct examination by Mr. BURR:

Q. Will you state your name, please?

A. George R. Todd.

Q. You are connected with William Curtiss Sons Company?

A. Yes.

Q. Of Milton, Massachusetts?

A. Yes, sir.

Q. Milton, Massachusetts, is about how far from here?

A. Just about ten miles; just outside of the city district.

Q. What is your line of business?

A. Retail lumber business.

Q. Do you wholesale any?
A. None at all.
Q. From whom do you buy, wholesalers?
A. Wholesalers and commission men, both.
Q. Do you buy direct from the lumber manufacturers at all?
A. In some cases.
Q. How long have you been in the retail lumber business?
A. Forty years.
Q. Always in the vicinity of Boston?
A. Always in Boston until we went to Milton.
Q. When did you go to Milton?
71 A. October of last year.
Q. Where was your place of business in Boston?
A. 30 Eustis Street.
Q. You carry white pine, do you?
A. Idaho, California sugar, and ponderosa.
Q. Do you carry California white pine, too?
A. We do not carry California white pine; we do not call it that; we call it California sugar pine.
Q. Do you know whether there is on the market a lumber which is distinct from California sugar pine, which is known as California white pine?
A. I do not.
Q. You do not know that?
A. I have been out there in that section and heard it called white pine, but we never handle it.
Q. You say you heard it called white pine?
A. No; California sugar pine; I have heard other people speak of it as California white pine.
Q. You think that when they spoke of California white pine they referred to sugar pine, do you?
A. I think so, but I would not say so definitely.
Q. Where do you get your Idaho white pine from?
A. From Idaho.
Q. Right from Idaho yourself?
A. That is where it is supposed to come from; that is
72 it is billed from.
Q. Do you mind telling us what company your source of supply comes from?
A. We buy it from numerous companies.
Q. When you get specifications for lumber and specifications read "white pine", what do you deliver?
A. In our class of business we do not get specifications. Our contractors and builders ordinarily order pine, and they just call it pine. They do not specify it as white pine; it does not come down to that minute question.
Q. Do you not get orders for white pine?
A. Only under the name of pine.

Q. You get orders, in general, as pine and not white pine?
A. We get orders for pine; that is right and we take it to mean white pine. We have North Carolina and southern white pine and pondosa, but they are used for different purposes.
Q. What if there is an order given you for pine, would you think that you could fill that order with North Carolina pine?
A. No, indeed.
Q. Pine does not mean North Carolina pine?
A. No. We take the meaning of pine to be Idaho; that is the only one we carry for that particular purpose.
Q. Do you mean that when a man orders pine that you could not give him pondosa, that is pine?

73 A. The only grade of pondosa we carry is only fit for box-boards; we have the low grade no. 4 common—that is the only kind we carry and that is meant for boxboards.

Q. What section do you get that from?
A. I could not tell you. We have a number of different shippers; we do not specify where it is coming from, we just order pondosa.
Q. And what do you get, no. 4 common?
A. No. 4 common, that is all.
Q. You never did buy anything under the specification of California white pine?
A. No, sir.
Q. You do not carry California sugar pine either?
A. Very little. It is only in the common grade and that is the only thing we sell it for.
Q. Where do you get your sugar pine from?
A. I could not tell you where we get it from; we get it from the millman and the mills do not specify.
Q. You do not know whether it is California or where it comes from?
A. We do not know what State it comes from but we suppose it is California.
Q. How long has sugar pine been on this market, so far as you know?
A. I should say a little over five years, maybe more than that; time goes by very fast. We started in years ago with Michigan

74 pine, and that is now almost entirely gone.

Q. When did you cease to get your Maine white pine lumber supply from New England?
A. You mean the eastern pine?
Q. Yes.
A. We have had it within less than five years and the only reason we stopped getting it is because the quality ran down.
Q. Did you find it to be second growth or third growth?
A. Second or third growth, running small.
Q. Did you ever buy it from Canadian Provinces?
A. Yes; some.

Q. That is good quality still, is it not?

A. We have not had any since, as I tell you the last four or five years, when we shifted to Idaho.

Q. And the Idaho quality is satisfactory?

A. It is better than the eastern, we claim.

Q. You sell pine for patterns, do you?

A. Sugar pine; practically, that is the only purpose we use it for, pattern stock.

Q. Do you think that is preferable to Idaho white pine for patterns?

A. We do, because of the clearness of it; the only bad feature is the gum part; when you cut into it, you might run into that; it is not seen from the surface.

Q. You mean a pitch pocket?

75 A. Yes; pitch pockets.

Mr. BURR. That is all.

Cross-examination by Mr. MATTHEW:

Q. Mr. Todd, did you ever furnish sugar pine in response to an order for pine, without any qualification?

A. If they ordered pine for pattern work, yes.

Q. So you receive orders for pine without any qualifying term?

A. Except the grade.

Q. Except the grade. And if you know that it is desired for pattern purposes, you supply sugar pine?

A. Yes.

Q. If you understand that your customer, however, does not desire to use the lumber for pattern purposes, you would supply the Idaho white pine?

A. Yes.

Q. Do you receive any orders at all for white pine, as such?

A. No; it is not specified as just white pine. Our main business is for speculative building—home building, and we know about what the builder requires, and the only thing we ask them is the grade that they wish.

Q. You have been in this business, I think you said, approximately 40 years?

76 A. Yes.

Q. At one time you carried a great deal of Michigan pine?

A. Yes.

Q. Was that likewise sold in the same fashion; that is, in response to orders for pine?

A. Just the same way.

Q. At the present time you are unable to get Michigan pine of the quality your trade requires, as I understand?

A. Yes; and the price both. The price would be prohibitive here for the use we have for it.

Q. That means that Michigan pine is practically off the market here?

A. Yes.

Q. Is it true of the other pine of the same species? I am referring now to what has been commonly termed either eastern white pine or northern white pine, meaning by that the pine of the New England States and of the Northern, Middle, and Western States—is practically all that pine off the market?

A. No; there is some here, but it is so small and coarse that we cannot use it for the purposes we want.

Q. The quality is decidedly inferior to the quality you require?

A. Yes.

Q. And it is for that reason that you have turned almost entirely to Idaho pine for those purposes?

77 A. That is right.

Redirect examination by Mr. BURR:

Q. Have you ever examined the white pine coming from the Canadian forests?

A. Examined it? You mean when we received it?

Q. Yes.

A. Yes, sir.

Q. That is virgin forest up there, is it not?

A. I do not know whether it is at the present time or not; whether they have cut their old virgin stock all off I could not state.

Q. When was it you stated you had your last shipment from the Canadian Provinces?

A. Canadian and New England States, both; if we could not get it at one place we got it from the other, but I do not think we had any in the last four years.

Q. Would you testify that there is no virgin growth coming from Canada?

A. I could not state.

Q. There might be white pine up there that had the original quality, for aught you know?

A. There might be.

Q. That is higher in price than the Idaho white pine?

78 MR. MATTHEW. The witness says he does not know.

Mr. BURR. He might know what the prices are.

The WITNESS. No; we have not paid any attention to New England or Canadian markets since that time.

Q. You have not interested yourself in the price then?

A. No; we confine ourselves to Idaho since we made the change.

Q. Would you testify that there was no virgin growth coming from the Lake States of northern white pine?

A. No; I would not state that.

Mr. BURR. That is all.

(Whereupon a recess was taken till 2:00 o'clock p.m.)

79 AFTER RECESS

2:00 p.m.

H. ALLEN BAILEY was thereupon called as a witness and, having been first duly sworn, testified as follows:

Direct examination by Mr. BURR:

Q. Mr. Bailey, what is your business?
A. White-pine lumber.
Q. Whereabouts do you carry on your business?
A. 166 Fifth Street, Chelsea.
Q. How long have you been in the lumber business?
A. About ten years.
Q. It is entirely a retail lumber business, is it?
A. Entirely retail.
Q. Have you been there for that entire length of time?
A. Yes, sir.
Q. What were you doing before that?
A. Just got out of school.
Q. Are you dealing in white-pine lumber?
A. Yes, sir.
Q. Where do you get it from?
A. The New England States, Canada, California and Oregon, Minnesota, Wisconsin and Idaho, and some little from Pennsylvania.
Q. You get white pine from all those localities?
A. So-called white pine from some of them.
80 Q. You sell it as white pine?
A. Yes, sir.
Q. Irrespective of what forest it comes from?
A. All depending on what the job may call for.
Q. Suppose I come in and order lumber and specify white pine, what do you sell me; do you sell me Idaho, California, or New England?
A. If I could have the pleasure, I should like to take you over in the yard and let you pick your own, telling you what you are buying.
Q. What would be the nature of what you would tell me?
A. Just what do you mean by that?
Q. Suppose I came in there and I said I wanted to buy some white-pine clapboarding, what would you tell me?
A. We do not carry any of that; we only carry the lumber, we do not carry the manufactured article.
Q. Do you carry boards?
A. Boards? Yes.
Q. What else?
A. Planks.
Q. What else?
A. That is all.
Q. That is all; boards and planks, no scantling?
A. No scantling.

Q. And no beams or anything of that kind?

81 A. Once in a while, squares, which at times are used for beams.

Q. What if I should come in and ask for certain specifications as to length and breadth of board and ask for white pine, what are you going to furnish me; will you furnish me what you have in stock of any of those varieties of white pine or do you choose what the selection is to be, or what method do you employ?

A. The selection depends entirely on the man and what he is going to use it for.

Q. Is it any of your business what he is going to use if for, as long as he specifies the kind of wood he wants?

A. Yes; sometimes it is.

Q. All right, tell me all about it; just what do you do in that case?

A. If he calls for white pine or you might call it by the botanical name of Pinus strobus.

Q. But you do not call it by the botanical name very often, do you?

A. No.

Q. Suppose I do not ask for Pinus strobus but ask for white pine, what do you give me?

A. At the present time you would get the California white pine.

Q. Is that also true of all the retailers that you compete with as well as yourself?

82 A. I think it is true of most retailers today.

Q. And that would be true if I came to your yard today?

A. If you just asked for white pine, but we would specify that it was California white pine in selling it to you.

Q. How do you specify that, orally or in writing?

A. Orally.

Q. You have stated that you buy white pine from several localities; what is the proportion, roughly speaking, taking it over a period, say, of the last couple of years, what is the proportion of lumber that you buy from New England, referring now to white pine lumber?

A. That would be pretty hard to say offhand; without consulting records I would say about 35 percent.

Q. Thirty-five percent would be your best estimate?

A. Yes.

Q. That would be strobus?

A. Yes, sir.

Q. How large a percentage would you say would California white pine, or would you not consider that as being white pine for the purposes of your answer?

A. We do not consider that as white pine.

Q. When you said strobus 35 percent, you were referring to Idaho and northern white pine?

Mr. MATTHEW. I thought he said that was New England.

Q. Did you mean to say in your answer that the 35 percent
83 of strobus would not include California?

A. No.

Q. The 35 percent was New England strobus?

A. Yes.

Q. Would there be any other strobus?

A. There would be another proportion of strobus from other countries.

Q. Where?

A. Minnesota and Wisconsin.

Q. Any from Canada?

A. Not from Canada.

Q. This Minnesota and Wisconsin, that is strobus of second growth?

A. I could not say, but I should think it was a second growth.

Q. Would you say it was second growth?

A. I would say so.

Q. What would lead you to that view?

A. The size of the lumber.

Q. What sized lumber is coming in now, in diameter?

A. An average of 9 inches.

By Examiner SHEPPARD:

Q. You mean by that the diameter is 9 inches?

A. No; in width.

Q. That is the diameter?

A. Yes.

84 Q. The width of the tree?

A. The width of the manufactured article, say in inch boards, it would be nine inch average.

By Mr. BURR:

Q. Are you getting any from Canada?

A. Yes; we do.

Q. That is virgin timber in Canada, the strobus that you get from there?

A. I would not say it was; no, sir; there may be some that is coming in, but it is a pretty late day to get much virgin timber from anywhere—genuine white pine.

Q. Is it genuine white pine that you are buying from Idaho?

A. No. The Idaho pine we handle would be only no. 3 common; we do not carry it in the better grades.

Q. Do you regard that as genuine white pine or do you not?

A. It is so called; I do not know.

Q. You do not know. Do you regard California white pine as genuine white pine?

A. No; I do not.

Q. For what reason? Do you draw a botanical distinction, or do you think there is a distinction in the type of lumber itself?

A. There is a distinction in the type of lumber itself.

Q. What would you say that consisted of?

A. More in the nature of yellow pine.

85 Q. What is the distinction in characteristics?

A. The texture.

Q. Is it not as soft or is it softer?

A. It is not as soft as the genuine white pine.

Q. What else; is there any other distinction or characteristic?

A. No; I think that is enough, the lasting qualities and durability.

Q. You think there is a distinction in lasting qualities between genuine white pine and California white pine?

A. In the length of time it has been in this section, it is hard to determine that from our experience, but I would not say that it lasts as long as the genuine white pine.

Q. In your judgment, then, it would not last as long?

A. No; it would not.

Q. When you refer to genuine white pine, are you also referring to Idaho white pine?

Examiner SHEPPARD. I thought he did not.

Mr. MATTHEW. He said he did not.

A. No; I did not.

Q. From what companies, if you can recall, are you buying the northern white pine?

A. I cannot recall, because we buy from a good many.

Q. Do you buy it from the Weyerhaeuser group?

A. Some of the Idaho.

Q. Not the northern?

86 A. No; we do not buy any northern pine from them.

Q. You do not know whether they are furnishing virgin white pine or not—virgin strobus from the north?

A. No; I do not.

Mr. BURR. I think that is all.

Cross-examination by Mr. MATTHEW:

Examiner SHEPPARD. Before you start let me put a question or two.

By Examiner SHEPPARD:

Q. What do you mean by this word strobus, Mr. Bailey? You know I have no technical knowledge of this game, and I do not know anything about it, and I want to know what these things mean, as I go along; what is strobus; how do you spell it?

A. S-t-r-o-b-u-s, I believe.

Q. What does that mean?

A. As near as I can tell you, it means genuine white pine.

Q. It is the botanical name?

A. I believe it is.

Q. The technical name?

A. The technical name.

Q. In your judgment, and from your knowledge of lumber and the things connected with it, where does this genuine white pine or strobus come from that you are talking about?

A. From Michigan, Minnesota, some parts of Wisconsin, I
87 believe; I think some from Idaho and some from Canada and some sections of New England.

Examiner SHEPPARD. All right; you may go on now.

By Mr. MATTHEW:

Q. You just stated that you think some part of the lumber that you referred to as Pinus strobus comes from Idaho?

A. Yes, sir.

Q. But you do not know that as a matter of fact?

A. No; I do not.

Q. Whether that lumber does come from a tree which is known as a Pinus strobus, botanically?

A. No; I do not.

Q. I assume, Mr. Bailey, you are not interested particularly in the botanical names of these trees, you are interested mostly in the utility and quality of the lumber?

A. I am interested in that, but I cannot remember all the names of them, but as occasion arises, I am interested in the botanical names.

Q. But as far as your business as a retail lumber dealer is concerned, your prime interest is the quality and utility, including in that the durability of the lumber that you furnish to your customers?

A. Yes, sir.

Q. When you order lumber from Idaho do you order it under the name of white pine or Idaho white pine or under what
88 designation do you order it?

A. Idaho white pine.

Q. When you sell it do you sell it as Idaho white pine, or as white pine?

A. As Idaho white pine.

Q. When you order California white pine, do you order it under that name?

A. I order it as California white pine and sell it as California white pine.

Q. You order it as California white pine and it is supplied to you by the dealers as California white pine and you sell it as such?

A. That is right.

Q. Do I understand that you do not deal in southern yellow pine?

A. No, we do not.

Q. Do you ever handle California sugar pine, so-called?

A. Yes.

Q. Under what name do you sell that pine to your customers?

A. As sugar pine.

Q. You never sell it as white pine?

A. Never.

Q. You do not know whether that is classified as a genuine white pine or something else?

A. I believe it is classified as a member of the white pine
89 family.

Q. But you would not sell lumber from the sugar-pine tree as white pine, would you?

A. No, you could not very well.

Q. Whether it is genuine white pine or not, you think it would cause confusion if you sold it as white pine?

A. I do.

Q. And you think, in order to avoid any possible misunderstanding or confusion on the part of your customers, you should continue to sell that as sugar pine?

A. I think I should.

Mr. MATTHEW. That is all; thank you.

Redirect examination by Mr. BURR:

Q. Now, the Idaho white pine belongs to the white-pine group or white-pine family?

Mr. MATTHEW. He said he did not know.

A. I do not know.

Q. You know that sugar pine belongs to the white-pine family, do you, is that right?

A. Yes, sir.

Q. I think you testified in the beginning of my direct examination of you that if a customer asked for white pine, he would be likely under certain circumstances in connection with the order that
90 he might leave with you, for certain specifications, he might receive on that order for white pine, California white pine, that is true, is it?

A. It is true to an extent; yes. We try to know what the customer is going to do with his lumber.

Mr. BURR. That is all.

By Examiner SHEPPARD:

Q. Would you tell the customer that it was California white pine when you sold it to him?

A. Yes; we would always tell him that it was California white pine that he was buying.

By Mr. BURR:

Q. Does the ordinary customer distinguish between the various varieties of pine, in a technical way, would you say?

A. No; he does not.

Q. When he gets a wood that is sold to him as California white pine, he regards that as white pine, does he not?

Mr. MATTHEW. Just a moment, can he speak for a customer? It seems to me he cannot be expected to testify to what a customer would regard that wood as. It seems to me he should confine his answer to what he does in the trade and not what may be in the mind of the customer.

Examiner SHEPPARD. Yes; I do not know that this man can testify as to what is in the customer's mind; I will let you testify what you know yourself.

A. I was going to tell the gentleman that I can't testify for
91 others.

Q. When you tell him that he is buying California white pine, you do not tell him that that is the genuine white pine, do you?

A. At times, we do.

Q. Not as a rule, do you?

A. Fully 80 percent of the customers that we sell California white pine to have been told that it is not genuine white pine.

Q. They have at one time or at another time been told?

A. Yes; but not on each particular sale.

Q. What class of customers do you sell, contractors or what?

A. Contractors, finishing mills, small carpenter shops, and the industrial trade.

Q. The industrial trade gets pattern stock, do they?

A. Yes.

Q. That is largely sugar pine, is it?

A. No; we sell very little sugar pine to the pattern trade.

Q. What do you sell them?

A. A good part is our own New England stock.

Q. The buyers of mill stock form how large a percentage of your customers?

A. Finishing mills, you mean?

Q. Yes.

A. At least 50 percent.

92 Q. Of the quantity of lumber or of the number of buyers, do you mean?

A. Buyers.

Q. Number of buyers?

A. Yes.

Q. Do they buy in larger quantities, most of them, than the average customer, these finishing mills?

A. I should say it was about evenly distributed.

Q. Now then, these finishing mills, they are men who are more familiar with the distinction between the species of woods than the ordinary buyer, are they not?

A. That I could not say.

Re-cross-examination by Mr. MATTHEW:

Q. How long has the term "California white pine" been used in the trade here, Mr. Bailey, to your knowledge?

A. Five or six years.

Mr. MATTHEW. That is all.

(Witness excused.)

JOHN J. CONNELLY was thereupon called as a witness and, having been first duly sworn, testified as follows:

Direct examination by Mr. BURR:

Q. Will you state your full name?

93 A. John J. Connelly.

Q. Your business is what, sir?

A. Yard manager for the Malden City Lumber Co.

Q. You live at Malden, do you?

A. Yes.

Q. How long have you held that position?

A. I should say 15 years.

Q. Are you interested with the company, too?

A. No, sir.

Q. Prior to that were you in the lumber business?

A. Well, for 5 years more—20 years in the lumber business altogether.

Q. Your company deals in white pine, does it?

A. Somewhat.

Q. Do you do millwork?

A. No, sir.

Q. Do you sell to millwork houses?

A. No, sir.

Q. What is your line of trade?

A. Mostly contractors and jobbers.

Q. You deal with the representatives of the ultimate consumers, is that the idea?

A. Yes.

Q. You buy white pine, do you?

A. Yes.

94 Q. Where do you get it?

A. Very little from New England; the biggest part is from Idaho.

Q. Do you buy California white pine too?

A. No, sir.

Q. None at all?

A. No, sir. Practically all we handle is Idaho and a little eastern pine.

Q. Did you concern ever handle California white pine?

A. Not to my knowledge.

Q. You are familiar with the wood, California white pine, are you?

A. No; I am not.

Q. Do you ever receive boards of California white pine when you get Idaho white-pine shipments?

A. No; I figure it is all Idaho.

Q. You figure it is all Idaho?

A. Yes, sir.

Q. Do you come in competition—does your yard come in competition with California white pine?

A. Not that I know of. All we ever get is pine—it is usually called pine, the "white" is usually left out of it.

Q. Are you a customer of the Long Bell Company in California?
A. The Long Bell?
Q. Yes.
95 A. We have bought flooring from them, but that is not in the pine line.
Q. What is that?
A. We have bought oak flooring.
Q. From whom do you buy your northern white pine?
A. It is so long since we had any; that is, bought any—it used to be from a man named Ostrander. I guess he used to pick it up here and there.
Q. Your white-pine stocks are not northern white pine; is that right?
A. No; they are not.
Q. What are your stocks of white pine?
A. Idaho and a little eastern pine.
Q. You do not call eastern pine and northern pine the same thing?
A. Eastern pine is what I would call New England pine.
Q. You do not buy any white pine in the lake States?
A. Not that I know of.
Q. How large a percentage of your white pine is from Idaho?
A. I should say 90 percent.
Q. Does your firm regard that as genuine white pine?
A. As far as I know.
Q. When some one comes into your place and wants stock from your yards of white pine he is likely to get eastern white pine or Idaho white pine, as it may happen; is that right?
96 A. I suppose so.
Q. You make no distinction between the two?
A. Only in grades.
Q. That is no. 1 or clear or no. 4, or what not?
A. Yes.
Q. Can you tell whether that is the customary situation in the trade in your vicinity?
A. As far as I know, I guess the majority in that vicinity are putting out Idaho pine, because there is very little——
Q. Putting out Idaho white pine and the other white pine without distinction, you mean?
A. Yes.
Q. How about California white pine?
A. I could not tell you about that.
Q. Do you have any competition from California white pine?
A. No.
Mr. BURR. That is all.
Mr. MATTHEW. No cross-examination.
(Witness excused.)

ADOLPHUS C. SWEEZEY was thereupon called as a witness, and, having been first duly sworn, testified as follows:

Direct examination by Mr. BURR:

Q. What is your business?

97 A. Lumber business, retail.

Q. Where are you located?

A. Malden, Massachusetts.

Q. Are you the brother of the Sweezey that I called?

A. I am.

Q. Do you deal in white pine, sir?

A. I do.

Q. What variety of white pine do you carry?

A. Mostly Idaho.

Q. Do you carry California white pine also?

A. No; we do not.

Q. You do not carry it at all?

A. No.

Q. Why is that?

A. There is no call for it—no demand for it.

Q. Did you ever carry it?

A. No; we did not.

Q. Have you had any experience with it?

A. Very little. We have had—I will take that back—we had some California clapboards in the past, but not in the general line of finished woods.

Q. Did you have an opportunity to check up to see what sort of satisfaction it gave?

A. No; we did not.

Q. Did you check up as to the satisfaction that your lum-

98 ber gives anyhow?

A. I don't know what you mean by checking up on it.

Q. I mean, do you have an opportunity to find out whether your customers are satisfied with what they receive?

A. Oh, yes; we know that.

Q. You get kicks occasionally, I suppose, like most everyone does?

A. Yes.

Q. Are you, as well as the other Mr. Sweezey, a millman?

A. No; he is the millman.

Q. He is the millman and you are not?

A. That is right.

Q. Do you sell to millmen?

A. Very little; it is mostly to contractors.

Q. Do you sell pattern stocks?

A. I do not.

Q. Do you regard genuine white pine as being equal to, inferior, or superior to the California?

Mr. MATTHEW. I object; he said he knows nothing about California white pine. He never dealt in it and it seems to me he ought not to be asked that question; he is not properly qualified.

By Examiner SHEPPARD:

Q. Mr. Sweezey, have you dealt in and have you sufficient knowledge of California white pine to answer the question?

99 A. No personal knowledge of it at all.

Examiner SHEPPARD. I will sustain the objection.

Mr. BURR. I think that will be all.

Mr. MATTHEW. No questions.

(No cross-examination.)

Mr. JOHN J. CONNELLY. I want to say that we carry pondosa in clapboards.

JOHN J. CONNELLY, resumed.

By Mr. BURR:

Q. Do you regard pondosa clapboards to be different from California white pine clapboards?

A. I can tell you about Idaho pondosa but not California.

Q. Do you regard them as different?

A. I would not call pondosa a white pine.

Q. Why?

A. It looks more of a hard pine than a soft pine; it has not got a white pine appearance.

Q. Do you notice more difference between the heart wood and sapwood of the pondosa than white pine?

A. I will tell you one is handled all bundled up and you handle the other board by board; this is all tied up in bundles, the pondosa clapboards; the Idaho is handled individually.

Q. Does that make any difference, in the knowledge you have, as to the type of the lumber?

100 A. Yes; I should say it is a good deal harder texture.

Q. I get that; but the last question I asked you, I believe, was whether you notice more difference between the heart wood and sap wood in the pondosa than the heart wood and sap in the Idaho?

A. I think there is more heart and sap in the pondosa than Idaho.

By Mr. MATTHEW:

Q. In what territory do you get your pondosa pine; what section of the United States do you get your pondosa?

A. I could not state that; I suppose it comes from the western part of the country.

Q. You do not know the actual source of the pondosa pine?

A. No; we only handle the Idaho.

By Mr. BURR:

Q. What company do you buy that from—the pondosa?

A. The Pacific Coast Lumber Company.

By Mr. MATTHEW:

Q. But you buy that in Boston here, do you not?

A. Yes.

J. E. DOWNES was thereupon called as a witness and, having been first duly sworn, testified as follows:

Direct examination by Mr. BURR:

101 Q. Mr. Downes, you are connected with what lumber company?

A. The Downes Lumber Company.

Q. What office do you hold in the corporation?

A. I am the president and treasurer and general manager.

Q. You are in the retail business, are you?

A. Yes.

Q. And located where?

A. At Boston.

Q. South Bay Avenue, is it?

A. That is one of our yards; we have three yards.

Q. You handle California white pine and other varieties of so-called white pine, do you?

A. Yes.

Q. What are your sources of supply?

A. We get pine from different parts of the country here—different kinds of pine.

Q. All right, will you be kind enough to describe them?

A. May I tell my own story?

Q. All right, sir.

A. In this vicinity they have what they call eastern or northern pine; that is, pine that comes from here and the St. Lawrence River and from Lake Champlain to the coast; they call that northern and eastern pine, and most of those who testified here testified that way.

By Examiner SHEPPARD:

102 Q. Would that take in New Brunswick?

A. That would take in New Brunswick, yes, and the southern part of Canada except near the Lakes.

When you get over by the Lakes, and come down along the Lakes, you have run into what they call the Canadian soft pine and further along, you get Minnesota and Wisconsin pine.

By Mr. BURR:

Q. That is white pine, all of it?

A. I am describing white pine now.

Then, when we go further along west, we get into the inland empire, and get some more white pine, known as Idaho white pine; then we get to the coast and get some more white pine, and we buy the California sugar pine, that is what we sell for white pine. Then there is another pine that we get out of California, now known as California white pine and which we do not think is the right name for it; that pine has a hard texture, yellowish color, a little heavier in weight and more apt to check and split than the California sugar pine, which is known to us as the clear white pine, and that is what we call it.

Now, the other pine, the California white pine, that is the name by which it is commonly known in this territory, is similar pine to what is called in the inland empire ponderosa, or, as we call it now, pondosa. Of course, we get yellow pine from the South, real yellow pine.

103 Q. That is much harder than the California white pine?

A. Yes; much harder.

Q. Southern yellow pine is much harder than California white pine, is it not?

A. Yes; although the sap wood of yellow pine in color and texture—it would take an expert to tell the difference between the sap wood yellow pine, soft texture, and a similar board coming out of California known as white pine, or Idaho known as pondosa.

I am trying to make this clear. I heard a witness say he did not know anyone who could tell the difference, so that there will be no misunderstanding of just what is in my mind, I say——

Q. You say it would take an expert to tell the difference between a California white pine board and a southern yellow pine board?

A. I did not say that. You did not follow me.

I said, if you take the sap wood of the southern yellow pine, the light soft texture sap wood, and then take a similar board—and you can find lots of them—that will come out of California or out of the inland empire, and it would take an expert to tell the difference.

In other words, you would have to get a microscope and look right at it to see the difference in the texture. I am not up in the

104 botanical language, or in the botanical end of this at all, and I do not care anything about that. I could bring you three boards right here, and unless a man that I would call an expert—a man examining them in a laboratory under a microscope—he could take those three boards and he could not tell and you could not tell from color, from weight, and you could not tell from texture—and by texture I mean softness or hardness—and you could not tell from the grain, although you might be able to tell by the taste.

Q. You are talking about southern yellow pine and ponderosa, are you?

A. And California white pine.

Q. And the same would be true of the pondosa up in Idaho, would it?

A. I said that.

Q. California yellow pine and pondosa, as you call it?

A. We do not like to call it yellow pine, because it really is not that; I am talking from the retailer's point of view, not botanically.

To our estimation, it is not really a yellow pine, for the reason that the heart of the yellow pine is a great big, solid, substantial wood of peculiar color, quite heavy, hard in texture, has a taste to it from pitch different from that which you will find in the California white pine or the inland empire's so-called pondosa pine.

Q. Do you draw a distinction between the California white
105 pine, so-called, and the pondosa of the inland empire, in texture?

A. No; I do not.

Q. You have customers, have you, who come in ask for white pine?

A. Yes.

Q. When they ask for white pine, what do they get? If they do not specify Idaho white pine, northern white pine, California white pine, what do you sell them?

A. You probably noticed that the other witnesses hesitated in answering that. They really did not know how to answer that, simply because when a man asks for pine, unless you are familiar with the wants of that customer, and there are so many varieties of pine, that he does not understand, you really have to ask him for what purpose he is going to use it; the first question is what he is going to use it for; the next question is how much does he want to pay.

I will assume that you are going to ask me for some white pine. I will answer as intelligently as I possibly can.

You call me up and say that you want two pieces of white pine. I do not know you at all, and the first question I would say to you is, "What are you going to use this for"? After you tell me, then it would be up to my judgment to know what to give you.

Q. Suppose I asked for exterior stuff.

A. I would ask you then whether you wanted a good pine
106 or a cheap pine or the best pine. I really can answer you better if you do not know anything about it; I can answer you better than if you do; I think I can sell you then, but if you do know something about it, then I do not think I can.

Q. Suppose I say I want some white pine at the best price you can make me.

A. In other words, you want the best pine you can buy?

Q. I want white pine at the best price I can get.

Mr. MATTHEW. The lowest price, do you mean?

Mr. BURR. Yes.

A. Are you going to use it for outside purposes?

Q. Yes.

A. We have a pine with a sound knot in it that comes from the East; that is pretty good pine; we have a pine that we call an Idaho pine for outside finish, with a small knot in it; that is good pine; they are both at the same price, and I would give you one as quick as I would the other.

Q. Do not customers that ask for white pine sometimes get California white pine, when they are talking price to you and want to get a low price?

A. Not if I know anything about it.

Q. They do not get it?
A. No; because they would come back.
Q. Why?
A. Too hard.

107 Q. In other words, you do not sell California white pine as white pine to a customer that wants white pine?
A. Not if we want him back again; he will send it back, anyway.
Q. Have you ever had it come back?
A. Oh, yes; surely. I only sell about two million feet of this a year.
Q. Of what?
A. White pine.
Q. California white pine?
A. No.
Q. You only sell two million feet of what, sir?
A. Pine.
Q. What kind of pine?
A. All kinds, if you are going to include yellow.
Q. What do you include in the two million feet?
A. I include in the two million feet the eastern country pine that I described, the sugar pine, California white pine, Idaho white pine, and the pondosa pine from the inland empire.
Q. You are including all of those as part of your two million feet of pine?
A. I include all of those in the two million feet of pine; yes.
Q. You did not say anything about southern yellow pine?
A. About a million feet.
Q. You did not mention that——

A. Oh, I would say about two million feet of southern
108 yellow pine that comes from North and South Carolina.

Q. You sell 2,000,000 feet of pine, you say, exclusive of the various varieties of southern pine, is that right, hard pine?
A. That is right.
Q. You regard all those others that you mentioned as soft pine, in that two million feet?
A. We regard it as soft pine; yes, sir. We have educated our customers to the fact, after bringing back thousands of feet of lumber, that there are two kinds of soft pine today——
Q. Yes.
A. One is pondosa and the other is white pine.
Q. Pondosa, you say, is too hard and comes back if you sell it as white pine?
A. That is right. Still, at the same time, there are a lot of people that might use it, but there are a lot of people who won't use it and we have to be careful about that.
Q. Are there not a lot of people that get it for white pine?
Mr. MATTHEW. From this witness, do you mean?
Mr. BURR. From this witness.
A. I do not think so.

People that are buying pondosa pine from us today know they are getting pondosa.

Q. I am talking about California white pine, I am talking about that, don't any of your customers ever get California white pine
109 from you, on occasion, under an order for white pine?

A. No.

Q. Never?

A. No.

Q. Are you sure of that?

A. They get it as California white pine.

Q. Do you say, "This is California white pine."

A. Yes.

Q. If they ask for white pine, and they get California white pine——

A. We tell them this is California white pine and they immediately say, "What do you mean by that?" and we have to tell them.

Q. Do they always say ,"What do you mean by that?"

A. If they know their business.

Q. Have you not a lot of jay birds that don't know their business?

A. They get educated quick in this business.

Q. Yes, they get educated by sad experience, and they get it by taking California pine for white pine.

Mr. MATTHEW. The witness has not said that. He said specifically that he does not sell California white pine when he is asked for white pine.

Q. You are positive, sir, that there is no California white pine that goes out of your shop without an explanation to people
110 who want white pine?

A. Those are my orders; I could not say I am positive.

Q. How long has that been your orders?

A. It has always been that way ever since I have known anything about the business.

Q. Do you sell white pine for pattern stock at all?

A. Yes.

Q. What do you sell for that?

A. We sell the eastern pine, the better grade of eastern pine and we sell the California sugar.

Q. Do you sell Idaho white pine at all for patterns?

A. No, I do not.

Q. Did you ever have it tried out and find it unsatisfactory, or what is the reason?

A. I may have tried it out 15 or 20 years ago.

Q. Is California white pine suitable for pattern stock?

A. I would not advise it.

Q. Do you know of its being tried in experiments along that line?

A. I think they have experimented and they found it unsuitable.

Q. Do you know anything about that of your own knowledge?

A. Yes.

Q. I see.

Could you relate the circumstances at all?

A. Years ago, when I was selling lumber on the road, naturally I would see the workings of some of the lumber, and this California white pine, they claim it splits and the resin or pitch comes out and it does not take the cutter's knife. They do not care for it.

111

May I just say another word about this pine, while I am here?

Q. Yes.

A. Only last Wednesday I was talking with one of our largest pattern dealers, and I said to him, "You haven't bought any pine from us recently", and I said, "What is the trouble?"

"Well", he said, "we found somebody that has got a little softer pine than you have." He had been using this eastern country pine, so I said, "Where did he say it was from?" He said it was from the Lakes, Tonawanda. He said it was a virgin cut they had just found and they had to get a great deal more money for it. He was trying that out and found it very satisfactory but did not know whether he could continue to use it on account of the price.

I said, "Why do you not use sugar pine?"

He said, "I tried that. I had it from you. Sometimes you get it soft, sometimes you get it hard."

I said, "I am going to try to clear that up for you. You haven't used any of that, as I remember, for years, about 15 years ago you had that?"

And he said, "Yes."

112

"You only buy it occasionally?"

He said, "Yes."

So I said, "You come over to our yard and let us show you some real soft sugar pine."

He said, "I have had the California white pine."

I think what the trouble has been is that people from the California pine associations have not been careful enough in selecting and assorting their white from sugar pine and the result is when a man would buy a load of this California sugar pine, they would get a few pieces of the white pine in there and the pattern maker would drive his knife in and it would cut or break or split and then get disgusted and condemn the whole business.

I said to him, "We will give you every piece of soft sugar pine. I think you better use it and save a lot of money, and as far as the grade is concerned you can get it a great deal better."

He promised to see me.

Q. When you referred in that narration to white pine, you were referring to California white pine?

A. We were talking about California white pine, the pine that comes from California; let us put it that way.

Q. The contrast that you made was between sugar pine——

A. And California white pine.

Q. That is the same, do you understand, as ponderosa?

113 A. Yes.

Q. Do you have an opportunity to ascertain what your competitors are doing in the way of selling California white pine? Do you have an opportunity to know about that?

A. Yes.

Q. Is California white pine sold in competition with your yard as white pine or under orders for white pine?

A. No; it is sold in competition with ponderosa.

Q. California white pine is sold in competition with pondosa pine?

A. Right.

Q. By pondosa you mean, do you, that part of the lumber marketed from the ponderosa tree, which goes under the trade name of pondosa from the northwest Pacific coast; is that right?

A. What they call the inland empire.

Q. It might also come from northern Oregon, might it not?

A. Yes.

By Examiner SHEPPARD:

Q. I am a little confused, Mr. Downes, as between what is known as soft and hard pine; do you refer to the southern yellow pine as soft pine?

A. No; in this section of the country—I do not blame you being confused—I have sat right in lumber conventions and wondered whether I was in one part of the country or another, when they talked about various kinds of lumber and for years we have

114 been trying to standardize sizes and kinds of pine, and I think this is a move in the right direction.

Mr. MATTHEW. I should object to the witness giving advice. I think he ought to answer the examiner's questions, as a matter of fact.

Q. Yes; what do you consider soft pine and what do you consider hard pines?

A. Hard pines are the woods we get from the South of the United States; we generally consider that hard pine.

Q. So yellow pines from North and South Carolina would be hard pines?

A. Yes; they would be in that family.

Q. Now, take the pine that comes from Minnesota and Wisconsin.

A. We consider that soft pine.

Q. Soft pine, is that what you refer to as ponderosa?

A. No.

Q. What do you call that?

A. It is a softer pine than the pondosa pine.

Q. Where do you get the pondosa?

A. Pondosa comes from the inland empire and from California and northern Oregon.

Q. This sugar pine that you spoke of, that comes from California, is that soft or hard?

A. We call that soft pine.

Q. Take the white pine that we have been talking of from
115 California. Is that soft or hard?

A. We would call that hard pine—a hard species of soft pine; California white pine we would consider a hard texture of soft pine.

We would consider soft pine, California sugar pine, Idaho white pine, and Minnesota and Wisconsin pine, and pine from New England and southern Canada.

Q. All those are soft?

A. Yes, sir.

Q. And softer than pondosa?

A. Oh, yes; much softer. In other words, to make myself clear, we look at the pines in three families.

One we call hard pine, known as yellow pine from the South. The other is a soft pine—it has a soft texture—coming from New England and Minnesota and Wisconsin, and then there is a certain kind of pine that grows in California; then there is a pine in between. That pine in between is not as hard as southern yellow pine and not as soft as the northern white pine, something in between, and that is what we are educating our trade to, as pondosa pine; that is neither soft, neither is it yellow, it is exactly in between, from a lumberman's point of view.

Q. How about Idaho white pine?

A. Idaho white pine is a soft-texture pine.

116 By Mr. BURR:

Q. Have you had any opportunity from your personal knowledge to check up the durability of the varieties of pine that you refer to as white pine?

A. Yes.

Q. What opportunities have those been?

A. In the use of it in the manufacture of it.

Q. Can you be a little more specific, what your personal opportunity has been to tell us about the durability of it?

A. Right here in Massachusetts it has been prominently advertised. We have a house built of white pine some 200 years ago—that is as to its durability. Then that same texture pine I recommended to friends of mine building houses as the best wood for outside when they could not get what we call tidewater cypress.

Q. Do you recommend California white pine for outside work?

A. No, never.

Q. Have you any experience, anything of your own personal knowledge now with regard to the comparative durability of California white pine, with the regular varieties of white pine?

A. Yes.

Q. Will you give that?

A. You take the California white pine and you put it outside and it does not seem to stand so well under the weather. What I

mean by "stand so well under the weather" is that it will
117 check and split quicker and then it will commence to get a little decayed and you have to paint it over frequently in order to hold it in place. If you don't, it will rot quicker than the other pines—what we call the soft pines. We never recommend California white pine or pondosa pine for outside finish.

There seems to be something in the wood that does not wear as well as the softer pine.

Mr. BURR. I think that is all, sir.

Cross-examination by Mr. MATTHEW:

Q. You stated, Mr. Downes, that you customarily furnish sugar pine for pattern work?

A. Yes, we do; sometimes.

Q. Sugar pine has a deservedly high reputation for pattern purposes, has it not?

A. It has not got as good a reputation as I wish it had and which I think it will have some day because there seems to be an old-fashioned prejudice against it.

Q. Personally you think well of sugar pine for pattern purposes?

A. Very well; and I recommend it.

Q. May I ask you how you order your sugar pine when you purchase it?

118 A. We order it as California sugar pine.

Q. Do you purchase it locally or do you buy it directly from the western lumberman?

A. We buy it both ways.

Q. And in each instance you specify California sugar pine?

A. Yes; I have a letter or telegram here that will show——

Q. You have answered my question satisfactorily. That is all I need on that, Mr. Downes.

You have also stated that you make a very earnest effort to supply your customers with what you understand that they want for their purposes?

A. Yes.

Q. And that if they order white pine, you do not supply them with lumber that is known as California white pine?

A. Right.

Q. You have referred to the southern yellow pine; if a customer comes to you and desires southern yellow pine, does he order it by that name?

A. He calls it that; yes.

Q. Does he just ask for yellow pine or does he ask for southern yellow pine or does he order long-leaf pine, for example, or short-leaf pine?

A. He is just as likely to order or inquire in all of the terms that you have mentioned.

Q. And any of those inquiries might well be received?

119 A. Yes; we sense it immediately in this locality. We almost know immediately when he talks about the yellow pine that he invariably means the southern hard pine.

Q. That wood is best known for its structural strength?

A. Yes.

Q. In that respect it is much superior to the other pines?

A. Oh, absolutely.

Q. When a customer asks you for yellow pine you would not think of furnishing California white pine so called?

A. I would not.

Q. Would you furnish the southern yellow pines?

A. I would.

By Examiner SHEPPARD:

Q. Is it a more expensive wood?

A. Yes.

Q. The yellow pine?

A. You see when you get in the first grade of yellow pine—I am talking about the southern pine now—and get into the wide widths and the heart lumber, the very best of it would not be as expensive as the very best of a similar soft pine, as far as price is concerned, but they would be close to one another.

By Mr. MATTHEW:

Q. I think you also stated, Mr. Downes, that you do not ordinarily furnish Idaho white pine for pattern wood?

A. We do not.

120 Q. Why is that, Mr. Downes?

A. Maybe a personal prejudice. I have got an idea that the Idaho white pine in the upper grades may check or split—I see a man coming into the room now that I bought almost a million feet from last year, and he is probably smiling at that remark.

Q. Nevertheless, that is a statement of the reasons of your preferring to furnish California sugar pine to Idaho white pine for pattern purposes?

A. That would be our suggestion.

Q. Do you ever deal in lumber known as Arkansas soft pine?

A. Yes.

Q. Do you know whether that comes from a tree which is a yellow pine, botanically?

A. It does come from yellow pine.

Q. But it is materially softer in texture than the yellow pines of the South, concerning which you testified on your direct examination?

A. Yes.

Q. I assume, then, that the important thing from your point of view and the point of view of your customer is the utility and durability of the lumber which you supply to them?

A. Right.

Q. Mr. Downes, you have referred to the texture of pondosa pine in contrast with the texture of the northern white and
121 Idaho pines, and said that the texture of the pondosa pine is coarser and harder——

A. I want to make myself clear; you have a lot of pines in there.

Q. By pondosa pine you were referring particularly to the pines of the inland empire section?

A. Yes.

Q. Can you tell us as to the relative softness of the pondosa pine from the inland empire and the so-called California white pine?

A. Yes; personally I would think or I would consider that the pine from the California district known as California white pine is a little softer than the pine that comes out of the inland empire, known as pondosa pine—a little softer. While I would take one with the other and call them both the same as far as texture is concerned, I think that the California white pine is inclined to be, as a whole, a little softer in texture.

Redirect examination by Mr. BURR:

Q. Have you had any opportunity to consider the texture of California white pine from the standpoint of its uniform texture that is, does it vary much in texture or is it of about uniform softness?

122 A. I consider that a very smart question.

Q. I just want the facts, that is all.

A. As a matter of fact, take the pondosa pine from the inland empire, the texture of the pondosa pine from the inland empire, is, as a whole, about the same texture——

Q. As the California white pine?

A. No; I am answering that question that you just put to me—the texture as a whole, is quite uniform.

Q. Quite uniform with itself?

A. Yes; uniform with itself, whereas the California white pine, as a whole, is not as uniform in texture as the inland empire.

You take a carload of about 25,000 feet—that is ordinarily a carload of California white pine—and you might possibly find 5 percent of it that would be very hard texture, almost like a piece of hardwood, on the other hand, the rest of it—the texture of the rest of the car as a whole would be softer texture than a similar car of the inland empire pondosa.

Q. Have you ever considered the uniformity of texture feature as regards the heartwood and the sapwood of the California white pine?

A. We go in for texture very strongly. We have apparatuses and everything else—as a matter of fact, we are one of the few con-
123 cerns that advertise soft texture and hard texture. I do not think any firm in this part of the country advertise medium or soft or hard texture as we do.

Q. I do not think you quite hit the point I was aiming at.

On the texture feature of California white pine, is there a contrast in texture between the heartwood and the sapwood that is more marked than in other varieties of pine?

A. I think so.

Q. Would you say that the hard texture that you referred to has the percentage—I forget the percentage you gave—was heartwood or was that hardwood in character?

A. It might be either.

Q. You are not sure?

A. I never could understand how it got so hard. I had cars that had very few pieces in it.

Q. Is that typical? Have you observed whether the typical soft part of California white pine is sapwood or part heartwood?

A. I would say it was part sap and part heart.

Q. Part of the heart, you think, is soft in texture, and part hard, or have not you studied that feature?

A. Yes. The heartwood of the California white pine is softer in texture than the heartwood of the pondosa of the inland pine. Is that what you wanted?

Q. It is not quite what I wanted, but I am glad to get the
124 information.

(Witness excused.)

GEORGE F. LINDSAY was thereupon called as a witness, and having been first duly sworn, testified as follows:

Direct examination by Mr. BURR:

Q. What is your company, Mr. Lindsay?

A. I am associated with the Weyerhaeuser organization.

Q. How long have you been so associated with them?

A. Forty years.

Q. What position do you hold with the Weyerhaeuser organization?

A. That would be difficult to say. I am one of the stockholders.

Q. Do you have a title with any one of the companies?

A. We are so organized—we have a rather disjoined organization. I am president of several companies; I hold other offices in other companies; we have no central organization. Perhaps I never told you that before.

Q. Now, Mr. Lindsay, the Weyerhaeuser concern has several subsidiary companies or several independent companies, I will put it that way?

A. They are made up of independent companies.

Q. And they are manufacturers?

125 A. Yes.

Q. Then you have a sales company for a large number of manufacturers of affiliated companies?

A. For all of them.

Q. The Weyerhaeuser interests, taking these companies under that general term, is that a fair term?

A. Yes.

Q. The Weyerhaeuser interests comprise certain holdings of timber in various parts of the country, do they not?

A. Yes.

Q. In what varieties of pine timber do they hold interests in the stump?

A. In the Wisconsin and Minnesota territory, white and Norway pine; the inland empire—I would better say the woods that grow there, there is quite a number of them. Do you want them listed?

Q. Just the pines I am interested in.

A. Idaho white pine and pondosa pine on the west coast; the woods again on the west coast, Douglas fir primarily; in the South, short-leaf yellow pine and long-leaf yellow pine—I might say in that connection that we have no cypress interests, neither have we any North or South Carolina interests. We have no interest in the timber of the New England States.

Q. Your companies are among the largest producers of pine lumber in the country, are they?

126 A. So considered, I believe; yes.

Q. The names that appear in the record, I believe, include the eastern country, northern Minnesota, Wisconsin, Canadian white pines; can you give me the botanical names of those various varieties of white pine?

A. I think so.

Q. What are they? Just of the white pines.

A. The white pine of the North or Lake States of New England go under the botanical name of Pinus strobus.

Q. And the white pine of Idaho?

A. That is called Pinus monticola.

Q. I did not include monticola or Idaho in my question: I think we can clear this up best by asking this: New England white pine is what botanically?

A. Pinus strobus.

Q. Minnesota and Wisconsin are what?

A. Pinus strobus.

Q. Canadian and Ontario are what?

A. Pinus strobus.

Q. In other words, all those common names all refer to the same species of white pine, strobus?

A. Yes, sir.

Q. There is in addition what is well known as the Idaho white pine, which is given the botanical name of what?

A. Pinus monticola.

127 Q. Now, referring to Pinus strobus for the moment, I would ask whether the Weyerhaeuser interests have large holdings still in Pinus strobus?

A. Yes, sir.

Q. Can you state offhand, or is it not a fair question—can you offhand give me the standing stumpage that is to be found in Pinus strobus?

A. I could get it for you, but I would not dare answer that question offhand, because it is a pretty hard question to answer.

Q. Are you still getting virgin Pinus strobus from any of your Weyerhaeuser holdings?

A. From all of them.

Q. Do you have any holdings in Maine?

A. No.

Q. Where, in general, roughly speaking, are your holdings from which you are getting Pinus strobus?

A. Principally, at the present time, from Minnesota. We have some small interests in Wisconsin, but Minnesota is the heaviest producer at the present time of strobus.

Q. Are you getting full-sized trees of strobus from some of those acreages up there?

A. The full-sized tree?

Q. Yes; are they as large in growth of strobus as appeared in the virgin forests earlier and further east.

128 A. Your question would have to have some explanation. Unquestionably the largest timber of trobus that grew came from Michigan. The next largest came from Wisconsin and the next largest is where we are now heavily operating—while it is large, it is not as large as these others—relatively, you start with Michigan, then you go to Wisconsin, and the timber of Minnesota, generally speaking, is not as large as those of the other two States—it is large, but not as large.

Q. Does it compare with the Canadian strobus?

A. I would say that it did.

Again, Mr. Burr, when you get into Canada, you have that great question of geographic differentiation to take into consideration, and it is very difficult to answer a question like that yes or no.

Q. Do you have any holdings for the Weyerhaeuser interests in Canada?

A. No, sir.

Q. Do you know whether there is virgin strobus coming from Canada?

A. Yes.

Q. Is the Canadian lumber that is coming into the market largely virgin in character?

A. Very largely virgin. I would not want to say definitely, but I would assume that 90 percent of it is.

129 Q. Would you be able to give me any approximation of the amount, in general, of virgin Pinus strobus that is coming into the American market, or is not that a fair question?

A. I would not want to try to answer that.

Q. You would not want to answer that?

A. No; I could get the figures for you, but I would rather not take a shot on that. I could make a guess on those questions, of course.

Q. It is several hundred thousand feet?

A. It is several hundred million feet.

Q. I meant several hundred million feet. Will you be able to get us those figures later in the course of this hearing? I do not mean today or in Boston, but later on?

A. Yes.

Q. I do not think I asked you how long you have been in touch, in a practical way, with the lumber situation; how long is it?

A. With the lumber situation?

Q. With lumber, yes; how long have you been a lumberman?

A. About 40 years.

Q. Did you ever have any practical experience in the forests?

A. I have.

Q. How long ago?

A. About 20 years ago.

Q. What kind of jobs did you hold in the forests? Suppose you sketch your experience back from somewhere near the beginning.

130 A. I have been all over—practically all over northern Wisconsin, northern Minnesota—the timber area of Wisconsin and Minnesota and in Canada. I bought and sold timber; bought logs and sold logs, and in the earlier days that I spent all the winters, or almost every winter in the woods country.

Q. Did you serve an apprenticeship in the lumber camps at all?

A. Just what do you mean by an apprenticeship?

Q. I mean a practical apprenticeship as a logger.

A. Yes; I have been through all the phases of logging of every character, as far as I know.

Q. Have you had occasion to study the New England situation, from the market standpoint as regards the history of Pinus strobus, in the New England market?

A. I have.

Q. Can you sketch that for us, beginning as early as your knowledge of it goes?

A. It was perhaps 20 to 25 years ago that we began to sense the strong competition that was coming for white pine in this Eastern territory.

We began about 18 years ago, through a publicity campaign, trying, as far as it was possible, to meet it. In New England, where white pine had had its parentage almost—as these old houses

131 in New England, which Mr. Fairbanks spoke of is simply saturated with the strobus pine, and we realize that here was the place, if anywhere, where white pine had its home, and we began a very aggressive publicity campaign, and we found ourselves in the peculiar position of having aroused a tremendous interest in the white pine, but we could not deliver it.

We sold white pine in this New England territory, but we could not deliver white pine, because there were other woods that were selling under that name, and what we considered white pine, I mean by that Pinus strobus, and Pinus monticola, we could not assure an architect that he could get it under any specifications that he was ordinarily willing to incorporate into his specifications.

You noticed this morning that Mr. Bourne said that you can go about so far in specifications, but you cannot ask us to put in all those botanical terms and everything that will guard us and go through our contractors, and so forth, and so on, unless there is some certain simple phrase that we can put in specifications that will assure us of getting what we ask for, otherwise, we won't get it.

In many cases, we found that trouble existed. I will say frankly I had the feeling at the time that if we could have delivered what we had advertised, I was very hopeful that we could occupy in white pine the same position that cypress occupied in Florida, that
132 is, as a more or less specialized wood. Cypress occupies that position today. I do not mean by specialized, as you specialize in blue-white diamonds or anything of that kind, but I mean that it would occupy a particular position down here in New England that it might not in any other place in the United States, so we centered our efforts here—I do not mean New England exactly, but from New York north.

Q. That effort failed, did it?

A. I would say that it failed because we could not deliver what we were advertising.

Q. Is there a difference in the cost of production of Pinus strobus as contrasted with Idaho white pine, for example?

Mr. MATTHEW. I cannot see that that is material whether there is a difference in cost of production particularly between strobus and Idaho white pine.

Mr. BURR. Suppose we develop that a little further later on; I will withdraw that question for the moment.

Q. Your companies have, in pricing their various lumbers, considered the cost of production, have they?

A. Yes; and cost of stumpage.

Q. And cost of stumpage. How do you secure your stumpage? Do you secure your stumpage by purchase from people who take it up under the Federal acts?

A. Usually by proxy in that way. We usually buy from somebody who has bought, I mean, somebody who has bought
133 a tract; we are very liable to buy that tract if opportunity offers, and in some cases, we have bought the original claims and bought back a tract of timber ourselves, but those days have rather gone by when it was possible to do that.

Q. When you refer to the cost of stumpage, that is the cost of those purchases that you have referred to?

A. Yes.

Q. And in addition to that cost there is another element of cost, namely, that of logging the territory?

A. Yes.

Q. Do you find that there is a difference in the cost of logging in various sections?

Mr. MATTHEW. I do not think that question is relevant, Mr. Examiner.

Examiner SHEPPARD. Let the record show that the objection is noted and ruling reserved after discussion off the record.

Mr. BURR. I withdraw that question for purposes of advisement for the time being.

Q. Is the territory from New York north the main market for the Pinus strobus products of the Weyerhaeuser interests at the present time, would you say?

A. The principal market, is that your question?

Q. The principal market.

A. Yes.

134 Q. Could you give me, roughly, what percentage of your Pinus strobus goes from New York City north?

A. I would rather have someone else answer that. I could make a guess at that, but it would be wild.

May I say this, Mr. Burr, in my association, while I am very closely in touch with the Weyerhaeuser Sales Company as to matters that take on a technical sales aspect, there are others in our organization who would be a whole lot better qualified to answer than I.

Q. Do you hold any position with the Sales Corporation?

A. No.

Q. Do you do any supervising for the Sales Corporation?

A. No.

By the way, what do you mean when you say "supervising"?

Q. Are you an officer that gives instructions to the Sales Corporation?

A. No, only as a stockholder to formulate policies; to that extent, yes.

Q. You are giving your time to the Weyerhaeuser interests?

A. Yes; in every phase of it.

Q. In one phase as well as the other?

A. Yes; but in general terms.

Q. What is your executive title?

A. Again I say there is no central organization, so I have no executive title. I might say that none of the Weyerhaeuser

135 boys have an executive title; there is not any such thing; we have no central organization. It is all units made up, that are more or less coordinated, but there is no president, vice president, secretary, or treasurer.

Q. How about executive committee?

A. We have not any executive committee.

Q. How are instructions issued?

A. Instructions are issued through a group of interests when they come together and, as I said, without any executive committee, but which perhaps we ought to have.

Q. Have you from your own personal experience in the woods and elsewhere a knowledge of the differences, as lumber, between Pinus strobus on the average, if you can take such a conception, Pinus strobus on the average and Pinus ponderosa as an average, referring now to the tree?

Mr. MATTHEW. Did the witness state that he has had experience in lumbering operations in connection with ponderosa pine?

Q. Are you familiar with ponderosa pine?

A. Not to the extent I am with Pinus strobus, but I have been much in the woods in Idaho but not in California.

Q. Are you familiar with the inland empire variety of ponderosa?

A. Yes.

Mr. MATTHEW. May it be understood that the question is
136 limited to Pinus strobus and Pinus ponderosa and the inland empire?

Mr. BURR. I will agree to that.

Q. Now, will you answer that question?

A. I hope I may be able to answer any question along that line.

Q. What is the difference between the two woods, taking a conception of an average tree?

A. Pinus strobus is a wood—do you want a description of Pinus strobus?

Q. Yes, first; that is the best way to give us the comparison.

A. Pinus strobus is a wood that is largely heart, very little sap, possibly on the average strobus would be 90 percent heart and 10 percent sap.

There is a variation there, of course, in different localities, but generally speaking that would be a statement of fact.

Strobus is a wood that is soft in texture, easily workable and because it is a heart wood, it is a long-lived wood when exposed to trying weather conditions.

Any other question with regard to strobus that you would want me to answer particularly?

Q. How about its texture?

A. It is soft in texture.

Q. How about lack of uniformity or uniformity, as the case
137 may be?

A. It is fairly uniform, of course; it goes the gamut of every defect which all woods are susceptible of, but in texture particularly it is about equally soft from heart to sap all the way through; it has knots, little streaks, not large ones; it has no pitch pockets; it is close grained, close knit; stands all sorts and character of weather under trying conditions and does not check; it does not split; takes paint perhaps the best of any wood known. Is that the gamut of strobus?

Q. I am hardly qualified to answer that question. Have you ever had occasion to note the texture of the summer and spring portions of the annual rings there and trace between the texture of the summer growth and spring growth?

A. Yes; and from a practical standpoint I do not think it is appreciable.

Q. It is appreciable in some woods, is it?

A. It is appreciable in many woods; it is appreciable in the hardwoods.

Q. In other words, the uniformity between the spring and summer rings—that is, the uniformity between the two is in the strobus above the average in uniformity?

A. Oh, yes.

Q. Is that a quality for which it is remarkable, would you say, that evenness?

138 A. Yes; it is a wood that is very even in its texture, especially between its sap and its heartwood. From the workability of it, and so on, they are much alike; you can distinguish the line between the sap and the heart, because the sap is very white and the heart is more like light taffy candy color, like butter color, but they are both soft, both equally soft and both alike workable.

Q. Before the coloring has been introduced, you mean?

A. Yes.

Q. Will you state what the characteristics of the Pinus ponderosa of the inland empire are, in the same fashion that you just stated for strobus?

A. I will endeavor to.

Pinus ponderosa of the inland empire runs much heavier to sap than this white pine. In other words, generally speaking, 65 percent possibly of heartwood as against 35 percent on an average of sapwood.

The heartwood of pondosa pine is very much harder than the heartwood of white pine, and on the other hand, the sapwood of pondosa pine is almost equal in appearance—in fact, certain portions of it, if taken, it would be impossible to select the heartwood of strobus as against the sapwood of ponderosa.

Q. Did you ever notice what the color, the average coloring, of the heartwood of the ponderosa from the inland empire is?

139 Is it more distinct from the sapwood, the coloring?

A. The heartwood and the sapwood of ponderosa?

Q. Yes.

A. The heartwood is distinctly darker than the sapwood of ponderosa. In other words, if you will—I wish I could make that plain in words—if you take the sapwood of white pine, it is almost milk white, then you take the heartwood of white pine and the sapwood of pondosa, they are almost identically alike.

Q. In color, you mean?

A. We are talking about color now, in appearance and in texture—equally so in texture—they are almost alike.

The next step down is the heartwood of pondosa; that is distinctly darker. Do I make myself plain there?

Q. I think so. Is the sapwood of ponderosa from the inland empire as soft, you think, as the heart wood of strobus; do you think it is about as soft?

A. There is very little difference.

Q. Is there a more distinct difference between the summer wood and the spring growth of ponderosa than there is in strobus in those seasons?

A. That I would not attempt to answer. I do not think so. I do not think the relativity there is greater than it is in strobus, but that is a technical question that I would not attempt to answer.

140 Q. Your company owns holdings of ponderosa?

A. Yes.

Q. And they are located where?

A. In Idaho and in California.

Q. Do you have any in Oregon?

A. Just overlaying; I would say no. Just Idaho and California.

Q. Are you about to open in Klamath Falls?

A. Yes.

Mr. MATTHEW. The Klamath Basin is largely in Oregon, is it not?

The WITNESS. Pardon me, I have made a misstatement. The Klamath Basin is largely in Oregon.

Q. You have ponderosa there?

A. Yes; I am glad you corrected me on that.

Q. Your company is manufacturing ponderosa at various points, are you?

A. Yes.

Q. In Idaho and in California, as you stated, where you have holdings?

A. Yes; and just coming into Klamath Falls.

Q. The company is selling a considerable body of ponderosa?

A. Yes.

Q. Under what trade term?

A. Pondosa.

141 Q. What would be the comparison, approximately, between your sales of ponderosa under that trade name and your sales of strobus?

A. About our sales of strobus I do not know that I can say, but if you will say strobus and monticola, a third more of pondosa than the other two combined.

Q. Than monticola and strobus combined?

A. Yes.

Mr. MATTHEW. Now, just what does that mean? He says he sells one third more than the other two combined—I think I get your meaning.

The WITNESS. Is that not clear?

Q. I think it is clear. How about sugar pine, are you selling any sugar pine?

A. No.
Q. Have you any holdings in sugar pine?
A. No.
Q. You have told me about your sales, how about your holdings; do your holdings in ponderosa, irrespective of what you are marketing, do your holdings of ponderosa exceed your holdings in monticola and strobus?
A. They are about the same.
Q. But you are selling ponderosa faster?
A. Yes.

Q. How long have you been using the trade term pondosa?
142 A. Since the action of the Federal Trade Commission, five years ago. What was that date, Mr. Burr? We were selling under the name of western white pine before that, just the same as everybody else, until a change was made about five years ago, when we changed to pondosa pine——
Q. That was in the inland empire?
A. Yes.
Q. Do you refer to the time when the Commission brought certain complaints against certain parties?
A. Yes.
Mr. BURR. May we stipulate that it was about 1924 or 1925?
Mr. MATTHEW. I will take your word for it.
Mr. BURR. I will give you the date right now. It was May 1925.
Q. Up to that time you were calling it California white pine?
A. No; western white pine.
Q. At that time, all of the inland empire manufacturers of ponderosa pine adopted the name of pondosa pine, did they, as far as you know?
A. Yes; there might have been a few very minor exceptions, but 99 percent did.
Q. And they have continued to use that name since, have they?
A. Yes.

Q. Did you attend any conferences with any of the Cali-
143 fornia white pine men at that time; were you present?
A. Not personally; but our people attended.
Q. All right, I shall not ask you anything further on that.
(Whereupon at 4:00 o'clock p.m., an adjournment was taken until Saturday, October 5th, 1929, at 9:30 a.m.)

144 Docket Nos. 1620–1669, inc.

BOSTON, MASS., ROOM 331, YOUNGS HOTEL,
*October 5th, 1929.*

Met pursuant to adjournment, 9:30 a.m.
Before: William W. Sheppard, examiner.
Appearances:
Eugene W. Burr and J. G. Birks, attorneys for the Commission.

McCutcheon, Olney, Mannon & Greene, by Allan P. Matthew and Carl I. Wheat, attorneys for the respondents, Clover Valley Lumber Company et al.; Davies-Johnson Lumber Co. et al.; Diamond Match Company et al.; California Fruit Exchange et al.; Penman Peak Lumber Co. et al.; Feather River Lumber Company et al.; Kesterson Lumber Company et al.; Hobart Estate Company et al.; Fruit Growers Supply Company et al.; Quincy Lumber Company et al.; Spanish Peak Lumber Company et al.; Lassen Lumber and Box Company et al.; Red River Lumber Company et al.; Owen-Oregon Lumber Company et al.; Big Lakes Box Company et al.; Ewauna Box Company et al.; Klamath Lumber & Box Company et al.; Lamm Lumber Company et al; Pelican Bay Lumber Company et al.; Algoma Lumber Company et al.; Shaw Betram Lumber Company et al.

Mr. MATTHEW. With your permission, Mr. Examiner, I would like at this time to reserve the point as to the juris-
145 diction of the Commission in this proceeding over the California Fruit Exchange, one of the respondents which we represent.

I should have made this statement at the opening of the hearing yesterday, but I neglected to do so. The California Fruit Exchange is a nonprofit cooperative corporation and has been so recognized by various departments of the Federal Government. Whether that point will be found to be material in these proceedings or not, I am not prepared to say. As long as the California Fruit Exchange officers desire us to have that point made of record, I shall ask Your Honor for permission to have that record made.

Examiner SHEPPARD. It may be so noted, Mr. Reporter.

Mr. Burr, I read for the first time last night the complaint in this case, and I want to tell you that, in my judgment, the testimony that you wanted to put in yesterday is, in my judgment, fully justified under this complaint.

It is just a matter now for you to decide whether or not you want to put it in.

Mr. BURR. I shall not do so at this Boston hearing.

Examiner SHEPPARD. I believe, if you decide to do so, it will add a thousand pages to this record, and many not add anything to the case at all.

Mr. BURR. I have a little thought in mind which I may develop in New York, and I may compromise on the point a
146 little.

Examiner SHEPPARD. I just wanted to tell you that in my judgment you can go ahead if you wish to.

Mr. BURR. I thank you very much.

Examiner SHEPPARD. Now, gentlemen, we will proceed with Mr. Lindsay.

By the way, Mr. Matthew, do you want to ask him any questions?

Mr. MATTHEW. I should like a few questions on cross-examination, with the liberty to engage in further cross later on if counsel has finished.

Mr. BURR. Further cross-examination?

Mr. MATTHEW. Further cross on the examination we had. Possibly, Mr. Burr, if you have no objection, but maybe the questions that I will ask this morning will be all of my cross-examination. I shall try to be brief and not go beyond the absolute requirements of the case.

I should like, at least, the liberty of being allowed to recall him if necessary.

Mr. BURR. I shall not object.

GEORGE F. LINDSAY, recalled.

Cross-examination by Mr. MATTHEW:

Q. Mr. Lindsay, I understood you to say, in the course of your testimony yesterday, that your companies operate to some extent in the southern pine belt?

147 A. Yes.

Q. Do you engage in the production and marketing of shortleaf and longleaf pine?

A. Shortleaf now; longleaf up to a few years ago, but we have no longleaf at the present time; we disposed of our longleaf.

Q. Are you personally familiar with the commercial practices of the short leaf and longleaf industries?

A. I would say yes, shortleaf particularly. You might ask me a question about long leaf that I could not answer, but I should be glad to try.

Q. I wanted to ask this question, whether commercial longleaf pine is identical with botanical longleaf pine?

A. Commercial longleaf pine identical with botanical longleaf pine? I would say it was.

Q. Do you know whether or not it is the practice in the industry to grade the lumber yielded by the longleaf and shortleaf pine with respect to the quality of the particular lumber and not with respect to the species of tree from which it is obtained?

A. What do you mean, common and things like that?

Q. I mean any kind of lumber.

Mr. BURR. Do you mean gradation as common?

Mr. MATTHEWS. Not gradation, I meant as to the classification of the lumber which comes from those trees.

148 Mr. BURR. Classification or species?

Mr. MATTHEW. No; lumber. In other words, what is commercial long-leaf lumber? If that question is not clear to you, let me put it to you this way:

Q. Do you know whether or not is a fact that commercial long-leaf lumber contains, to a large extent, lumber which is yielded by short-leaf pine trees?

Mr. BURR. I would like to object to the materiality of this.

A. I may be dense this morning, but I do not get that question.

Examiner SHEPPARD. We will let Mr. Matthew go on for a little while.

The WITNESS. Pardon me, I must be dense; I have not got that point again.

Q. Very well, let me try again.

There are certain mills in the South which cut both shortleaf and longleaf pine; you know that to be true?

A. Yes.

Q. In classifying the lumber which is yielded by those trees, is it not a fact that lumber will be graded and classified as longleaf lumber irrespective of whether it comes out of a shortleaf tree or longleaf tree? In other words, it is graded with respect to its particular quality?

A. I think that is true.

149 Q. I think you stated that your company operates in Douglas fir on the west coast?

A. Yes.

Q. Under what name is the lumber yielded by that tree marketed?

A. The Weyerhaeuser Timber Company.

Q. Is it sold as douglas fir?

A. It is sold as douglas fir.

Q. Is it ever sold as Oregon pine?

A. No.

Q. Do you know whether or not the tree from which the lumber is obtained is in fact a fir, botanically?

A. The botany of that territory is going to bother me I am afraid.

Q. You do not know whether that is classified as a false hemlock and not as a fir?

A. As a false hemlock?

Q. Yes.

A. I know there are different species out there.

Q. I am now speaking of the well-known Douglas fir lumber.

A. I think as you say douglas fir is largely fir and the name douglas fir is attached to it——

Q. You do not know whether botanically it is known as a false hemlock?

A. The botany of that country, I must say, I am vague on,

150 but I could get the information for you.

Q. We will pass that, then.

Does not your company sell this Douglas fir to which you referred in southern California, under the name of Oregon pine?

A. I think not.

Q. You do not know as to that.

You spoke of your California holdings in lumber and I think you afterwards explained that your holdings were primarily in the Klamath Basin which is in Oregon?

A. Yes; it overlaps there.

Q. Do not your holdings consists of a considerable stand of sugar pine trees?

A. Yes—I would not say considerable—it is relatively small but considerable; yes.

Q. Are you marketing any of the products from that particular operation now?

A. No.

Q. The mill is not yet built?

A. It has not yet been built.

Q. Do you know whether you expect to market the sugar pine obtained from that section under the name of sugar pine?

A. I do not know as that point has arisen as yet but I assume yes.

Q. You know that the sugar pine is classed botanically as
151 a true white pine?

A. Yes.

Q. You would not expect to market this lumber as either California white pine or Oregon white pine?

A. No.

Q. That would cause confusion in the trade, if you adopted any such term?

A. Yes; I would assume right away that it would be marketed under sugar pine; there is no question about it.

Q. Such terms as Oregon pine, California white pine, would cause confusion in the trade of this particular product?

A. Yes.

Q. Can you tell us what percentage of lumber that is obtained from Pinus strobus ordinarily falls in the shop grades?

A. Pinus strobus ordinarily falls in the shop grades? That is a question, Mr. Matthew, that I would rather have Mr. Williamson answer in New York. He could do it definitely; I have an idea, but it is perhaps not exact.

Q. I thought perhaps your experience in that particular operation was sufficient to give us that.

A. No; that would be vague. That is a very broad question.

Examiner SHEPPARD. We will get it definitely.

The WITNESS. Mine would be just misleading and I certainly do not want to do that.

Q. One other question about sugar pine, if you please; do
152 you know whether the practice is to mix the sugar pine with the so-called California white pine in the common grades?

A. If that is the California practice, I would not be able to answer.

Q. You are not familiar with that.

You undertook yesterday, Mr. Lindsay, to describe with some particularity the lumber which is yielded by Pinus strobus and compare it with the lumber yielded by the pondosa pines so called in the inland empire section, and you said, among other things, that Pinus strobus yields approximately 90 percent of heartwood and 10 percent of sap?

A. That would be an approximation. I hope I stated it that way; there might be differences of opinion, but it is about 85 or 90 percent.

Q. Is that just based upon opinion or upon definite knowledge?

A. It is based on 30 or 40 years' experience; just personal experience; just opinion from that.

Q. It does not proceed from any actual statistical data or anything of that kind, or any governmental statistics?

A. No.

Q. Similarly, when you said that pondosa yields 65 percent heartwood and 35 percent sap; that simply reflects your personal judgment?

A. It is based on the same theory.

Q. I think you said, if my notes are correct, that the sap-
153 wood of the pondosa pine is almost alike in appearance to the heartwood of the strobus pine?

A. Yes.

Q. You refer to appearance only in that connection, you meant simply in its color?

A. In its color and in its texture and in its general appearance and the inability after putting them side by side to easily distinguish between the two.

Q. In point of fact, is not the heartwood of the strobus pine quite a bit darker than the sapwood of t.. pondosa?

A. I would say not.

Q. I think you did not undertake to describe the Idaho white pine lumber in the same fashion as you described the lumber you referred to as Pinus strobus and Pinus ponderosa; could I ask you, if you please, to compare or contrast the Idaho white pine lumber with the strobus pine lumber?

A. In percentages of sap and heart and texture or both?

Q. Just as you did yesterday in comparing the pondosa pine with which you are familiar and the strobus pine.

A. Pinus monticola or Idaho white pine would run in percentage of sap to heartwood almost identically with strobus. Perhaps a shade to the advantage of monticola; if anything, there would be a shade, a percent or two above.

Q. That is, the proportion of heartwood?

A. Heartwood to sapwood.

154 Q. Would be a little greater——

A. In monticola than in strobus, but that only by a shade, one or two percent, something like that, but that is a matter of opinion again.

Q. You said that the strobus lumber is soft and easily workable; how does the Idaho white pine compare with that statement?

A. Equally true of Idaho white pine; it is of the same color, too.

Q. How does it compare with the lumber yielded by the ponderosa pine in that respect?

A. The relative difference again would be quite the same, just as I gave between strobus and ponderosa, if that answers your question.

Q. Is not the pondosa-pine lumber just as soft and easily workable as the Idaho white-pine lumber?

A. The sapwood of it is.

Q. How about the heartwood?

A. The heartwood would come harder again.

Q. Is there any material difference between the lumber yielded by these three trees, Pinus strobus, Pinus monticola, and Pinus ponderosa, as far as quality of hardness is concerned?

A. I should say a distinct difference. There is in quality; the hardness or sapwood of pondosa would compare very closely
155 with the heartwood of both strobus and monticola and the heartwood of pondosa would immediately be distinctly harder.

Q. That again reflects your personal opinion without reference to any authoritative data of any kind?

A. That could be substantiated, I think, with all character of authority; I do not think that is a matter of opinion at all.

Q. How about the specific gravity of the lumber yielded by these three trees?

A. You are speaking of weight now?

Q. Yes; the weight.

A. Strobus and monticola practically the same. The heartwood of—pardon me, the sapwood of pondosa substantially the same as the strobus and monticola; the heartwood of pondosa distinctly heavier.

Q. You have already said distinctly harder?

A. Distinctly harder.

By Examiner SHEPPARD:

Q. If I remember right, pondosa is sugar pine?

A. No; pondosa is the California white pine.

Q. Ponderosa is white pine of California?

A. Ponderosa is called white pine in California.

Q. That is the respondent's tree, as I understand?

Mr. MATTHEW. Yes; that is our trade name.

Q. All right; clear up for me pondosa.

156 A. Pondosa is a trade name used in Idaho for the same botanical species as ponderosa is in California; botanically they are both yellow pine.

Q. Now, distinguish for me between pondosa and Pinus monticola.

A. Pinus monticola is a true five-needle white pine of Idaho, just the same, Mr. Sheppard, as strobus is the true five-needle white pine of Minnesota, Wisconsin, and Oregon.

Examiner SHEPPARD. All right; pardon that interruption.

By Mr. MATTHEW:

Q. Mr. Lindsay, do the grading rules for pondosa pine more nearly resemble the grading rules for Idaho white pine than they resemble the grading rules for southern pine?

A. That is a technical question, and I am not personally familiar with the grading rules; I would be somewhat familiar with them in the North, but out there in the West I would rather have one of our men more capable of answering that.

Q. You have never seen a booklet of grading rules?

A. Oh, yes; and I have studied the booklet of grading rules.

Q. You know that the grading rules for Idaho white pine and pondosa pine of the same section are just the same rules in a single book?

A. I am of the opinion that they were separated at one time. It would seem to me there was a discussion two or three years ago as to the dividing of those grading rules, because there were shad-
157 ings of differences which would not apply to all cases. In fact, the grading rules of all those woods come back to the white pine of Minnesota and Michigan. They are all founded on that, so also is douglas fir.

Q. The grading rules for southern longleaf and shortleaf are quite different, are they not?

A. Quite different; yes. I might say in that regard, you undoubtedly know Mr. George S. Long, who is the father of the grading rules of white pine, and he has had more to do with the grading rules of all those western woods than a dozen men.

Q. I am sorry I have not the pleasure of his acquaintance, but I have seen a recent copy of the grading rules of the California white pine and pondosa pine in a single booklet.

A. Do not think that I am contradicting that.

Q. I know you stated that you are not certain of the facts. The southern yellow pine, both shortleaf and longleaf, is characteristically much harder, denser wood than the pine lumber obtained from either northern white pine, Idaho white pine, or the ponderosa pine, is it not?

A. Did you say both long and short leaf?

Q. Yes.

A. I would beg to disagree with you on that.

Q. All right, let us take the longleaf first, if you please.

A. Yes.

Q. The longleaf pine lumber is much harder and denser?

A. Much more pitchy.

158 Q. Much more pitchy than either of these three varieties to which I have referred?

A. Yes.

Q. As far as quality and utility are concerned, the pondosa pine which you have described more nearly resembles Idaho white and strobus pine than it does longleaf yellow pine?

A. Than longleaf yellow pine? Yes; decidedly so.

Q. Now, coming to the shortleaf pine, again pondosa pine more nearly resembles the northern Idaho white pine than it does the shortleaf pine?

A. I question that a little. If there was a thousand feet of Arkansas shortleaf yellow pine put in one pile, pondosa or Idaho put in another pile, and California white pine put in another pile, I doubt if there is any human being who could pick out which was which.

Q. The Arkansas pine, shortleaf pine, is characteristically a soft pine?

A. The Arkansas shortleaf pine is distinctly so.

Q. And is usually marketed as Arkansas soft pine?

A. Arkansas soft pine; that is its name.

Q. Take the other shortleaf pine of other States in the South; how does it compare with Arkansas pine?

A. Arkansas, southern Missouri, and just a shade in Texas, takes the whole belt of the shortleaf; other than that you are in the
159 Gulf States with the longleaf belt, Georgia, Mississippi, Texas, and all along, as we call it, the Gulf State group. The percentage in the South or shortleaf yellow pine or what is commercially known as Arkansas soft pine, is very small. Botanically, as you appreciate, Arkansas soft pine is in another family than pondosa; it is not the same botanical species, but it has almost identically the same qualities.

Q. I understand it is not botanically the same?

A. No.

Q. Can you give us the botanical name of the Arkansas soft pine?

A. Echinata.

Q. I take it, Mr. Lindsay, that you have not familiarized youreslf with any of the Government publications, showing the comparative characteristics of these pine lumbers?

A. Oh, at various times it has vaguely, but my feeling is that I don't want to say mislead but they are founded on so much that is difficult of analysis that I do not give much credence to them, if you will allow me to put it that way.

Q. You have never seen the publication of the United States Department of Agriculture, dated June 1929 entitled "Miscellaneous Publication No. 46, on the Strength of North American Woods"?

A. I have not.

Q. Would you be surprised that it appears from that publication that the Pinus ponderosa is found to be a softer wood
160 than Pinus monticola?

A. All I can say as to that is that I would like to see the lumber that they examined. There is where the difficulty comes in. We could give them white pine to examine that was all sap; we could give them white pine to examine that was all heart. If they will take the run of the log on any of these analyses, and if you can find an analysis by the Government in Washington where they have taken the run of the log instead of boards, why, then, I am willing to argue with you, but on boards, we can furnish any kind of board out of any kind of lumber almost that you ask for.

Q. Including Idaho white pine, isn't that true?

A. Yes, any kind; it would not make any difference.

Q. In some sections of the Idaho white belt, you will get lumber which is quite hard and flinty, would you not?

A. I have not seen it, but I presume so; you will in the strobus belt.

Q. You do not know that the specific gravity of the ponderosa pipe was found by the Government to approximate very closely the specific gravity of Idaho white pine and northern white pine?

A. I would not believe it. I may be wrong on that, but that is merely my opinion, but I know so much of the way those analyses are made, and they are made from boards and you can furnish
161 boards of all sorts and of all types and kinds of hardness and softness that I cannot think that there is any way to discuss a matter of this kind on a basis of average.

Q. I agree with you on that, Mr. Lindsay, entirely.

Just one or two more questions, and I am through.

Is the percentage of shop lumber in Idaho white pine as great as the percentage of shop lumber yielded by either strobus pine or California white pine, Pinus ponderosa?

A. That is a technical question that I would rather not answer.

Q. You do not know?

A. I do not know; but I have an opinion, however, we have a man that would answer that definitely.

Q. I would not care for a mere opinion unless you had some information about it.

Do you know whether the Idaho white pine sap lumber is any more durable than the sap lumber from the pondosa pine?

A. The sap lumber of Idaho and the sap lumber of pondosa? I could not say authoritatively on that. From opinion I would say it was, but that would be purely opinion.

By Mr. BURR:

Q. What was?

A. That the sap lumber of Idaho white pine or monticola was longer lived than the sapwood of pondosa; I think it is, but where anybody could get anything authoritative on that I would want to see it.

162 By Mr. MATTHEW:

Q. You have nothing authoritative on it?

A. I have not; no.

Mr. MATTHEW. I think that is all.

Redirect examination by Mr. BURR:

Q. Mr. Lindsay, has sugar pine, as far as you know, ever been marketed from any locality as white pine?

A. Not to my knowledge. Sugar pine, as I understand, was selected as a trade name for that wood, that is called sugar pine generally in California, and as far as I know, that is a technical question and my familiarity with California is a bit vague. I believe sugar pine has always been sugar pine and has never been called white pine in California, so far as I know.

Q. What is the botanical name of that species, sugar pine?

A. Lambertiana.

Q. Do you regard that as a true white pine?

A. Yes.

Q. So far as its being a true white pine is concerned, it is as much so, you think, as monticola?

Mr. MATTHEW. I will stipulate that, Mr. Burr, that the Pinus lambertiana is I think uniformly classified by botanists as a true white pine.

Mr. BURR. How about the commercial qualities, will you
163 stipulate that also?

Mr. MATTHEW:

A. I cannot say that I can stipulate that very well, that is a material point in issue. It is botanically a true white pine; it is a five-needle pine.

Q. I would like to ask that question, confining it to its commercial character; is it as much a true white pine, having in view its utility as monticola?

A. It has always been considered so.

Mr. BURR. That is all.

Re-cross-examination by Mr. MATTHEW:

Q. Mr. Lindsay, if you consider California sugar pine commercial to be a true white pine, of course, there could be no objection to terming it California white pine on the market?

A. There could be no objection to marketing it as California white pine, you say?

Q. Yes.

A. No.

Q. How long have you been familiar with the term "California sugar pine," commercially?

A. Why, I should say twenty years, maybe, but that is a rank guess.

Q. That is a well-established trade name for that lumber?

A. No question about that.

164 Q. How long have you been familiar with the term "California white pine"?

A. I would say just a little lesser time. That does not mean that it was not used at the same time, I do not know, but I knew of sugar pine before I knew of white pine, but it was just a bit beyond us because we had no interest in California.

Mr. MATTHEW. That is all.

Redirect examination by Mr. BURR:

Q. Before you knew of California white pine, you mean?

A. California white pine, surely. I knew of our white pine a whole lot longer than that.

Q. Do you recall a time when in certain parts of the country the products of ponderosa pine was designated as western white pine?

A. Yes.

Q. Would you state about when the name "western white pine" fell into disuse; that is, comparative disuse?

Examiner SHEPPARD. There is no need to go into that; that came out yesterday; that is already in the record.

Mr. BURR. All right, I shall not press that.

Q. At the same time that the inland empire was calling it western white pine, were California producers of ponderosa designating it as western white pine or California white pine, or how?

165 A. California white pine.

Q. For how long a period have they been calling it California white pine that you know of?

A. I don't know, but I understand thirty or forty years, maybe longer than that.

Q. When you say it would be appropriate or proper to designate sugar pine as California white pine, are you referring to the commercial situation or are you referring to the practical situation in view of the fact that California white pine has for a long time been designated pine, a trade name for ponderosa? Is my question clear?

A. I will attempt to answer that in saying that there would be no objection on the part of any white-pine manufacturer to see California take the name "California white pine" for their sugar-pine product if there was any such thought in their mind, but I had always assumed that that name of sugar pine was taken as a trade name because they more or less had in mind a specialized wood and they seem to have preferred the name sugar pine to white pine. Why, I don't know. Maybe the name white pine had been absorbed by that time, I don't know.

Q. Would there be a danger of confusion, in your judgment, if sugar pine were called white pine or California white pine, in view of the fact that California white pine, as you have testified,

166 for many years has been the trade name for ponderosa white pine?

A. It would be most hazardous for sugar pine to adopt the name "white pine", I should think. California white pine is botanically a yellow pine, and now if sugar pine were to take the name of California white pine and tried to get themselves on the map as a true white pine instead of sugar pine, I don't know how long it would take them to do that. There would be tremendous confusion there.

Q. There would be confusion, in your judgment, if the sugar-pine men began to adopt the name of California white pine?

A. It certainly would. That is almost self-evident, it seems to me.

Mr. BURR. I think that is all.

Examiner SHEPPARD. Mr. Lindsay, you may stand aside and hold yourself in readiness for further questions.

(Witness excused.)

T. E. GAVIN was thereupon called as a witness, and, having been first duly sworn, testified as follows:

Direct examination by Mr. BURR:

Q. What is your business, Mr. Gavin?

A. Retail lumber.

Q. How long have you been in that business?

A. Fifteen years.

167 Q. You are with the Norwood Lumber Company, are you?

A. Yes, sir.

Q. Located in Norwood, Massachusetts?

A. Yes.

Q. How far is that from Boston?

A. Twelve miles.

Q. You deal in white pine, do you?

A. Yes, sir.

Q. You buy so-called Idaho white pine, do you?

A. Yes.

Q. You buy the so-called California white pine, do you?

A. Yes.

Q. When a man comes into your establishment and he says that he wants a certain designated specification of lumber, and does not tell you what he wants it for, and asks that the order be filled in white pine, he may get either California white pine or Idaho white pine as your yards are stocked, would he?

A. He very seldom orders it that way.

Q. If he does?

A. Yes.

Q. He would? I see. Suppose a man comes in and asks for clear white pine, he is more apt to get California white pine, is he, than Idaho white pine, is he?

A. Yes.

168 Q. Where do you get your Idaho white pine from?

A. From Potlash, Idaho, or Lewiston, Idaho.

Q. Can you give us the name of the company?

A. It is the Weyerhaeuser Sales Company.

Q. One of the Weyerhaeuser companies?

A. Yes.

Q. Where do you get your California white pine?

A. From the Algoma Fruit Company and the Fruit Growers Supply Company.

Q. Where are they located?

A. I don't know.

Mr. MATTHEW. They are in Susanville.

Q. In your trade, you come in contact with competitors, do you; that is, you take orders from competitors occasionally and sometimes competitors take orders from you?

A. Yes.

Q. So far as you know, in their way of selling white pine, it is the same as you have testified, as to your method?

A. As far as I know.

Q. That is your experience for fifteen years, is it?

A. Yes.

I would like to say at this time that pine is bought here—that is, from my experience—as either pine or soft pine; it is not bought as white pine.

Q. Not so much?

169 A. Not at all.

Q. You do not specify when you buy it?

A. When the consumer buys it from the retailer, he buys it as either pine or soft pine and does not specify it as white pine.

Q. Do not specifications from architects read white pine in many cases? Do not the contractors bring in their specifications for white pine for certain purposes?

A. Very seldom.

Q. Do not specifications sometimes read "California white pine"?

A. Yes; the architects' specifications do, but the big bulk of the retail business is with the contractor and builder, and he purchases as either soft pine or just pine.

Q. When the architect's specifications read white pine, he comes and asks for pine?

A. Yes.

Q. And soft pine on occasion?

A. Yes.

Q. You do have times, though, when they ask for white pine, but that is the exception?

A. Yes.

Q. Have you had any questionnaire on this subject recently come into your office?

A. Not that I have seen; no, sir.

Q. You have talked with no Government man on the subject?

170 A. No.

Q. Except myself over the phone; is that right?

A. Are you, Mr. Burr?

Q. Yes.

A. Yes, sir.

Mr. BURR. I think that is all.

Cross-examination by Mr. MATTHEW:

Q. Do you deal in southern yellow pine?

A. Yes, sir.

Q. Under what name is that lumber ordinarily ordered by your purchasers?

A. Southern pine?

Q. Yes.

A. Generally called hard pine or North Carolina pine.

Q. So when a customer desires hard pine, you will supply him with southern yellow pine?

A. Yes.

Q. You would not think of supplying such an order with either California white pine or Idaho white pine?

A. No, sir.

Q. There are marked differences between the hard pine of the Southern States and the California white pine lumber, are there?

A. Yes, sir.

171 Q. Southern yellow pine which you handle is harder, more dense, and much stronger lumber, is it not?

A. Yes, sir.

Q. And the California white pine is more ordinarily used for shop purposes? And sash, door, frames, and so forth?

A. Yes.

Q. And for finished lumber?

A. Yes.

Mr. MATTHEW. That is all; thank you.

Redirect examination by Mr. BURR:

Q. Sash and door material is often white pine, is it not; that is, monticola; that is, Idaho white pine? Idaho white pine goes into sash and doors, does it not?

A. We have not used it.

Q. Are you a millworker?

A. Yes, sir.

Q. Do you make those things?

A. Yes, sir.

Q. Do you use California white pine for that purpose?

A. We use either California white pine or so-called "pondosa" pine from Oregon.

Q. Do you distinguish any difference between those two types of wood?

172 A. No.

Q. You think for the uses for sash and door they are virtually the same thing?

A. If they come from the proper section.

Q. What section do you think is best for California white pine, for example, as far as your experience goes?

A. There is a section, I think they call Mt. Shasta, that we have had the best success with for soft texture.

Q. That is California white pine?

A. Yes.

Q. What section have you had good success with, with pondosa for sash and door?

A. Why, there is a section called Klamath Falls where we have had the best.

Q. Don't they sell it as California white pine from Klamath Falls?

A. We have not bought it as such.

Q. You have bought it as pondosa?

A. Pondosa.

Q. Can you state whether your competitors in the sash and door business make their sashes and doors from California white pine in this section mostly?

A. I could not say.

Q. You could not say as to that?

A. No, sir.

173 Q. Do you have competitors in this business who ship their mill work from the Middle West into this territory?

A. Not in the type of business we do.

Q. What is your type?

A. It is all custom business; that is, the sash and door we make are all custom made.

Q. It is all made to order?

A. Yes.

Q. Not stock?

A. No.

Re-cross-examination by Mr. MATTHEW:

Q. Just one further question, if you please, Mr. Gavin; from what company have you bought pondosa coming from the Klamath Falls section, if you can tell me?

A. We buy it, as you probably know, through brokers, all through brokers.

Q. Yes; I know that.

A. I have had it from this so-called Shevlin Hickson Company.

Q. The Shevlin Hickson Company are at Bend, Oregon; you understand that?

A. I understand that.

Q. That is some distance removed from the Klamath Falls section, or don't you know that?

174 A. I do not know.

Redirect examination by Mr. BURR:

Q. Did I understand you to say that your best section—rather your best success with pondosa pine for these purposes was with materials that come from Shevlin Hickson at Bend, Oreg.?

A. No.

Q. Did you not say that on recross-examination?

Mr. MATTHEW. No; I did not ask him that. I simply asked him from whom he purchased the lumber in that section.

Q. From the Shevlin Hickson Company have you been buying pondosa pine?

A. We bought it from the broker, who buys it from the Shevlin Hickson Company.

Q. But it comes from Shevlin Hickson?

A. Yes.

Q. Is it your desire to change your testimony from the testimony that you gave a moment ago that your best success with the lumber of the pondosa trade name came from Klamath Falls? Are you now changing to Shevlin Hickson as the best source of supply for pondosa pine, is that your idea?

A. No. Perhaps I misunderstood; I understand Klamath Falls is in Oregon, am I right?

Q. Right.

A. I understand Shevlin Hickson people ship pondosa pine
175 from Klamath Falls and we bought it and that is the way it was represented to us as coming from Shevlin Hickson Company, of Klamath Falls, and that section is the best pondosa that we, in our judgment, get.

Mr. BURR. That is all.

(Witness excused.)

176 H. A. FALES was thereupon called as a witness, and having been first duly sworn, testified as follows:

Direct examination by Mr. BURR:

Q. Mr. Fales, you are in the lumber business, are you?

A. Yes.

Q. What is the name of your concern?

A. The Framingham Lumber Company.

Q. You are located at Framingham, Mass.?

A. Yes.

Q. You are in the retail trade?

A. Retail.

Q. You carry the so-called Idaho pine, do you?

A. Yes.

Q. Where do you get that from?

A. Well, various mills; at present I buy it from Weyerhaeuser mostly.

Q. The Weyerhaeuser Company?

A. Sometimes from the Weyerhaueser Company and sometimes from Coeur d'Alene and Potlash.

Q. You buy also the so-called California white pine, do you?

A. Yes.

Q. Whom do you buy that from?

A. Long Bell.

Q. The Long Bell Company?

177 A. Yes.

Q. Suppose someone comes into your place and asks for certain lumber of certain specifications, and asks for white pine, you may sell either of those two (Idaho white pine or California white pine), may you?

A. Yes.

Q. If he asks for clear white pine lumber, he is more apt to get the California white pine, is he, than the Idaho?

A. Yes; in that particular instance, because we carry more of the clear grade of the California than we do of the Idaho.

Q. Do you come in contact with other retail lumber dealers to the extent of knowing whether that is the general practice of the trade?

A. I should say yes; although not authentically.

Q. That is your best judgment, is it?

Mr. MATTHEW. If he does not know authentically, I do not think the answer should stand, and I move to strike it out.

Q. What do you mean when you say you don't know authentically?

A. I imagine the other yards in town handle the situation the way we do, sell the pine with regard to the quality.

Q. You say you imagine that, what do you base that view upon, that you express?

A. By the opinion of the builders, that is the inquiries we have, must be similar to what they give to the other yards.

178 When they inquire for pine, we must have the same inquiries as the other yards; they do not specify or state——

Q. You just assume that as to the other yards?

A. I assume that, because that is the way it is handled in our yard.

Mr. BURR. I think that is a little indefinite and I shall not object to a motion to strike.

Examiner SHEPPARD. My methods of doing business, Mr. Matthew, is to give what I call probative value to a statement of that kind, and you know what the probative value of that would be.

Mr. MATTHEW. I think I understand.

Mr. BURR. That is all.

Cross-examination by Mr. MATTHEW:

Q. You say that it is the practice to sell lumber by quality primarily?

A. We do.

Q. How does it happen that you carry more of the clears in the California white pine than the Idaho white pine?

A. Because I think the texture is a little softer in the California white pine.

Q. When a customer comes to your yard and orders pine, does he ordinarily request it as white pine or Idaho white pine or California white pine or by some other term?

179 A. Just by pine.

Q. He just asks for pine?

A. Yes.

Q. He does not use the word "white" ordinarily, just "pine"?

A. It is according to what the customer is going to use it for; if he is going to use it for outside, he calls it white pine.

Q. Ordinarily the request is just pine?

A. I would say ordinarily they would say white pine, if they want to use it for outside trim.

Q. And you use your discretion as to whether it is Idaho white pine or California white pine which is to be supplied?

A. We ask what grade he would like in the white pine.

Q. You ask for the grade. How do you determine whether you will furnish him with Idaho pine or California pine?

A. In that particular instance, we carry a no. 2 common Idaho; of course, it has some knots and we say, "Do you want clear grade or some with knots?" and he will say, if he wants Idaho pine—he won't specify it as Idaho pine, but if he says with some knots, we give him Idaho pine, because that is the grade we happen to carry.

Q. If he asks for a clear grade, you think the proper thing is to furnish him with California white pine; if he asks for pine with knots in, you give Idaho white pine?

A. In our situation.

180 Q. Do you carry any southern pine?

A. To a small extent.

Q. Is that the longleaf hard pine, so called?

A. We do not carry the longleaf, we carry the Arkansas yellow pine.

Q. That is a relatively soft pine?

A. It is softer than the so-called North Carolina pine.

Q. But it is not as soft as either Idaho or California white pine?

A. No.

Mr. MATTHEW. That is all, thank you.

Redirect examination by Mr. BURR:

Q. You say that you think that the California white pine is a little softer than the Idaho?

A. I do.

Q. As an average run?

A. As an average run and in the one's and two's.

Q. You think that is the question of quality that enters in there, do you?

A. I do.

Q. Do you notice any other differences in quality between the two types of lumber, the Idaho and the California?

A. It is a hard question; what you call other differences.

181 Q. Is there any difference, so far as you know in the durability characteristics of the two lumbers?

A. I could not say that I know there are; no.

Q. You think, for exterior use, the California white pine is as suitable for building purposes?

A. Yes.

Q. For outside work it is as durable as the Idaho; is that right—do you think it is as durable?

A. One is just as durable as the other.

Q. Have you had any experience so that you could check up on the durability?

A. We have not absolutely checked up on the durability.

Q. You haven't had any experience so that you could check it up?

A. No; but by observation, you might say, not particularly checking up every piece, I would say one would last as long as the other.

Q. When you consider the quality of the California white pine, do you ever notice any difference between the heartwood and sapwood of the lumber that comes to you?

A. Oh, yes; we have.

Q. Is the heartwood of this California white pine easily distinguished by the eye from the sapwood?

A. I think so; yes.

Q. What is it?

A. I think there is a small flaky part in the center of the
182 heartwood that is more prominent in the California.

Q. Is it a different color at all?

A. It is a little brownish texture.

Q. In considering the quality of the California white pine which type of—well, is there a heartwood in most of the boards that you receive?

A. No.

Q. It is mostly sapwood, is it?

A. Some sapwood and some heartwood.

Q. Is it mostly sapwood or mostly heartwood?

A. More sapwood than heartwood, I should say.

Q. And you say the sapwood is darker in color?

A. The heartwood is darker in color.

Q. I mean the heartwood is darker in color; that is a smaller percentage now, is it?

A. Smaller percentage?

Q. Smaller percentage of the total run of the California white pine?

A. I should say yes.

Q. Did you ever notice the difference between the sapwood and heartwood of Idaho white pine or is not that distinguishable?

A. I would not say so much.

Mr. BURR. That is all.

(Witness excused.)

183 C. E. LINDSTROM was thereupon called as a witness and, having been first duly sworn, testified as follows:

Direct examination by Mr. BURR:

Q. What is your business, Mr. Lindstrom?

A. Salesman.

Q. For whom?

A. Weyerhaeuser Sales Company.

Q. How long have you held that position, sir?

A. Approximately five years.

Q. Will you state whether or not you have had experience in the theoretical part of the study of forestry?

A. Yes, sir, I have.

Q. That was obtained how?

A. How do you mean?

Q. Have you ever taken any courses in forestry?
A. Yes.
Q. At any educational institution?
A. Yes; at the University of Idaho.
Q. When was that?
A. 1924.
Q. Have you ever had any lumber experience prior to taking that course?
A. Yes, sir.
Q. What was that, in logging or what?
184 A. Both logging and lumber.
Q. Please be a little more specific about what your experience has been.
A. The various steps in the woods that a man would come in contact in logging operations, and, aside from that, at the mill, as a grader and a roundabout man at the mill.
Q. You had a job first as a logger in a logging company?
A. No; the first was in a lumber mill, and I migrated from that to the woods.
Q. How long was the logging and milling experience?
A. From the time I was twelve years old up to the present.
Q. That covers how long a period, approximately?
A. About fifteen years.
Q. What woods were you in?
A. In the inland empire, the woods that grow there, and it was those woods that I spent my time among.
Q. Following that experience in the mills and in the forest you took this course that you referred to in the educational institution?
A. Yes, sir.
Q. Following that you went into the lumber business as an employee, did you?
A. Yes, sir; following that, when I was through school, I did.
Q. You have been with the Weyerhaeuser interests ever since?
A. Ever since; yes, sir.
185 Q. In connection with your forest experience, did you have experience in examining microscopically or otherwise the lumber of different species?
A. In a few instances.
Q. Is it possible to distinguish Pinus ponderosa from white pine?
A. Yes, sir; it is.
Q. What do you understand by white pine, the genuine white pine?
A. I mean Pinus ponderosa from genuine white pine.
Q. By genuine white pine what species do you refer to?
A. I refer to the three, Pinus strobus, Pinus monticola, and Pinus lambertiana.
Q. Have you had occasion as recently as yesterday to visit the Charles Street Meeting House in this city?
A. I didn't quite get that question. Read the question, please.
(The question was thereupon repeated by the reporter as above recorded.)

A. Yesterday was the first time I was down there; is that what you mean?

Q. You visited the Charles Street Meeting House yesterday?

A. Yes, sir; I did.

Q. Would you state whether you examined certain urns on or about the roof of the structure?

186 A. Yes.

Q. Where is that meeting house; do you remember the corner of what streets?

A. The corner of Charles Street and Mt. Vernon, I believe; yes, I am certain it is.

Q. That is in the neighborhood of Beacon Hill?

A. That is in the neighborhood of Beacon Hill.

Q. Will you state what the result of your examination of these urns was?

A. What do you mean, what I found on examining them?

Q. Yes; did you examine the type of wood in one or more of those urns?

A. Yes, sir; I examined the wood in two urns.

Q. Did you make any cutting from any of the wood that you found there?

A. Yes; I did.

Q. Will you state what you found the condition of those urns to be?

A. Not in very good condition.

Q. About how tall an urn would you say those were?

A. Possibly the height of this table.

By Examiner SHEPPARD:

Q. Please indicate about how high.

A. Approximately thirty inches.

By Mr. BURR:

187 Q. Will you state what the situation of those urns was, as regards exposure to the weather?

A. Well, of course, they were urns stuck right out there exposed to all atmospheric conditions.

Q. Outside, were they?

A. Yes; they were outside, exposed right to the raw atmospheric conditions.

Q. To all the elements, rain, snow, and so forth?

A. Yes; rain, snow, sleet.

Q. Were those hollow urns or solid urns?

A. I believe they were solid urns.

Mr. MATTHEW. Does he know whether they were solid or not?

By Mr. BURR:

Q. Do you know whether they were solid urns or not?

A. From indications, they were all solid, as far as I could see.

Q. You do not know of your own knowledge that they were?

A. The only way I could find out was to take an axe and cut them in two, but I imagine that would be prohibited.

Q. The urns are in full sight of the passers-by on the street?
A. Yes.
Q. They are there for ornamental purposes?
A. They are there for decorative purposes; yes.

Q. You looked at the top of the urn and there was no
188 aperture on the top to the base?

A. Not that I could see.
Q. You looked down from the cupola above, did you?
A. Yes.
Q. And they were solid in appearance across the top?
A. Yes, sir.
Q. You say that you made cuttings from the lumber of which the urn was in part composed or wholly composed?
A. I made a cutting of two of the urns; I made a cutting of the base of one and the top of the other.
Q. You examined them through a microscope, did you?
A. Yes; through a hand lens, not a microscope.
Q. Through a hand lens that you carried with you?
A. Yes.
Q. Will you state what type of wood you found those to be.
A. Pinus ponderosa.
Q. Did you bring those with you this morning?
A. Yes, sir. Do you wish to see it?
Q. Yes; if you please.
(Sample handed to counsel.)

Mr. BURR. I ask that they be received in evidence jointly, with the receptacle as Commission's exhibit no. 5.

Mr. MATTHEW. I shall object unless this lumber is identified as lumber furnished by one of these respondents.

189 Examiner SHEPPARD. Yes; I think that is proper.

Mr. BURR. If the examiner please, we can not prove, nor it is pleaded nor is it proper to expect us to prove the durability characteristics of the Pinus ponderosa produced by any specified respondents or any specified producers. It is making a case as regards the durability or the relative durability, where exposed to the weather of Pinus ponderosa as contrasted with other white pines if we make proof with regard to Pinus ponderosa, irrespective of who is the producer. It is to be presumed that the species is the matter at issue as to durability rather than the actual lumber produced by any one producer of that species, otherwise it would be prohibitive to attempt to prove anything as regards durability of any class of wood that may be made.

Mr. MATTHEW. If the examiner please, we have very specific issues in this case. What may be the quality or durability of lumber produced of Pinus ponderosa in some sections may not be at all determinative of the quality or durability of Pinus ponderosa in other sections. In fact, this very complaint alleges that this Pinus

ponderosa varies very materially throughout this range, the range alleged to be extremely great, from Canada through the United States into Mexico and perhaps beyond. If it is true that this lumber is extremely variable throughout this range, certainly
190 these respondents who are represented by us cannot be precluded by some lumber produced from some entirely different section.

Examiner SHEPPARD. I have no special objection to the samples going in for whatever consideration the Commission may want to make of them, Mr. Burr, but it seems to me, in order for the samples to be of any value, in this case, it has got to be shown whence they came and by whom they were produced, and so forth. Merely bringing into this case any sample of ponderosa is, in my judgment, a little bit too broad to be of any material use.

Mr. BURR. If the examiner please, counsel himself has argued here as to figures of the Government with regard to this species of lumber. Why, counsel's own argument here will mean that the figures of the Federal Government with regard to tests that they made with Pinus ponderosa are not material at all unless the Government happens to know whether that Pinus ponderosa that was then examined was produced by these respondents. We have got to prove the characteristics of the species, and when we prove the characteristics of the species we will admit that there are some variations, but the characteristics of the species are placed in issue by the Federal Government's complaint in this case, and we can not be precluded from proving the characteristics of the species by be-
191 ing burdened with the laboring oar of proving where each particular piece of wood or white pine or ponderosa was produced.

Examiner SHEPPARD. I will let the exhibit go in for what it is worth.

Mr. MATTHEW. You think it goes to its weight rather than admissibility?

Examiner SHEPPARD. Absolutely, and I am going to give it probative value. I will tell the Commission that here is an example of ponderosa but there are other samples of ponderosa that are not here, and let them take it for what it is worth.

Mr. MATTHEW. May I say, Mr. Examiner, with respect to producing samples which are entirely representative, as far as the suggestion of counsel, respecting the difficulty of proving his case as the quality of these various woods is concerned, of course, the Government did specifically identify the lumber as being produced from different sections. It seems to me that a Government publication which reports the results of independent, and of course, impartial tests has far more value than you can possibly find in producing these two little splinters of wood of some particular job, without any evidence and without any assurance as to the source of the wood.

Examiner SHEPPARD. That is my point exactly. While I
192 have no objection to it going in, I see no special benefit in it, as it is only one of many samples.

Mr. MATTHEW. I think almost anybody can go out and take a particular piece of wood on some job and perhaps find some defect and deficiency in it. I think that these samples should not be admitted. I think not only on the ground that they are irrelevant and immaterial, but I think in addition, there is not a proper foundation laid; they are not identified with any lumber produced by these respondents, and I desire to stand on the objection, if Your Honor please.

Examiner SHEPPARD. Your objection will be noted. Mr. Burr, if you desire, I will let them go in.

Mr. BURR. All right, I desire to have them go in.

Examiner SHEPPARD. Mark this exhibit the appropriate number and let it go in for the information of the Commission, and let the record show that the examiner states that he will give it probative value.

(The sample was thereupon received in evidence and marked "Commission's Exhibit No. 5.")

By Examiner SHEPPARD:

Q. Mr. Lindstrom, I would like to ask you if you could give me some idea of how long these urns have been sitting up on that meeting house.

A. That I could not tell you.

Q. Is it a number of years or do they appear to be old?

A. Why, I really could not say exactly; I do not know.

193 Mr. BURR. If the Examiner please, this is an offer as a sequel to the testimony of the witness who was on the stand yesterday, Mr. Bourne, who testified with regard to certain urns on the Charles Street Meeting House.

Examiner SHEPPARD. Yes; I remember the testimony.

By Mr. BURR:

Q. Mr. Lindstrom, you were not present during that testimony and I would like to ask you if in the basement of the same meeting house there were encountered certain urns of ancient character, apparently, when you were there yesterday?

A. Yes, sir; one.

Q. One urn down there?

A. One urn.

Q. Did that break open while it was being examined there?

A. Yes, sir.

Q. Was that of ancient character?

A. You mean the urn?

Q. Yes.

A. Yes, sir; it was.

Q. Did you look at that urn to ascertain whether it was composed of white pine or not?

A. I did, sir.

Q. Was it white pine?

A. Yes, sir; it was also solid. That urn was solid. It was broken up, with the exception of a little part in the end.

194 Q. And that was in decayed condition?

A. In decayed condition, part of it, and parts of it were in pretty good state of preservation.

Q. It was decayed so it broke up without any force?

A. Yes, the center section broke open; the portions where the atmospheric conditions could not get at it and continuously work at it, those parts were in a nice stage yet.

By Examiner SHEPPARD:

Q. Let me ask you this, were the urns from which you took the cuttings which appear in the exhibit, were those urns substituted in a latter day for the ancient urns that you have been speaking of?

A. Yes, sir, they were.

Q. And these urns that you have testified about, I mean that you have taken the cuttings from, were made from the ponderosa pine?

A. Yes, sir, they were pondosa pine that we found on the urns up there now, which I understand were substituted for the old, ancient urns that had been up there.

Q. You don't know how long the later urns were up there?

A. I don't know if that pondosa as one day or old, or five years, or what it is. I was asked to identify that as a species, and it is Pinus ponderosa.

195 Cross-examination by Mr. MATTHEW:

Q. Mr. Lindstrom, where do you reside?

A. At present?

Q. Yes.

A. Belmont, Massachusetts.

Q. How long have you been a resident there?

A. In Belmont, Massachusetts, about two years.

Q. How long have you been a resident of New England?

A. Approximately three years—three and a half years.

Q. Upon whose request did you make this visit to the Charles Street Meeting House and examine these urns?

A. The Commission.

Q. That is Mr. Burr, counsel for the Commission, do you mean?

A. Yes.

Q. At the request of Mr. Burr, do you mean?

A. Yes, sir.

Mr. MATTHEW. That is all.

(Witness excused.)

WILLIAM W. LUNT, was thereupon called as a witness, and having been first duly sworn, testified as follows:

Direct examination by Mr. BURR:

Q. You live in Hingham, Massachusetts, do you?

196 A. Yes, sir.

Q. How long have you been a resident there?

A. Probably forty-two or forty-three years.
Q. You are the town treasurer of Hingham, are you?
A. I am.
Q. Is there a historical society in that town?
A. There is.
Q. Do you hold any office in that society?
A. President.
Q. How large a membership have you?
A. About 370.
Q. How long has that society been in existence, if you know?
A. Since 1914.
Q. How long have you been president?
A. Since last June.
Q. In connection with the study that the society makes, have you ever had occasion to look into the historic houses of Hingham?
A. I have.
Q. Can you refer to any structures there of ancient character?
A. Yes; there are several. There is the house used as a headquarters of the Colonial Army, known as the Old Ordinary; the General Lincoln House—the William Otis Lincoln House; the house known as the Old Garrison House; the Old Mill, the Old Ship
197 Church, the Shute House at South Hingham, and then the house known as Roseneath.

Q. You do not know of your own knowledge, I suppose, when those houses were built—you were not there at the time they were built?
A. Hardly.
Q. They are old structures?
A. Yes.
Q. Can you tell me whether you are familiar with the tradition and reputation of those houses in the city of Hingham?
A. Yes.
Q. How old, according to reputation, is the Old Garrison House?
A. 1640.
Q. How old, by reputation, is the William Otis and Lincoln House?
A. 1753 or 1757.
Q. And the Old Mill?
A. The Old Mill is not the original building. I cannot tell you the date of this one.
Q. That is an ancient structure, is it?
A. Oh, yes.
Q. Runs back in the 1700's, somewhere?
A. In the old 1700's; yes.
Q. How about the Ship Church?
A. That is 1681.
198 Q. The Shute House is how old?
A. That is not known. It goes probably somewhere about the date between 1720 and 1740.

Q. The Roseneath House is how old?

A. About the same date as the church, about 1680 or '81.

Q. Are these buildings constructed of white pine externally?

A. So far as I know. That is only by hearsay. I am not an expert on white pine.

Q. That is their reputation, is it?

A. The reputation of the builders. The builders down there pronounce it white pine.

Q. The exterior finish of these houses, do they show age to the eye?

A. The siding exposed to the weather in some places show age, but not enough to deteriorate in their soundness at all.

Q. Are all of these structures painted on the outside or is any one of them unpainted?

A. I think they are all painted—I am quite sure they are.

Q. Referring to the Old Ordinary House there, what kind of condition is that in?

A. In very good condition.

Q. Is there any part of it where the lumber is actually exposed or is the paint in good repair, too?

A. The lumber has not been exposed for, I should say
199 twenty years; it was shingled right over the old siding clapboard.

Q. Then the original white pine clapboards are not exposed to the weather?

A. Not now.

Q. How long has that been the case that you have been familiar with it?

A. I have been familiar with the house ever since I have been in Hingham. I think it was in 1904 that it was shingled.

Q. Up to that time, the original white pine had been exposed but painted?

A. No; it was not painted during that period.

Q. From your experience, beginning 43 years ago, up to about 20 years ago, the exterior of that building was left exposed to the weather, without protection of paint; is that it?

A. Yes, sir.

Q. Is that reputed to be the original siding?

A. Yes, sir.

Q. How familiar are you with the William Otis Lincoln House?

A. Well, not so very familiar with that house, but the party who has lived there, I have been in communication with him ever since there has been a historical society.

Q. Is he living?

A. He is living; yes.

200 Q. I guess I better not ask you to give us what he told you.

A. Well, that would be hearsay.

Q. That is painted, is it?

A. That has been painted.

Q. Has that been painted during all of your recollection of it, if you can give your statement on that?

A. No; I am not sure about that.

Q. How about the Old Garrison House; what sort of condition is that in?

A. That is in very good condition.

Q. Any rotting?

A. No.

Q. That has been painted?

A. That has been painted.

Q. And that has been painted, as far as your recollection goes, has it?

A. As far as my recollection goes.

Q. The Old Mill; how about the condition there?

A. I could not state.

Q. Is the original material exposed there?

A. Yes.

Q. And painted?

A. No; it has not been exposed; it is shingled.

Q. It is shingled over with more recent material?

A. Yes, sir.

201 Q. Do you know when that was shingled?

A. I do not.

Q. It has been shingled, as far as you know, so long as you know the building?

A. Two or three times.

Q. So the original white pine lumber is not now and has not been exposed to the weather; is that right?

A. Yes, sir.

Q. The Old Ship Church, how about that; can you answer the same questions with regard to that as I have asked you as to the other buildings?

A. That has been painted ever since I have been there.

Q. Is it shingled over and protected?

A. It is protected by clapboards.

Q. That is the original clapboards?

A. No.

Q. That is modern clapboarding?

A. Yes. I think that was about sixty years ago that it was clapboarded.

Q. That is the reputation, that it was boarded sixty years ago?

A. Yes, sir.

Q. Prior to that, the clapboarding was the original clapboarding?

A. I do not know.

202 Q. You cannot testify on that point?

A. No; I cannot say.

Q. The Shute house, what is the exterior of the Shute house at the present time?

A. You mean in regard to painting?

Q. Yes, with regard to painting and as to the original clapboarding there or outside cover?

A. I doubt it. That is a question which has been discussed.

Q. You think the chances are that it is not?

A. I think it is not. I think it is more modern. It is old, but it does not go back to the original.

Q. The Roseneath house, can you state what the situation is there with regard to the original character of the present outside covering?

A. The outside covering there is modern.

Q. Have you any recollection as to when it was put on?

A. I think it is about thirty-two or thirty-three years ago. It is not on its original site, and when it was moved it was reclapboarded.

Q. You think that removable is about the period that you have given, as your best judgment?

A. Yes.

Q. Where were you born, sir?

A. Charlestown.

Were you familiar with these Hingham matters before you
203 went there?

A. Yes; I spent my summers there from boyhood.

Q. Your recollection then goes back how far in that Hingham neighborhood?

A. About sixty-five years.

Q. Are you familiar with the Third Unitarian Church in Hingham?

A. Yes.

Q. When was that built?

A. In 1807.

Q. How about the siding boards there; are they the original ones?

A. They are the original boards.

Q. They have been covered over by external covering?

A. They have been covered over by exterior covering; the present covering, about twenty-two years ago was put on the clapboarding.

Q. The siding parts are original?

A. Those are original, the side boards.

Q. And they are not exposed at the present time to the weather?

A. No; they are not exposed.

Q. Are you familiar with the Molly Wilder house?

A. Yes.

Q. Is that in Hingham?

204 A. Yes; that is in South Hingham.

Q. When was that constructed?

A. I cannot give you the date, but it is a very early house. That is the house where Jane Austen's "A Nameless Nobleman"—where the instance of that story took place. The incidents of the "Nameless Nobleman" are taken from that house, which dates back previous to 1700; as to the original part of it, I do not think there is any way of telling.

Q. Is there any part of the original structure there?
A. Oh, yes.
Q. Is the original clapboarding exposed to the weather in any part of the structure?
A. No; I do not think any of the original is exposed to the weather.
Q. Can you tell when the original siding there or clapboarding was covered?
A. No, sir.
Q. You cannot give us that?
A. No.
Q. Are you familiar with the Jabez Wilder or Rainbow Roof house?
A. Yes.
Q. Where is that?
A. That is in South Hingham.

205 Q. What is the situation as to the age of that house, by reputation?

A. I could not tell you. I know very little about that other than recently it has been restored.
Q. About how many years ago?
A. Two years ago.
Q. Up to that time was the original material exposed to the weather?
A. So far as I know.
Q. That is the reputation it has, is it?
A. That is the reputation.
Q. Was that painted?
A. Yes.
Q. Prior to its restoration?
A. Yes; it was painted.
Q. Are you familiar with the house known as the Cushing house?
A. Well, there are so many Cushing houses——
Q. There is one on Main Street of Hingham.
A. There is a regular Cushing colony of houses there, and it is hard to tell which you refer to.
Q. Are they all old structures?
A. They are all old; yes.
Q. Is there any special Cushing house on Main Street?
A. I think the house referred to there is not in existence now, unless Mr. Birks, you can refresh my memory.

206 By Mr. Birks:

Q. Mr. Burr is referring to the Cushing house on Main Street, which has just been taken over by this old lady—I have forgotten her name—who is having it done over, taking off the outside boards——
A. Do you mean the house that is painted black?
Q. I do not think that was a Cushing house.
A. That was the Thaxter.

Q. Tell us about the Thaxter house.

A. The Thaxter house was built somewhere in the 1740's or '50's, if I remember correctly, and I think the original siding is still there; it has been exposed to the weather now perhaps six months, but there was some clapboarding on it and they took it off. That is perfectly sound; I went up there and looked at it when they were making alterations in the spring. It is now painted.

Q. Is that reputed to be white pine?

A. Yes; that is reputed to be white pine, so Hardy said.

Q. The exposed pine boards of that house now are reputed to be white pine and the original boards?

A. Yes, sir; those are the original boards.

Q. What is the name of the woman who has taken the house?

A. Chamberlain.

Q. She removed the boards of the house, and the architect found the original pine boards that were put on the house,

207 as originally built?

A. Yes.

Q. What is the reputation of the house for age?

A. I could not say.

Q. It goes back to the early 1700's?

A. No; it is not as early as that; it is along about the middle of the century.

Q. That was unpainted up to two years ago?

A. No; it was painted and had clapboards from the original siding.

Q. The old original siding, was it painted when it was uncovered?

A. It must have been, because it does not show any signs of being painted at all.

Q. You indicated that you are familiar with the Old Ordinary, and you testified concerning it. Is there an ancient colonial porch on the street side of the Old Ordinary?

A. Yes, sir.

Q. Are the pillars of this porch reputed to be of white pine?

A. So I am told.

Q. And these pillars are still standing?

A. Yes.

Q. And are painted?

A. They are painted now; yes.

208 Q. Can you give us any idea concerning the age of these pillars—what is their reputation for age?

A. Those, without doubt, were put there in 1711 when the front porch was erected, before the house was built; that is, the newer portion.

Q. You have seen a blueprint of this house, haven't you?

A. No; I don't think so.

Mr. Birks. Mr. Examiner, I offer this picture in evidence—first, I will have it identified by the witness.

Q. This picture which I have handed you, Mr. Lunt, you identify that as being what?

A. The porch of the Old Ordinary on the south end of the Old Ordinary.

Q. This is the porch concerning which you have just testified?

A. Yes.

Examiner SHEPPARD. Any objection?

Mr. MATTHEW. None.

(The picture referred to was thereupon received in evidence and marked "Commission's Exhibit No. 6.")

By Mr. BURR:

Q. Mr. Lunt, can you identify the picture which I now hand you?

A. Yes; that is the southern end of the Old Ordinary.

209 Q. That is a photograph of the southern end of the Old Ordinary, is it?

A. Yes.

Mr. BURR. Mr. Examiner, I wish to offer the picture which the witness has just identified as Commission's exhibit no. 7.

Examiner SHEPPARD. Any objection?

Mr. MATTHEW. No; let it go in.

(The picture referred to was thereupon received in evidence and marked "Commission's Exhibit No. 7.")

By Mr. BURR:

Q. In connection with your historical society, have you had any point of contact and cooperation with other historical societies in this part of Massachusetts?

A. Oh, yes.

Q. There are other ancient structures in the various parts of the vicinity of Boston, are there?

A. Oh, plenty of them.

Mr. BURR. That is all.

Examiner SHEPPARD. Any cross-examination?

Mr. MATTHEW. No cross-examination.

(Witness excused.)

Mr. BURR. At my request and by agreement of counsel, arrangement has been made, which I understand the examiner is

210 apprised of, that we have one day's intermission besides Sunday before we open in New York.

I therefore move that this proceeding do now adjourn until ten o'clock of Tuesday, October 8th, 1929, at New York, at the office of the Federal Trade Commission, at 45 Broadway.

Examiner SHEPPARD. We will now take an adjournment of this proceeding to reconvene in the city of New York at 45 Broadway, at the office of the Federal Trade Commission in room 803, on Tuesday, the 8th of October 1929, at ten o'clock a.m.

(Whereupon, at 12:00 m. an adjournment was taken to October 8th, 1929, 10:00 a.m., 45 Broadway, New York City, New York.)

211 Before the Federal Trade Commission

Docket Nos. 1620 to 1669

In the matter of the White Pine cases

NEW YORK CITY, NEW YORK,
*Room 803, 45 Broadway,*
*October 8th, 1929.*

Met pursuant to adjournment, 10:00 a.m.

Before: William W. Sheppard, examiner.

Appearances:

Eugene W. Burr and J. G. Birks, attorneys for the Commission; McCutcheon, Olney, Mannon & Greene, by Allan P. Matthew and Carl I. Wheat, attorneys for the respondents, Clover Valley Lumber Company, et al.; Davies-Johnson Lumber Co., et al.; Diamond Match Company, et al.; California Fruit Exchange, et al.; Penman Peak Lumber Co., et al.; Feather River Lumber Company, et al.; Kesterson Lumber Company, et al.; Hobart Estate Company, et al.; Fruit Growers Supply Company, et al.; Quincy Lumber Company, et al.; Spanish Peak Lumber Company, et al.; Lassen Lumber and

212 Box Company, et al.; Red River Lumber Company, et al.; Owen-Oregon Lumber Company, et al.; Big Lakes Box Company, et al.; Ewauna Box Company, et al.; Klamath Lumber & Box Company, et al.; Lamm Lumber Company, et al.; Pelican Bay Lumber Company, et al.; Algoma Lumber Company, et al.; Shaw Bertram Lumber Company, et al.

Jesse Andrews, attorney for the respondents, Pickering Lumber Company and the Forest Lumber Company, et al.

213 PROCEEDINGS

Examiner SHEPPARD. Do I understand, Mr. Andrews, that you represent anybody that Mr. Matthews has not made an appearance for?

Mr. ANDREWS. I should like my appearance noted on behalf of the Pickering Lumber Company and the Forest Lumber Company.

Examiner SHEPPARD. It may be so noted.

SAMUEL J. RECORD was thereupon called as a witness, and having been first duly sworn, testified as follows:

Direct examination by Mr. BURR:

Q. Will you please state your full name?
A. Samuel J. Record.
Q. Professor, your occupation is what?
A. I am professor of forest products in Yale University.
Q. Yale has a school of forestry?
A. It has.
Q. Who is at the head of that school?
A. General Henry S. Graves.
Q. How long has that school been conducted, if you know?
A. Since 1900.

Q. How long have you been connected with it?

A. Nearly twenty years.

Q. Will you state whether you have made a lifelong study
214 of forestry?

A. Well, since 1903, I have.

Q. Will you sketch your experience in the study of forestry, both practically and theoretically, from 1903 to the present time, just briefly, giving us an outline of it?

A. I had some forestry training in Wabash College in Indiana; I had training at the Yale School of Forestry as a student and I entered the U.S. Forest Service and was there a little over six years, after which I entered the Yale School of Forestry, first as instructor and later as assistant professor and eventually as professor.

My first position in the Forest Service was the study of western yellow pine in the inland empire, particularly monticola and Idaho, and since then I have devoted most of my attention to the study of woods, both of the United States and foreign woods.

Q. In what part of this country have you studied forestry, Professor?

A. I have studied the forests in almost all parts of it except California, Arizona, and northern New England.

I have studied particularly in the inland empire, as I mentioned, through the Middle West and in the South and parts of the East.

Q. Are you an author on forestry matters?

A. I have published three books and numerous pamphlets
215 and articles.

Q. Are you the author of a book entitled "Identification of Economic Woods of the United States"?

A. I am.

Q. That was published about 1919, was it?

A. The first edition was in 1912 and the revised edition in 1919.

Q. Are you a member of the committee for cooperating with the Federal Trade Commission on nomenclature matters in forestry?

A. I am chairman of the committee to advise the director of trade practice conferences in matters of trade nomenclature of woods.

Q. And you have so advised in said matters, have you?

A. I have.

Q. Now, Professor, I wish you would state, first, what are the general distinguishing characteristics between the so-called white-pine group and the so-called yellow-pine group, if you will, please, sir.

A. There are several differences in the trees and also in their woods.

One of the most conspicuous differences in the foliage is that the leaves of the white-pine group have one strand or leaf or needle, and those of the yellow pines have two strands or bundles. The so-called true white pines have their needles in clusters of three;
216 the others, almost without exception, have them in clusters of two or three and occasionally more or less.

The cones of the white pine are thinner, scaled, and do not have the sharp points that you find on the pitch pines or hard pines.

By Examiner SHEPPARD:

Q. Are you speaking of strobus?

A. Strobus is typical of the white-pine group.

Q. When you say white pine, you mean strobus?

A. I meant the more general term, including strobus, Idaho white pine, monticola, and California, representing the groups of white pines or soft pines, while the hard pines are often spoken of as pitch pines, including most of the southern pines and the Pinus ponderosa, which is in question here.

Q. You do not call Pinus ponderosa a pitch pine, do you, or is it in that class?

A. It is in the pitch-pine group; its name is not pitch pine but it belongs to that group.

Q. All right, proceed.

A. There are also differences in the woods, so that these main groups of pines can be separated fully and as readily from the structure of the wood as they can from any other characters, which a systematic botanist might use.

217 These structures are different for the two groups, so that if you use a small specimen under a microscope, you can separate the two groups.

In turn, these groups can be further divided, but the divisions do not carry very far, and the most we can do is to think in rather large groups, unequal groups.

These differences are represented by certain outward and inward characters, extending further to what you might say the quality and texture of the wood.

The white pines or soft pines being ordinarily softer, much more uniform in texture and growth, and less highly resinous than the pitch pines and hard pines. Those are the principal differences.

By Mr. BURR:

Q. Is there a difference between the ponderosa or western yellow pine and the white pines as regards its uniformity?

A. Yes.

Q. And of quality?

A. If I understand you correctly, the wood of Pinus ponderosa, the tree which produces what is frequently called western yellow pine, shows greater variation—very much greater variation—due to its range of growth and age and particular conditions of growth than you find in the white pine or in any one of the white pines.

That is, whether you take eastern or northern white pine or Idaho white pine or the sugar pine.

218 Q. Taking as nearly as you can, the conception of an average ponderosa tree, will you state whether it has as high a degree of uniformity of texture and character of wood as the average of the three species of so-called white pines?

A. It does not.

Q. In what respect, Doctor?

A. There is greater contrast between the portions of the growth layers, depending on whether it was produced in the early part of the season or the latter part—the so-called spring wood and summer wood.

The contrast is greater, while in the white pines, the contrast is moderate and the transition from one to the other is uniform, so that the wood cuts more smoothly.

Q. Is there a greater uniformity or less uniformity as between heartwood and sapwood in the genuine white pines than in the ponderosa?

A. I believe there is greater uniformity in the white pines than in the ponderosa.

Q. In color or texture or what do you refer to—where is the contrast—in both those characters, in one or which?

A. Principally in color, but also in the amount of resin contained in the wood. It is ordinarily greater in the ponderosa than it is in the white pines.

Q. Taking up the question of color, will you describe wherein the difference in color in the heartwood and sapwood of
219 white pine and the difference in color in the heartwood and sapwood of the ponderosa, lies?

A. There is only a small contrast, as a rule, in the color of heartwood and sapwood of the white pine; when it is fresh, the heartwood being light brown or slightly pinkish and the sapwood being yellowish.

Later, as the wood becomes older, it deepens in color, taking on a reddish color.

Q. That is the white pine?

A. That is the white pine. The heartwood, in time, would take that color in lumber form.

Q. For how long a period?

A. It is usually a long period, of many years. Very old white-pine furniture and lumber usually shows a rich red, which is not pronounced when it is fresh.

It is usually a light color; in the ponderosa the contrast is usually sharper. It varies with different trees in different positions; sometimes the contrast is very sharp, the wood being brown or reddish brown. In general, the contrast is considerably sharper in the ponderosa than it is in white pine.

Q. What is the effect upon softness of texture of the presence of resin or rosin in the wood?

A. The abundance of resin tends to increase the hardness of the wood somewhat. The amount of it, if there is a very
220 large amount at all, will increase its hardness and weight very materially.

Q. There is an appreciably larger amount in the heartwood of ponderosa, taking it as an average, than there is in the white pines?

A. I should say so.

Q. Have you observed the relative amount of heartwood and sapwood in the genuine white pines as contrasted with the ponderosa trees?

A. I have no definite measurements in mind, but I have a very definite impression that—

Mr. MATTHEW. Pardon me just a moment. I have no objection to Professor Record testifying to anything within the realm of his actual knowledge, whether it is gained by observation or otherwise, but I doubt very much whether his impressions ought to go into the record.

The WITNESS. These impressions, I might say, are based on my own experience.

Mr. MATTHEW. If it is based on experience, I have no objection.

By Mr. BURR:

Q. Go ahead.

Will you read the professor's answer as far as he has gone?

(The question was thereupon repeated by the reporter
221 as above recorded.)

A. (Continuing.) That the sapwood in the white pine is narrower than in the Pinus ponderosa for the large trees. It is considerably narrower, in general, with the possible exception of sugar pine, where the contrast is not so great as I recall, although I have not seen very many cross sections of sugar pine, never having studied that tree in the forest.

Q. Referring to monticola and strobus, as contrasted with ponderosa, will you state whether there is a considerable difference in the average proportion of the sapwood and heartwood, leaving out of consideration the third variety or lambertiana.

A. I think there is considerable difference, the lesser amount being in Idaho or northern white pine.

Q. The least amount of which?

A. Sapwood in Idaho or nothern white pine.

Q. Will you state whether or not it is possible for an expert wood technologist to take miscellaneous yellow pine specimens and state whether they belong to one or another species of yellow pine, by microscopic tests?

A. Well, in general, I fear he cannot. Some species he can separate out with more or less assurance, but in general, that is very difficult if not impossible.

Q. How about the white pines; can you differentiate by the miscroscope in all cases, specimens or small cuttings, we will
222 say, of monticola, lambertiana, and strobus?

A. Not always, with real assurance, I am sorry to say.

Q. Can you always tell by the microscope, whether a given sample, say a very small piece, belongs to the yellow pine group or white pine group?

A. Yes; very definitely.

Q. Would you undertake to say, if you had a carload of any one of the white pine species, if it had not been selected in order to deceive the eye, would you be able to tell which carload was monticola and which carload was strobus and which was lambertiana, infallibly?

A. I do not know whether I could tell Pinus monticola from Pinus strobus or not, but I think I could tell a sugar pine from the other.

Q. From either of the others?

A. Yes, sir.

Q. That is on account of pitch pockets that exist in sugar pine, is it?

A. Partly that and partly its odor. It has a very pronounced odor, if you have it in quantity, and as a rule it runs coarser texture and has more prominent resin ducts. Those are relative things, but as you get enough of those together, you can draw your conclusions.

Q. How about the yellow pine group; would it be possible always to differentiate ponderosa from the other specimens of the
223 species of the yellow pine group if you had it in quantity?

A. I do not think I could tell it from Arkansas soft yellow pine, for example, which is a southern pine.

Q. Is Pinus jeffreyi recognized as a separate species from Pinus ponderosa?

A. Yes.

Q. In what respect does it differ from ponderosa?

A. Mostly a matter of cone. That is the most outstanding feature. I have forgotten what all the technical differences are, because I never made a special study of that either.

Q. Does the lumber differ materially from Pinus ponderosa?

A. The specimens I have seen of it do not differ very materially.

Q. You have examined that type of wood frequently, have you, doctor?

A. Not frequently, but I have examined it.

Q. Now, will you state what is the difference in the life of the tree between heartwood and sapwood, for the information of the examiner and Commission?

A. Sapwood is the living part of the wood; the heartwood is dead wood.

The heart at one time, of course, was sapwood. The structural differences are ordinarily not great, hardly appreciable. The sapwood usually contains free resin which will exude, run out,
224 when the tree is cut, while the resin in the heartwood is fixed, the volatile portions having disappeared; the color deepens, largely due to chemical changes, I presume, as well as possibly the greater amount of resin, or its distribution is changed.

As far as the pines are concerned, the most outstanding feature is the color and that is largely due to chemical changes, as I understand it, which take place in the substance, such as resin.

Q. Which is the durable portion of lumber in general, when exposed to the weather, the heart or the sap wood?

A. The heartwood.

Q. That is largely true throughout the lumber world, is it?

A. In no instance that I know of is the sap part of any tree durable when exposed to conditions favorable to decay. The heartwood may or may not be durable.

Q. Did you say may or may not be?

A. Yes.

Q. Do the white pines differ from ponderosa in their ability to stay in place as regards shrinkage, if you know?

A. I know that the white pines are noted for their ability to stay in place, with small amount of shrinkage. Some of the other pines are not so well known for that purpose, but I would prefer not to make any statement.

By Examiner SHEPPARD:

Q. You mean by staying in place, when it is used in a
225 building as lumber?

A. When it is finished, it does not shrink much or swell much as a result of absorbing moisture from the air.

Q. That particular kind of lumber is characterized by that feature?

A. White pine is noted for its ability to stay in place after it is manufactured.

By Mr. BURR:

Q. What is the reputation of Pinus strobus as a building material?

A. Excellent.

Q. And for how long a time has that been the case?

A. Ever since they began to use it in the country, as far as I know.

Q. Is it excelled by reputation of any other wood for durability, where exposed to the weather?

A. Possibly by such woods as heart cypress, redwood——

Q. Cedar?

A. And cedar.

Q. When you say heart redwood, or did you say heart cypress?

A. Heart cypress.

Q. Lambertiana or sugar pine and the monticola, the northern white pine, came onto the American market much later, did they not, than strobus?

A. Yes.

226 Q. Do those woods share in any of the reputation for durability when exposed to weather conditions that strobus has enjoyed?

A. So far as I know, they do.

Q. They haven't had as long a test as strobus, have they?

A. No; but I know of no instance where they have failed, but instances of other failures come to my attention frequently.

Q. Have instances of failure come to your attention as regards yellow pine, when exposed to the weather?

A. Yes.

Q. Which varieties?

A. I think I have had more cases of Pinus ponderosa than any other.

Q. Can you mention any specific instances?

A. One instance I had a few years ago, perhaps three or four years ago. I do not recall the firm, but they were called upon to replace a sash in a house because the inside had turned blue and had stained the color through the paint, and the sash was supposed to be white pine and it proved to be Pinus ponderosa.

The explanation seemed to be that the drying out of the plaster had caused the condensation of moisture which ran down the panes and caused the frames to blue badly and start incipient decay.

Mr. MATTHEW. Pardon me a second, do I understand the
227 professor to say that he could not recall the firm?

The WITNESS. I do not remember the name of the firm.

By Mr. MATTHEW:

Q. But you know the place; you can identify the place?

A. I cannot identify it now.

Q. This is an incident within your own knowledge and you cannot identify the structure, and so forth?

A. No; the frames were sent to me by some lumberman here in New York.

Mr. MATTHEW. All right, I will pass that for the moment.

By Mr. BURR:

Q. How long ago was that, Doctor?

A. I think it was about three or four years ago.

Q. Have you any other instance that you could call to mind?

A. I have had numerous instances where this question was brought up, but they sort of blend together in my mind so that I cannot put my finger on the individual cases very distinctly.

Q. Have specimens of the wood been sent to you to analyze or determine the identity of the wood?

A. Yes; they usually come in as a piece of wood that has rotted or stained, and the question is whether this is white pine or not, and they usually do not go much further than that, so I only learn about the details casually. They simply want to know what
228 the wood is, and I noticed there have been more cases of that sort than any other one wood that has come to my attention.

Mr. BURR. I think you may cross-examine.

Cross-examination by Mr. MATTHEW:

Examiner SHEPPARD. Professor Record, I would like you to give me the botanical name of the so-called yellow pine or long leaf pine found in the South.

The WITNESS. There is more than one. There is one called the long leaf, which is the hardest and the heaviest, and that is Pinus palustris.

There is another one called the short-leaf pine; that is, Pinus echinata.

Examiner SHEPPARD. That is sufficient on that line. What Mr. Burr asked you about this Pinus jeffreyi, is that a yellow pine?

The WITNESS. Yes; it falls in that group, but it is a California tree.

Examiner SHEPPARD. It is a California tree, and belongs to the ponderosa?

The WITNESS. It is more closely related to ponderosa.

Examiner SHEPPARD. Than it is to Pinus strobus?

The WITNESS. Yes.

By Mr. BURR:

Q. Do not some of the specialists class Pinus jeffreyi as a
229 subspecies of ponderosa?

A. Some do.

Q. Do you?

A. I never went into the matter.

By Mr. MATTHEWS:

Q. You have stated, Professor, that Pinus ponderosa belongs in the pitch pine group; is that justified by consideration of its essential mechanical and physical properties?

A. The pitch pine group is the name for a general group to contrast it with the so-called soft pine group, which includes the white pines.

The pitch pines include not only the hard pines but certain other pines, like the Norway or red pine and some of the pines that would not be called hard pines.

Q. So some pines which you would not call hard pines are classed in the pitch-pine group?

A. Yes.

Q. Then if we address ourselves to a consideration of the mechanical and physical properties of the lumber and ignore such considerations as the number of needles in the strand or the number of needles in the cluster, would you say that Pinus ponderosa can be more nearly assimilated to the pitch pines or white or soft pines?

A. I should say that some grades of it, so far as the organic properties are concerned, are like the hard pines, pitch pines,
230 and some more like the soft pines.

Q. Let us get something as definite as we can upon the record, professor, let us take the general run of the lumber which has been marketed under the name of California white pine or some similar name for a great many years past and I will ask you this question:

Whether when we consider the mechanical and physical properties alone of lumber yielded by Pinus ponderosa, is it more nearly to be assimilated to the lumber yielded by white pine trees or the lumber yielded by the general group of hard or pitch pines?

A. Under those conditions I would say it is more nearly like the white pines.

Q. You know that by numerous tests which are quite well known to technologists that the lumber yielded by Pinus ponderosa is generally very much softer than the lumber yielded by the long-leaf yellow pine of the South?

A. Yes.

Q. As far as the quality of softness is concerned, the Pinus ponderosa lumber generally is very close to the lumber yielded by the true white pines?

A. The lumber that comes on the market is generally selected from the outer part of old matured trees and is generally quite soft and more like the white pine.

Q. You have referred to the resinous properties of these
231 various woods; addressing yourself to that feature alone, would you say that Pinus ponderosa lumber more nearly resembles true white pine lumber or the long-leaf yellow pine lumber of the South?

A. True white-pine lumber.

Q. Considering the same element again, namely the resinous property of lumber, I will let you contrast the Pinus ponderosa lumber with sugar-pine lumber, which you have stated is yielded by the tree known botanically as Pinus lambertiana.

A. I am not sure that I quite understand your question.

Examiner SHEPPARD. Read the question.

(The question was thereupon repeated by the reporter as above recorded.)

Examiner SHEPPARD. Do you understand it now?

The WITNESS. Yes; I should say that the lumber commonly sold as California white pine is about the same in resin as the sugar pine.

Q. Although the sugar pine is botanically a true white pine?

A. Yes.

Q. Counsel for the Federal Trade Commission inquired as to the so-called pitch pockets which he stated or suggested are characteristic of sugar-pine lumber; do you recall his inquiry along those lines?

A. I do not know that I do recall it.

Q. Suppose I make the inquiry myself then.

The sugar-pine lumber which is a pine yielded from Pinus
232 lambertiana, is characterized by little deposits of resin which not infrequently come to the surface and are known as little pitch bubbles, is that true?

A. That is true, I think.

Q. That is true of the sugar pine lumber?

A. Yes.

Q. That is not characteristic of lumber which we have designated here as California white pine, is it?

A. It is less common.

Q. It is more truly characteristic of sugar pine lumber?

A. I think so.

Q. Counsel asked you as to the distinction between Ponderosa pine and Jeffreyi pine, and you stated that they had certain botanical differences, but that by some botanists the Pinus jeffreyi is classified as a subspecies of Pinus ponderosa, as I recall your testimony?

A. I think that is true.

Q. I think you likewise stated that the lumber yielded by Pinus ponderosa and Pinus jeffreyi is quite the same?

A. I based it upon my studies of small samples, they are very similar.

Q. Has your study been confined to small samples?

A. So far as jeffreyi is concerned; yes.

By Examiner SHEPPARD:

Q. I do not quite get that. The testimony, as I get it, is
233 that Pinus ponderosa—if I understand the matter correctly—is more like white pine, and the Pinus jeffreyi is more like yellow pine; am I mistaken in that respect?

A. No; I do not think that I should place one ahead of the other. They are very close together. There seem to be more varieties perhaps than the separate species. I do not pretend to be an authority on Pinus jeffreyi at all.

By Mr. MATTHEW:

Q. Do you know whether Pinus ponderosa yields turpentine?

A. It does; yes.

Q. Do you know whether the Pinus jeffreyi yields turpentine?

A. I do not know.

Q. You have no information at all as to the relative turpentine producing qualities of those two species of pines?

A. Nothing definite.

Q. In answer to my inquiry as to whether the Ponderosa pine yields turpentine, do you mean to imply that it yields turpentine commercially, in a practical sense, or that it has a turpentine content just theoretically?

A. A number of tests were conducted by the Forest Service a few years ago as to the possibility of using western yellow pine in the Southwest for turpentine, in the same way that they do the pine in
the South, and their conclusions were, if I may be permitted to
234 state that, that while the yield was less, it was feasible under certain conditions.

Q. But you do not know whether the jeffreyi pine yields turpentine?

A. I simply do not recall that.

Q. Did you state that you would have no difficulty or that any wood technologist would have no difficulty in distinguishing jeffreyi pine lumber from ponderosa pine lumber?

A. I did not make any statement like that intentionally.

Q. May I ask that question, whether you have any difficulty in distinguishing or whether a wood technologist generally would have any trouble in distinguishing lumber yielded from ponderosa from a lumber yielded from the jeffreyi pine?

A. I do not know.

Examiner SHEPPARD. The witness stated that he does not know anything about jeffreyi, and I do not think his testimony along that line would be of any value to me.

By Mr. MATTHEW:

Q. Do you know what the commercial practice is as to the grading of jeffreyi pine and ponderosa pine?

A. I do not know anything about jeffreyi pine.

Q. You were asked by counsel as to the relative durability of heartwood and sapwood, and your reply was, as I recall it, that the sapwood of pines generally is far less durable than the heartwood?

A. That is so.

235 Q. And the sapwood of the Idaho white pine, pinus monticola, then, is certainly less durable than the heartwood?

A. Yes.

Q. Can you state whether or not the sapwood of the Idaho white pine is more or less durable than the sapwood of the ponderosa pine?

A. I have no data upon which to draw a definite conclusion.

Q. Then we shall not ask you to make a statement.

The principal pine lumber yielded by the Southern States is the so-called "longleaf yellow pine", is it not, professor?

A. That is one of them; there are three usually sold together.

Q. Which is produced in the largest volume?

A. I am not sure. I should say long leaf; probably the other two, short leaf and loblollies are usually classed together.

Q. You mean that shortleaf yellow pine and the loblolly pine are simply mixed for purposes of commercial distribution?

A. Generally so.

Q. What is the common trade name for that particular lumber?

A. It depends somewhat upon the part of the country. In some places it is known as North Carolina pine, in other places as shortleaf pine, and when you get in Arkansas it is called Arkansas soft pine.

Q. In each instance, is that pine lumber yielded by the tree, described botanically as pinus echinata?

236 A. By that and another.

Q. The lob'olly pine is not found in Arkansas commercially, is it?

A. Yes.

Q. Is the lob'olly pine lumber intermingled with the lumber yielded by the short-leaf pine?

A. Yes; in the South, because lob'olly does not grow in the north part of Arkansas.

Q. The North Carolina pine is both lob'olly pine and short-leaf pine; that is true, is it not?

A. Yes, sir.

Q. Is there any difference between the properties of the lob'olly pine and the short-leaf pine?

A. Sometimes.

Q. Will you please state what, in your opinion, are the outstanding differences?

A. Usually lob'olly pine is of coarser grain; it is a tree of more rapid growth, but when the two trees are grown together, in old matured stands, there is no appreciable difference.

Q. You are now referring to the lumber?

A. To the lumber; yes.

Q. You have in mind not only the appearance but the quality and utility of the lumber as well?

A. Yes.

Q. Are all three of these pines used for the production of
237 turpentine?

A. The longleaf is used for that. Only rarely do they use short leaf or lob'olly.

Q. But the short leaf and lob'olly are used to some extent in the production of turpentine?

A. They have been, but not commonly now.

Q. Do you know whether commercially longleaf yellow pine is identical with short-leaf pine botanically?

A. Sometimes I think it is in commercial grade.

Q. What do you mean by "commercial grade"? How do you distinguish commercial grades of longleaf yellow pine from short-leaf pine botanically?

A. Longleaf pine botanically sometimes produces wood, particularly in the case of young lumber, which would be classed as short-leaf or lob'olly, because it does not have the physical characteristics of the first-growth longleaf. In that event it is normally graded and classified as short-leaf pine and sold as such.

I do not want to make a statement too positively on that, but the dealers and inspectors here seem to decide that question on the appearance of the lumber rather than the source.

Q. In other words, they are not interested in the botanical species of the tree, but they are interested in the appearance and quality and utility of the lumber?

238 A. Yes, sir.

Q. So that if the particular lumber coming from southern yellow pine is in appearance and presumptively in its botanical properties assimilated to the ordinary shortleaf pine lumber, it is classified and distinguished as such?

A. I think so.

Q. Is it also the fact that some of the pine lumber which is marketed and distributed as longleaf pine is obtained from trees which are botanically shortleaf pine—that is, Pinus echinata?

A. I can only voice my suspicions.

Q. Well, never mind answering then. If you do not know the facts, I do not want you to testify.

A. I cannot say positively.

Q. You do not know the facts.

Then you do not know it to be a fact that commercial longleaf yellow pine is the correlative of commercial shortleaf pine, as you have described it a moment ago; that is, that the lumber is classified and distributed in accordance with its appearance and apparent qualities and utility?

A. I think that is true.

Q. Of commercial longleaf yellow pine?

A. Yes.

Q. Now, the characteristic longleaf yellow pine is used essentially for what purposes, Professor?

239 A. For heavy and durable construction.

Q. It is a structural timber primarily?

A. Yes, sir.

Q. It is not used very largely for shop purposes, is it, Professor?

A. Less so than the others?

Q. It has far greater structural strength than the white pine?

A. Yes, sir.

Q. It has far greater structural strength than ponderosa pine, has it not?

A. Yes, sir.

Q. It is used not only for structural purposes, framing, but also for flooring?

A. Yes, sir.

Examiner SHEPPARD. The examiner at this point indicates to the respondents' attorney and the Commission's attorney whether or not an inquiry in this case should be broadened so as to include the longleaf yellow pine of the Southern States.

Mr. MATTHEW. The obvious purpose of the complaints which are being heard before the examiner is to throw the lumber yielded from ponderosa pine into the yellow-pine group, and the prayer of the complaint is that we be required to cease and desist from using the term "white" in describing our product.

240 Professor Record has testified on his direct examination as to the distinction and the differentiation between the white-pine group and the yellow-pine group; he has thrown ponderosa pine into the yellow-pine group, which he further characterized as a group of hard or pitch pines, whereas white pines are commonly known as white or soft pines.

Now, the purpose of my interrogation is to show that commercially speaking at least, the lumber yielded by Pinus ponderosa does not

belong at all in the yellow-pine group, and should not receive a trade name which associates it with or identifies it with yellow-pine lumber.

Stating that, perhaps, in a little different form, we want to show that the mechanical and physical properties of our lumber are such that it will be trade deception to call it anything but California white pine.

Examiner SHEPPARD. In other words, you want to show, if I understand you right, Mr. Matthew, that the qualities and so forth of ponderosa are more like the Pinus strobus than like longleaf yellow pine?

Mr. MATTHEW. Or any other yellow pine, if Your Honor please, known to the trade.

Examiner SHEPPARD. It is a matter of comparison?

Mr. MATTHEW. It is a matter of comparison with these various lumbers.

I think, if we can show, as I believe we are showing very
241 satisfactorily here, that our lumber does not have the properties of the lumber that has commonly been known as the yellow pine, and marketed throughout the United States for scores of years, and that our name has been adopted because it properly characterizes by its appearance and botanical and physical properties those of the white pines, I think we are going to the very heart of the case.

Mr. BURR. I should like to be heard on that, if the examiner please.

We are almost arguing the case now, and I would like to make a statement, which I think can clear this up.

Examiner SHEPPARD. Gentlemen, the reason I raised the point here is, as I told you in Boston, it is my purpose to keep the record as short as possible and confine it to its exact issues.

Mr. BURR. I would like to have the examiner hear me on this.

Mr. MATTHEW. The language of the complaint—Your Honor has read that paragraph—clearly contemplates that we belong in the yellow-pine group. Let me state very definitely that we concede, and we have stated right from the start, that Pinus ponderosa has normally been classified in the so-called yellow-pine group, but unfortunately a very misleading group from our point of view, and considering the physical properties of the lumber, it does not
242 belong in the category of yellow-pine lumber, but belongs in the classification of white-pine lumber, and that is what we are undertaking to show.

Mr. BURR. If the examiner please, I would like to be heard, and I think I can clear the situation up without difficulty.

Counsel, in his remarks, has indicated that it would be erroneous to class ponderosa with the yellow pines. The complaint itself, in order to avoid this very thing of taking testimony with regard to yellow pines of the South—which, in our judgment, is immaterial—

the complaint itself, in order to avoid this very thing that counsel is now trying to inject in the case, uses the following language:

(Whereupon counsel read from paragraph VIII of the complaint.)

We also say here somewhere that ponderosa differs more markedly from the southern yellow pines than it does from the white pines as regards certain qualities.

Now, then, I do not believe that these gentlemen should be required to call their product western yellow pine. The Government has not taken one step or made one single attempt to introduce evidence in this case which could be construed as forcing or attempting to force the Pinus ponderosa interests to call their product western yellow pine or anything else with the name "yellow pine" in it.

243 I should be opposed to such an order.

Furthermore, the Commission has no authority to make a positive order or tell them to call it anything in particular affirmatively. They have the power to tell them not to call it by a certain name, if they find that name to be misleading. I concede that the name "western yellow pine" would be an inappropriate name; I concede, further, that Pinus ponderosa differs markedly from the yellow pine in the South.

If, however, there is confusion and misconception and perhaps deception of the public—if "deception" is not too strong a word—I am satisfied, although this pine is not a hard pitch pine but is, nevertheless, not a white pine; if there is misconception from calling it white pine, there should be an order requiring them not to call it white pine. That is what we are aiming at.

We do not aim to force them into a class of wood in which they do not belong.

Examiner SHEPPARD. Mr. Matthew, you have stated a few moments ago that it was your purpose to attempt to show the Commission that the class or classification that technologists in lumber or lumber experts had graded this Pinus ponderosa and placed it into a wrong designation or grade.

Did I get you correctly?

Mr. MATTHEW. No, sir; I did not say that, Mr. Examiner.

Examiner SHEPPARD. I understood you made a remark simi-

244 lar to that in purport.

Mr. MATTHEW. No; I made the observation that I thought it was rather unfortunate and misleading that ponderosa pine had been classified in the group of pines which are referred to commonly as hard or pitch pines, because it is neither hard pine nor pitch pine.

Mr. Examiner, if you would indulge me just another moment——

Examiner SHEPPARD. Yes; go right ahead.

Mr. MATTHEW. The paragraph from which counsel read, paragraph VIII, is a direct charge or conveys the direct charge that we have been reluctant to use the name western yellow pine as a commercial or trade name because we desire to avoid market disadvantages, and so forth.

That is one of the claims.

Now, then, there is not a line in the complaint which shows, which I think should be shown, that we adopted that name for the legitimate purpose of letting the trade and the consuming public understand that our lumber in mechanical and physical properties is really a white-pine lumber rather than a yellow-pine lumber.

The complaint does not concede that, and counsel will not concede it now.

Mr. BURR. No; I will not concede it.

Mr. MATTHEW. If I can show, as I believe we can, as far
245 as appearance, quality, and utility are concerned, our lumber is closely to be assimilated to the lumber yielded by the so-called "genuine white pine" and is radically different from the lumber yielded by the ordinary hard or pitch pine, I think we are addressing ourselves to the real issue in this case, an issue which I believe will be the determining one.

I had nothing more to ask of Professor Record along these lines, but I think that is material, if your honor please.

Examiner SHEPPARD. I will let you proceed.

I am particularly trying to guard against the dangers of interpleader, because I don't want any of the yellow-pine manufacturers to feel that it is necessary to interplead in this case.

Mr. MATTHEW. I think there is nothing that will be developed that will necessitate that.

Mr. BURR. No one is attacking yellow pine for the purposes for which it is best adapted, I take it.

Mr. MATTHEW. Just a question or two further.

Examiner SHEPPARD. Go right ahead.

By Mr. MATTHEW:

Q. Is the general quality of the northern white pine—that is, the lumber yielded from Pinus strobus, as high as it was twenty or thirty years back?

A. That for first growth may be.

246 Q. Board for board we will assume that it is; let us take the white pine lumber that is generally known on the market as strobus pine lumber.

A. There is some lumber on the market now of strobus that is of much lower quality than that of many years ago.

Q. Is that not generally true of strobus lumber that is on the market today?

A. I am not sufficiently versed with the marketability or markets to be sure of that.

Q. As a matter of fact, there is comparatively little strobus lumber left; is that not true?

A. There is comparatively little first growth.

Q. There is comparatively little second growth of merchantable character, is there?

A. There is probably as much pine lumber in Maine now as there ever was, but it is second growth.

Q. Of merchantable quality?

A. It is merchantable quality for certain purposes.

Q. For what purposes, would you say?

A. For match stock, pail stock, crating, and boxboards.

Q. For match stock, you mean for making matches?

A. Yes; match sticks.

Q. By "pail" you mean for constructing wooden pails?

A. Yes; where you can cut out clear lumber between the knots, not for the large boards, though.

247 Q. Do you get a high proportion of so-called clears from Maine white pine lumber now?

A. No; a low proportion.

Q. Very low indeed, is it not?

A. Yes, sir.

Q. Do you get very much shop lumber?

A. Some shop lumber; yes.

Q. It is mostly common, is it not?

A. Yes; it is mostly common.

Q. Rather low grade common; is that not a fair characterization of the Maine pine lumber?

A. I think so.

Q. You stated that white pine lumber is characterized, among other things, by the fact that the shrinkage is relatively small?

A. Yes.

Q. When the lumber is in place?

A. Yes.

Q. How does it compare with ponderosa pine lumber in that respect?

A. I have no definite data upon which to make such a comparison.

Q. Then you are not to be understood as stating that as far as the quality of shrinkage is concerned, that either strobus pine or monticola pine is superior to pondosa pine?

248 A. No; I did not make that statement.

Q. You said that two or three incidents had been brought to your attention where some lumber had failed, when put to certain uses, and you referred to one case where some sash had been replaced, the inside of it having turned blue; that was some three or four years since?

A. Yes.

Q. You said that you could not name the firm; can you identify the particular case sufficiently so that it could be checked up in some fashion?

A. I cannot offhand.

If it were of sufficient importance, I might be able to run it down.

Q. You said that you were not able to identify any other individual cases, but you just had the impression that there were more cases where ponderosa pine had failed under these conditions than other lumber?

A. In matters of this kind that come to my attention, I am interested in them as cases, and remember details of them, but I am not at all interested in them from the standpoint of the firms, so I am perfectly willing and glad to forget who they are.

Q. You do not know whether in any of these cases to which you referred, ponderosa pine lumber was supplied in response to
249 specifications for northern white pine? If you do not recall, I shall not ask you any further.

A. I am not sure.

Q. Coming back now to this first case which you brought to our attention, where the sash was replaced, can you tell us whether that sash was constructed of sapwood or heartwood?

A. Sapwood, I should say.

Q. And it had not been properly protected against dampness?

A. I should assume that.

Examiner SHEPPARD. Professor Record, I am going to authorize you to look up your records regarding the incident you have just testified about, concerning which Mr. Matthew has been questioning you, and I will request you to write me a letter addressed to my office at the Federal Trade Commission, Washington, D.C., and set out all the details that you can find from your records about that matter.

You may send Mr. Burr a copy and me the original, and Mr. Matthew, after I get that letter, if there is any information which will enable you to make further inquiry about that incident, I will allow you to do it.

Q. I think you stated, Professor, that you were not certain that you could readily distinguish sugar-pine lumber from lumber that is yielded by either monticola pine or strobus pine?

A. Not in small sizes or in small pieces.

Q. Let us take large boards; do you think then that you can readily differentiate or distinguish between them?

250 A. I think I can.

Q. Take a four-foot board, a board four feet long by perhaps two or three feet wide, or one foot wide.

A. I think I can.

Q. There are certain pieces that are quite difficult to distinguish, are there not?

A. That is my experience.

Q. That is, there is quite a resemblance between the lumber yielded by each of those three pine trees?

A. Yes.

Q. It is also true, is it not, that much of the lumber yielded by the ponderosa pine is difficult to distinguish from the sugar pine, Idaho white pine, and northern white pine?

A. Some of it is difficult to distinguish from casual inspection, but not from microscopic examination, certainly.

Q. You think you can always make a distinction by microscopic examination?

A. Yes, sir.

Q. You stated upon your direct examination, professor, that you had had some experience in practical forestry in the inland empire section; did that experience carry you both into the production of lumber of Idaho white pine and ponderosa pine?

A. Not very much in Idaho white pine, only casually in that. I was interested at one time in the study of so-called western
251 yellow pine, and the other time in the study of western red cedar and the Idaho pine came in only casually.

Q. How close was your contact with this Idaho white pine? You say you came in contact with it only casually; tell us to what extent your experience was limited.

A. It was very limited.

I was in the country where it was being used and saw it, but I was making no special study of it.

Q. Do you know whether or not the lumber yielded by Idaho white pine or Pinus monticola has a considerable variation, depending upon the elevation and character of the soil and climate and other conditions?

A. There is some variation, but it is not very great.

Q. Don't you know that a considerable quantity of lumber yielded from Idaho white pine is of a hard, flinty type, not at all like the lumber characteristic of the true white pines?

A. I never knew that.

Q. Do you know whether the lumber yielded by the monticola pine is characteristically a clear type or shop type?

A. It is perhaps more shop type than it is clear.

Q. Does it yield proportionately as much shop as is yielded by ponderosa pine?

A. I cannot state positively.

Q. Does it yield proportionately as much shop as is yielded
252 by the strobus pine?

A. I haven't sufficient data to answer that accurately.

Q. One further question, Professor:

I think you stated that your studies had not carried you into California?

A. That is true.

Q. I assume that likewise you have not been in southern Oregon, which is the territory that produces the lumber marketed in California under the name of California white pine?

A. That is true.

Q. You are not familiar with the grading of California white pine and California sugar pine, are you?

A. No; I am not.

Q. Your studies did not carry you into a consideration of commercial grading to any considerable extent?

A. Not now, they do not.

Mr. MATTHEW. I think that is all.

Redirect examination by Mr. BURR:

Q. Professor Record, you testified, I believe, that you had considerable experience in Oregon at one time, practical experience in forests; is that true?

A. Perhaps not considerable, but some.

Q. At that time you knew the ponderosa of southeastern
253 Oregon, did you?

A. Southeastern? No; I have not been in southern or southeastern Oregon.

Q. What part of Oregon have you been in?

A. Northern and the northeastern part.

Q. Is there a Pinus ponderosa there?

A. Yes.

Q. And you studied it on the ground at that time, did you?

A. Some, but not extensively.

Q. Have you studied it since you devoted your time to forest products from a scholastic point of view?

A. I have studied the woods from time to time in connection with my work as a teacher.

Q. You have had opportunity to acquire information about Pinus ponderosa, together with other woods, during that long period?

A. I did.

Q. For the purpose of writing your books on lumber products, you have familiarized yourself with the subject matter of which you write, I assume, did you?

A. I tried to.

Q. This strobus that is brought in from Maine, will you state whether any of it is lumber that is matured under the economic lumber methods that are adopted in Maine? Is my question clear?

254 A. Most of it is wild second growth, although there are places where they are trying to practice forestry regulations and methods.

Q. Those forestry regulations and methods require the cutting only of the mature growth, do they not?

A. Not necessarily mature, they cut it at such time as it will be practicable, whenever that might be, that is, the maturity from the standpoint of the forester is likely to be when he can get the largest return, that is, financial return for his timber.

Q. It is cut more economically under forestry regulations than it is where there are no regulations and the land is slashed off entirely, is that true?

A. That is true.

Q. And those regulations call for the leaving of many trees that would be hewn down if the unregulated production of lumber and logs were permitted, is that true?

A. The regulations try to protect the forests and assure a continuation of it, whatever that might be.

Q. You mean a continuation of the supply?

A. Yes.

Q. The original lumber operations in certain parts of Maine were conducted under the protective regulations of scientific forestry, were they not?

A. The original? In certain parts of Maine. I do not
255 know whether the original forests were so protected, unless it is comparatively recent. As I understand, the cutting off of timber in Maine was without much restriction.

Q. I suppose that they had State regulations up there that covered part of the original virgin growth, although I may be in error.

A. They do not undertake this regulation usually until after the damage is done.

Q. In other words, they close the barn door after the horse is stolen.

Do you know whether or not there is virgin strobus coming out of the Canadian market at this time?

A. There is.

Q. Is that of high grade?

A. I have seen some of high-grade timber.

Q. How recently?

A. Within a year.

Q. That is, a large-sized virgin strobus coming from Canada?

A. Yes.

Q. How large in diameter have you seen them run?

A. That is a rather difficult question to answer.

Q. Well, is the virgin timber comparable with the early New England virgin growth?

A. I should say so, in the quality of the lumber.

Q. How about Minnesota, is not Minnesota still producing
256 virgin Pinus strobus in considerable quantities?

A. It is producing it, but I do not know how much, but I should say in considerable quantities.

Q. That is a high-grade virgin timber, is it, of large size?

A. Yes.

Q. The soft pine of Arkansas is called "Echinata"; I believe you defined that as that, and what is the other term?

A. Pinus taeda.

Q. The Echinata, however, is the larger bulk of the so-called soft pine of Arkansas?

A. It is made up of growth in the northern part of the State and a considerable portion, perhaps the bulk of that, in the southern part of the State.

Q. Is that a soft pine?
A. Not in the technical sense, certainly.
Q. Is it comparable to ponderosa as to softness?
A. Some of it is—decidedly so.
Q. Does the soft pine of Arkansas differ markedly from the southern pitch pine, or is it a pitch pine itself?
A. It is the same pine, but seemingly growing in different conditions. It is softer and less resinous than that growing farther south, although you occasionally find trees that are quite hard and full of resin; but, on the whole, it is lighter, softer, and less resinous than the timber growing farther south.
257 Q. Referring to the lumber from ponderosa, coming down from the outside or near the outside of the tree, that would be sap lumber, would it?
A. Yes.
Mr. BURR. I think that is all, if the examiner please.
(Whereupon a recess was taken until 1:30 o'clock p.m.)

258 AFTER RECESS

1:30 P.M.

M. W. WILLIAMSON was thereupon called as a witness, and having been first duly sworn, testified as follows:

Direct examination by Mr. BURR:

Q. Mr. Williamson, your line of business is what, sir?
A. I am district manager of the Weyerhaeuser Sales Company in this city.
Q. How wide is your territory?
A. It comprises northern New Jersey, eastern New York State, and all of New England.
Q. How long have you held that position?
A. Four years.
Q. What were you doing prior to that?
A. I was a road salesman for the same company, in St. Louis, Missouri, for two years.
Q. Have you ever had any practical experience in the forests as a logger or lumberman?
A. Not as a logger but as a manufacturer.
Q. What positions did you hold and when?
A. I was assistant sales manager up at Potlatch, Idaho, for twelve or thirteen years, prior to going to St. Louis, with the Potlatch Lumber Company.
Q. Did you have anything to do with the logging operations, so that you were brought in the woods at all?
259 A. Yes.
Q. Where was that.
A. At Potlatch.
Q. For how long a period was that?
A. About thirteen years.

Q. I wish you would tell us just what your duties there were—it will be shorter to do it that way than by asking you these various questions; just tell what you did there, please.

A. In a general way it was sales manager's work, directing the policies and prices of our products and following the manufacture of the lumber through the woods, cutting the orders; that is, the logging lengths and checking them and going through that work in the woods.

Q. Potlatch, Idaho, was pretty close to your lumbering operations, was it?

A. Oh, yes.

Q. Did you have an opportunity there to observe the actual logs and did you ever do any grading?

A. No; I never did any grading, other than in a superficial way—but we were holding our grading clinics at various times with the graders, and I was always in on those meetings.

Q. How much opportunity did you have to observe the actual logs and the actual way in which the logs were milled?

A. A great deal. I was in the sawmill, and was there a great part of the time, so I had a great deal of opportunity to
260 observe that.

Q. Pretty much every day, you mean?

A. Practically every day I was in the mill at some time or other.

Q. Those operations were not under your instructions, of course, as sales manager?

A. No.

Q. Now, what type of lumber were you handling?

A. Lumber or timber?

Q. Was it monticola or Idaho white pine?

A. Idaho white pine—Pinus ponderosa, cedar, large [larch], white fir, and a small amount of spruce—those mixed woods that are common in that region.

Q. Will you state when they start to cut up a log of ponderosa what happens? How is it handled? The first thing is to take the slabs off, is it; that is, do some slabbing?

A. That is right.

Q. Will you describe that, please.

A. Well, the operation in connection with the pondosa logs is not very different than the manufacture of any species, as far as that is concerned.

Q. All right, tell us that.

A. The log is slabbed and the lumber is immediately produced. The log is turned as the sawyer finds it to his advantage in getting the most out of the log.

261 Q. How does slabbing result; do they take off the bark as part of the slabbing, and what else, if anything?

A. They usually try to just skin the bark, and then they come along and take another cut until they face the log.

Q. What do you mean, they square it up?

A. Not necessarily square it up, but in a general way, yes—of course, the cuts that come off the log first drop off and go through the edger, as the log becomes square sawed to the proud edge.

Q. What do you mean by the "proud edge"?

A. Where the bark has been eliminated, in other words, the lumber as it comes from the head rig, the band mill edger requires no further manufacturing——

Q. It is a straight edge?

A. Exactly.

Q. Is there any contrast between the result that occurs from slabbing a ponderosa tree, as compared with an Idaho white pine tree or monticola?

A. In the first place, I will say that the monticola tree is known commercially among timbermen as a small commercial timber, not a heavy growth, if you know what I mean, whereas the pondosa or ponderosa pine—Pinus ponderosa—is a heavier tree, much larger, runs considerably larger in diameter than the Idaho white pine or Pinus monticola.

Q. And the same is true of strobus, is it—strobus is a smaller tree?

262 A. Yes.

Mr. MATTHEW. The witness has not qualified on strobus, has he?

Q. Have you ever been in the forest where they were cutting strobus?

A. Yes, sir.

Q. Where?

A. Minnesota.

Q. How long were you up there?

A. My experience in Minnesota—I was born in Stillwater, and I have seen Pinus strobus logs ever since I saw anything, as far as that is concerned, yet my actual working experience has never been in Minnesota, but I have visited our plants at Cloquet many times, during which times, I, of course, paid a good deal of attention to the method of manufacture.

Q. How long ago were you there?

A. The last time I was there was about a year ago today.

Q. Cloquet, that is in Minnesota?

A. Yes.

Q. The monticola and strobus, as an average, the logs run smaller, do they, than Pinus ponderosa?

A. Yes, sir.

Q. That is true in the inland empire as well as California, is it?

A. Oh, yes.

263 Q. In fact, in California they run still larger than the inland empire, or don't you know?

A. I would say they do; yes.

Q. When you have taken a slab off of one of the trees of monticola or strobus have you taken anything besides the bark off? In other words, you have taken part of the sapwood, have you?

A. Why, certainly.

Q. The same is true, you have taken part of the sapwood of the ponderosa tree too, have you?

A. Yes.

Q. How about the relative amount of sapwood that is taken off from the monticola and strobus on the one hand and the Pinus ponderosa on the other when you have taken the slab off?

A. You have affected the sap area the most in monticola and strobus by far than you have the Pinus ponderosa on account of the heavy sap line in Pinus ponderosa. The very fact that Pinus ponderosa logs are larger, and the saw passing through the log as it does, naturally leaves a greater area of sap and a greater percentage of the original area of sap in the ponderosa log than it does in monticola or strobus; many times it practically wipes out the sap line in monticola and strobus. I don't know whether you know just what I mean or not.

What I am trying to convey is: You take a small log, and,
264 of course, it is naturally going to produce a smaller sized lumber commercially, and therefore the average size of logs is much smaller in monticola than it is in ponderosa, and also strobus is much smaller than it is in Pinus ponderosa.

Therefore, when you take a small log you will eliminate the sap area which is in that species to a larger extent as compared with the species in a bigger log—in other words, you are leaving more sap—or rather eliminating more sap from strobus or monticola than ponderosa.

Q. When you have eliminated the sap [slab] of monticola or strobus you have eliminated a greater percentage of the sapwood from the log than you do when you have taken the slab from the average ponderosa tree; is that true?

A. Absolutely.

Q. Did you ever have any experience in any millworking company?

A. Yes.

Q. Where and when was that?

A. From 1902 to 1909 I was with the Curtiss Company in Clinton, Iowa, and had a lot of experience in millwork there.

Q. What were you doing for them?

A. I was shop grader as a boy out of school, then became lumber buyer for that company——

Q. Just a moment; by a shop grader, what do you mean by that, please?

265 A. Shop grader is a grader of that class of lumber products that is used very largely by sash, door, and blind and millwork concerns.

Q. All right, proceed.

A. And as lumber buyer for that company, naturally it took me into California.

Q. Now, that concern was buying shop lumber for making into sash, doors, and blinds, is that right?

A. Yes.

Q. Did they have any other products?

A. Yes; they had many other products that are found in factories of that kind, specialty work and all that, but in those days, it was very largely a stock proposition—stock windows and doors.

Q. And they bought what classes of supplies, I mean what classes of lumber?

A. Shop lumber, factory plank, as it is known.

Q. I mean what species of lumber?

A. Very largely California white pine.

Q. They bought California white pine or Pondosa pine?

A. They bought California white pine.

Q. They bought it from California, did they?

A. Yes; they buy Pinus ponderosa in various parts of the country but very largely from California.

Q. Did they also buy any of the monticola or strobus?

266 A. Some strobus but very little monticola.

Q. Did you ever have occasion to see the orders that were coming in for this class of goods from the retailers? Were retailers your customers?

A. Retailers and sash and door jobbers.

Q. The retailers as customers would write in for certain specifications for sash, door, and blind material?

A. Certainly.

Q. And you had occasion to see those orders?

A. Certainly.

Q. Did those orders call for white pine material or California white pine, or what did they usually call for?

A. Just white pine.

Mr. MATTHEW. Just a moment, before that is on the record, does that affect these respondents?

Mr. BURR. I am trying to prove a custom, sir. I am trying to prove that when white pine was called for, Pinus ponderosa or California white pine was sent. If the examiner were to rule that I had the burden of tying this up to each respondent, instead of only one, I would have to get evidence from fifty different respondents and I think that is more than you will ask the examiner to require of me.

Under that theory it would not be possible to charge the Long Bell Lumber Company unless I had instances in which the Long

267 Bell Lumber Company were a party and the same would be true of the Algoma Lumber Company and all the rest of the fifty concerns, which is more of a burden than ought to be imposed on me.

Mr. MATTHEW. All that you are trying to do is to establish a trade practice custom?

Mr. BURR. Oh, no.

Mr. MATTHEW. I thought you said so.

Mr. BURR. In a sense; yes.

Mr. MATTHEW. Well, I shall not object; just go ahead.

By Mr. BURR:

Q. Did you have occasion to know what type of material was furnished to those who ordered white pine for sash, door, and blinds?

A. California white pine.

Q. You saw the invoices, did you?

A. Yes, sir.

Q. And it was invoiced to them as white pine, was it?

A. Yes.

Q. On occasion, they would invoice it as California white pine, would they, or was that the exception?

A. I would say no, because all of the material possibly would not be California white pine.

Q. What else might it be?

A. It might have been Pinus ponderosa, of which, as I explained before, a small percentage existed.

268 Q. Occasionally a customer would demand strobus, would be?

A. Yes.

Q. And then your company was able to furnish strobus pine in such exceptional demands, was it?

A. We had the same trouble back there, where the three-needle variety showed failure, and certain architects and builders simply tied the specifications up by calling Pinus strobus in that case——

Mr. MATTHEW. Just a moment. I move to strike that out on the ground that it is not responsive to the question.

Mr. BURR. I think that an answer is not responsive to the question is an objection which adheres to the man who asks the question rather than opposing counsel. I was very much surprised by a ruling which was made by Mr. Bennett to that effect, and upon investigation, I found that he was right.

Mr. MATTHEW. I understand the objection may be made by opposing counsel.

Mr. BURR. But it will not be sustained.

Mr. MATTHEW. That is entirely up to the examiner.

May we have the question read?

Examiner SHEPPARD. Read the question and answer.

(The question and answer were thereupon repeated by the reporter as above recorded.)

Examiner SHEPPARD. You may go ahead.

The WITNESS. There is no question but what in that case

269 Pinus strobus was furnished.

By Mr. BURR:

Q. In other words, you would make a sash, door, or blind out of genuine strobus for those who actually insisted upon it, would you?

A. Why, certainly.

Q. Where they ordered white pine and did not say "strobus", they got California white pine; is that true?

A. Yes, sir.

Q. Was that true during your entire period with the Curtiss Company?

A. Yes.

Q. And that was how long?

A. Seven years.

Q. When did you leave them?

A. 1909.

Q. As I understand, your present duty is to sell the products of the Weyerhaeuser interests in the territory that you have named, is it?

A. Yes, sir.

Q. And you have how many salesmen under you?

A. Eighteen.

Q. You are handling what types of lumber in this market; strobus and what else?

A. Pinus strobus and the mixed woods common in the Min-
270 nesota territory.

Q. What pine, I mean?

A. Pinus strobus, Pinus monticola, and Pinus ponderosa.

Q. You sell your Pinus ponderosa under what trade name?

A. Pondosa pine.

Q. How long has that been the case; ever since you have been here?

A. No; I think it has been only about two years.

Q. Two years?

A. I think so.

Q. Up till that time, what did you call it?

A. Western soft pine and western white pine.

Q. And what time was it that you eliminated the word "white" from the name?

A. As I say, about two years ago.

Q. You think it is only two years ago?

A. I think so; as I recall it. I could not give you the exact date, but my company instructed me to sell Pinus ponderosa only as pondosa pine and I have it understood so in all transactions.

Q. You are competing with other dealers, other manufacturers carrying pondosa pine, are you?

A. Yes, sir.

Q. And some who are calling their ponderosa pine California white pine; is that true?

271 A. Yes.

Q. And others sell strobus, I presume, in this market, or are there not any?

A. Yes.

Q. Do you have occasion, when you lose an important order, to ascertain for what reason you lost it?

A. Yes, sir; I am supposed to; that is part of my duty as a salesman.

Q. Do you occasionally lose orders to California white pine manufacturers?

A. Yes.

Q. I wish you would tell me for what reasons you lose sales of Pondosa pine as contrasted with California white pine competitors?

Mr. MATTHEW. I think that is asking the witness to give us hearsay testimony, Mr. Burr.

Mr. BURR. I am going to ask this, to be frank with you, and you may make whatever objections you desire, but I am going to ask for what reasons they lose their sales, and the only way in which we can find out how they come to lose sales and to prove the allegations that we have here, as to the state of mind of these customers and the effect upon the trade of a certain line of competition, is to find out from these men what the reasons are that they lose the trade to competitors and I think it is competent.

272 Examiner SHEPPARD. Do I understand that there is a formal objection?

Mr. MATTHEW. I shall object to anything in the nature of hearsay testimony.

If he wants to introduce such testimony——

Examiner SHEPPARD. I understand, Mr. Williamson, of course you being the witness know that they want facts here and not hearsay.

I will let you testify in answer to this question, and if objection is made, and if upon consideration of the objection I deny the motion and let you testify, it is because I believe that you know what you are talking about and it is not hearsay.

Now, let us have the question read.

(The question was thereupon repeated by the reporter as above recorded.)

By Examiner SHEPPARD:

Q. Do you understand that?

A. Yes, sir.

Mr. BURR. I suggest that we have the question read again.

Examiner SHEPPARD. Yes; read the question.

(The question was thereupon repeated by the reporter as above recorded.)

Examiner SHEPPARD. If you know that I shall allow you to
273 testify, if you know the reasons why; but if you are going to tell me what you heard someone else say about this, I do not want it.

A. Well, if dealers have told me these things that I am about to say, would you consider that hearsay?

Examiner SHEPPARD. No; I would not.

The WITNESS. Would I be required to go through a long list of customers who have made such statements?

Examiner SHEPPARD. No; I consider that any knowledge obtained by you in the due course of your business you may relate.

The WITNESS. Absolutely, and I shall only speak the truth.

We have lost and are losing a very considerable amount of business in [error for "to" ?] California white pine, for one of three reasons in each case:

There is a certain line of dealers that think that California white pine is better than pondosa pine so called. They have told me that.

Another class of dealers have told me that they believe that I cannot convince them, if you please, that California white pine is not a true white pine. That class of dealers, I will say, according to my observation, are in the minority.

There is another class of dealers that tell me that they know that California white pine is not a true white pine, but it
274 is invoiced to them as white pine and they sell it to the trade requiring white pine as white pine and because it is invoiced to them as white pine, they can pass it on as white pine and do it with just a little safer feeling than they would if it was invoiced as something else besides white pine, and buy it at considerable less than they would have to pay for true white pine.

These are undoubtedly some of the best known facts in the lumber industry today, and it is just as I have told you in regard to this white-pine situation.

By Examiner SHEPPARD:

Q. Is there much difference in price, Mr. Williamson?

A. Yes; there is.

By Mr. BURR:

Q. Between pondosa and California white pine?

A. Oh, no.

Between California white pine and true white pine, I thought that was your question.

Examiner SHEPPARD. Yes; that was my question.

The WITNESS. It is there.

Q. I was just going to ask him this very question, Mr. Examiner. I was going to ask him this: When they say they want white pine, and that their trade that calls for white pine, why do you not offer them Idaho pine instead of pondosa, or do you?

A. We do, but it is a price proposition with them. If in
275 four cases out of five, they can give the three needle variety to the public and make them think that they have gotten a real white pine, they will sacrifice the one time where they had trouble because it is more profit to them to be able to do so and that is only natural.

By Examiner SHEPPARD:

Q. You are talking about retailers, are you?

A. Yes, sir; that is my contact with the retailer; the ethics of the business call for me to approach only the retailer.

Mr. BURR. I think that is all.

Cross-examination by Mr. MATTHEW:

Q. Throughout what period have you been dealing in Idaho white pine?

A. From 1909 to the present date.

Q. And you have been selling Idaho white pine in this vicinity for the past four years, approximately?

A. Four years; yes, sir.

Q. You have likewise been selling your pondosa pine and your northern white pine or strobus during the same period?

A. Yes, sir.

Q. Is the volume of your Idaho white pine sales increasing?

A. Yes, sir.

Q. Is the volume of your strobus pine sales increasing?

A. No, sir.

276 Q. The sale of that particular lumber has been falling off during the past four years, has it?

A. I would say it has.

Q. Is it being displaced in considerable measure by Idaho white pine?

A. Yes; I would say that it is.

Q. What reasons do you ascribe the increase in the sales of Idaho white pine to and correlatively the decrease in the sale of northern white pine?

A. I did not say that northern white pine had increased.

Q. No; you said that it had been decreasing.

A. I did not say that either.

Mr. BURR. He said it had not been increasing, and he did not say it was decreasing; he said nothing about its being stationary at all.

Mr. MATTHEW. I thought he said it was falling off.

The WITNESS. I said that strobus had not increased.

Mr. MATTHEW. You also said it was falling off. That was the last answer that you have just given. I would like to have those last questions and answers with regard to that read, if the examiner please.

(Questions and answers were thereupon repeated by the reporter as above recorded.)

Examiner SHEPPARD. That is exactly the impression I got.

Mr. MATTHEW. Certainly, it is right there in the record

277 definitely.

The WITNESS. Yes; it is.

Q. Do you intend to stand by that answer?

A. That is all right; yes.

Q. My question now is to what circumstances do you ascribe the increase in your sales of Idaho white pine and correlatively the decline in your sales of strobus pine?

A. For one reason, our production of Idaho white pine has a greater range; we can take care of a greater amount and our chances of handling an order of Idaho white pine are greater, very much, at present, than in handling orders for Pinus strobus.

Now, you are asking me my experience—and I am speaking of this that I have described as having been my experience in that locality——

Q. My question was directed to that very thing.

A. Yes; but you may not find that to be true in other parts of the country.

Q. I am not suggesting that, Mr. Williamson; let us keep together.

A. That is all right; I am not speaking for all Pinus strobus.

Q. I have not so understood it.

I am asking you to what circumstances you ascribe the increase of sales of Idaho white pine and the falling off of strobus, in
278 this territory over which you have had jurisdiction and having had jurisdiction in the past four years.

A. Because this is an Idaho white pine territory. They never did buy from us Pinus strobus in any quantity. Our sales of Pinus strobus are very, very small, and there is no real reason why Pinus strobus should take the position of falling off in this territory particularly.

Q. Then, why does it fall off in this territory?

A. I do not know. It is so trivial that it really does not matter much. My men have never been able to sell much Pinus strobus from Minnesota in this territory.

Q. Then, it is only your Minnesota lumber that is sold here; that is, the only strobus lumber?

A. That is the only strobus lumber that we have.

Q. You have never been able to sell it in this territory, have you?

A. Not since I have been here; no.

Q. But why should it decline in sales volume?

A. Well, one very good reason for the slight difference between what we have sold and what we may be selling at this time might be because of stock conditions.

Q. Are you pushing the sale of Idaho white pine preferentially over the sale of your strobus pine?

A. I would not say preferentially, but it naturally does, because of greater production.

Q. Is there a difference in price of Idaho white and your
279 strobus pine, grade for grade?

A. I would say not to any extent whatever.

Q. You are selling your strobus pine to the retailer at the same price f.o.b. New York, at which you sell your Idaho white pine?

A. Yes. There may be some slight difference, but it would not amount to anything.

Q. Even at that substantial parity of prices, the sales of Idaho white pine are mounting and the sales of strobus are declining?

A. That merely is answering that same question over again; yes.

Q. I take it that you do not regard the strobus pine lumber as being superior to the Idaho white pine?

A. No; I would consider one just as good as the other.

Q. Do you sometimes receive an order for white pine, as such, without any qualifying term, such as "northern" or "eastern white pine" or "Idaho white pine"?

A. Do we just receive orders for white pine?

Q. Yes.

A. Yes.

Q. In such event what pine do you supply?

A. We usually get in contact with the buyer and ask him just exactly what he wants—Pinus strobus, Pinus monticola, or Pinus ponderosa and in a surprisingly large number of cases, he says "I am talking about California white pine."

280 Q. You do not deal in California white pine?

A. No, sir.

Q. If you got an order for white pine, do you feel free to supply that order with either Idaho white or with northern white?

A. If he calls for what?

Q. White pine.

A. Why, no; not unless we question him.

Q. And then you try to find out whether he wants Idaho white pine or your northern white pine?

A. Absolutely; because we have a pretty good idea that he is not sure just what he does want.

Q. I take it that you do not deal at all in sugar pine?

A. No, sir.

Q. Have your sales of pondosa pine been increasing during the past four years?

A. I think I answered that question "no" before.

Q. I did not ask you as to pondosa pine before, as far as I can recall.

A. I would say that our pondosa pine business is not as great as it was four years ago.

Q. What has been the course of your sales during the past four years with respect to pondosa pine, that is to say, has there been a gradual decline during that four years' period, commencing in 1925 and running down to date?

281 A. If there has, it has been very slight. I have not the figures.

Q. So far as your general information goes, there has been, you think, merely a slight falling off in sales of pondosa pine from 1925 to 1929?

A. I would say, slightly; yes.

Q. There has just been a gradual falling off from year to year, you think?

A. I would say so.

Q. You have noticed no particular change, when you changed the name; that is, the commercial name of that lumber from western white pine to pondosa pine, in 1927?

A. Well, there has been that decline; I would not say it has been exactly over any particular date, but it has been within that period; yes.

Q. That decline has extended over the entire four-year period, you say?

A. Yes.

Q. You stated that when you were engaged in purchasing shop lumber for the Curtiss Company that, to a large extent, you bought California white pine?

A. Yes, sir.

Q. Will you tell us why you bought that lumber in preference to any other?

A. Price, I would say, basically; we bought it very cheap.

282 Q. You could buy the ponderosa lumber from the Inland Empire at still lower price, could you not?

A. No; I would not say so. In that particular case, it was a matter somewhat and very largely, perhaps, of the concern buying the lumber and being interested in the supplier, if you know what I mean—they were interested in the concern from whom they bought. I do not think that was the cause of going into California and buying California white pine——

Q. Just give me the reason why you went to California and bought California white pine rather than the inland empire; was it regarded as superior for mill-work purposes?

A. No; I think not.

Q. You say you bought a little strobus pine during that period for the Curtiss Company?

A. Yes, sir.

Q. And no monticola pine?

A. No, sir; not that I can remember. If there was any, it did not amount to anything at all.

Q. Was the monticola or Idaho white pine on the market at that time?

A. That is another point. You see, Idaho white pine was just coming on about 1900, 1901, and 1902 or 1903, in there.

Q. You were acting as the purchaser of lumber for the Curtiss Company from 1902 to 1909?

A. No; I gradually grew into that position. I was only

283 rated as a lumber buyer, I would say, for only about two years, from 1907 to 1909. I really had not thought of it particularly, but it was about that time.

Q. Idaho white-pine lumber was on the market in some volume at that time, was it not?

A. Yes; but we did not hear of it in the Middle West at that time.

Q. As a matter of fact, Idaho white-pine lumber does not produce a very large proportion in the shop grades, does it, Mr. Williamson?

A. It is rated as a small producer of shop lumber; yes, sir.

Q. Could you tell us about what proportion of the lumber yielded by an ordinary or average Idaho white-pine tree would be of a shop grade?

A. It would take a pretty good run of logs to make ten percent of shop.

Q. Shop or better?

A. No; I would not say shop or better because that is taking in a lot of territory when you say "shop or better."

Q. Let us take the clears then.

A. That is a different proposition. If you want to say factory plank or factory stock, why, it would run considerably more than that.

Q. Are you including all of the common grades in that designation?

284 A. No, sir; because you cannot—there is no common grades.

Q. You are just talking of the shop and clears?

A. Just the shop and clears?

Q. What would be your figure, taking the shop and clears together?

A. That is what I say; it would run considerably more than ten percent, but just how much I don't know.

Q. Would it be as much as 15 percent?

A. Oh, yes; it would be more than that; it would probably run to 25 or 30 percent.

Q. You have also testified that if one of the customers of the Curtiss Company demanded sash or door blinds manufactured from strobus lumber entirely the Curtiss Company would comply with that order?

A. Absolutely.

Q. Will you explain the composition of the sash and door and blinds that are manufactured by that plant during the period of your connection with them; that is, what I desire particularly to ascertain, Mr. Williamson, is whether or not it was customary to make doors out of the particular grade of lumber or a particular variety of lumber?

A. You can make door from no. 2 shop, and so forth, right through the upper grades.

Q. Let me reframe my question. I take it that the factory would have on hand at all times a supply of California white

285 pine and perhaps some northern white pine, possibly some Douglas fir, and occasionally, at least, some Idaho white pine; now, these various quantities of lumber would ordinarily be just used together in making up doors, would they not?

Q. In other words, you would not make a straight door out of California white pine?

A. Oh, yes.

Q. Was that the customary practice?

A. Yes, sir; absolutely.

Q. You would not mix the lumbers of various varieties in the making of pine doors?

A. No, sir.

Q. Or sash or frame?

A. No, sir.

Q. How did they keep their lumber separate—the different varieties separate—do you know?

A. That is a very simple thing. You get a pile for each one. Did I understand you to ask how they stored these different kinds of lumber?

Q. How did they keep them distinct for the purpose of remanufacture into doors of a particular type?

A. Well, to get at it in a very simple way, a car of lumber is received and is put in this bin, we will say, and if genuine
286 white pine is ordered for a particular job, it is put in another bin and it is handled very much the same way.

Q. You do not know whether that same practice still obtains in the Curtiss plant?

A. No, sir.

Q. Can you give us any approximate figure as to the amount of northern white pine—I mean by that your strobus pine—which is sold in the territory in which you have your jurisdiction?

A. No, sir.

Q. Can you tell us the proportion of your total sales represented by your sales of strobus pine lumber?

A. No, sir.

Q. You have told us that it is relatively a small part of the total; at least, that is the implication I got.

A. That is right.

Q. Would it be as much as five percent of your total?

A. I could not say; I just do not know.

Q. You say there is no particular reason for expecting a very large sale for northern pine here, and as I recall your reason for saying that was that this is an Idaho white pine territory; is that what you said?

A. So we find it.

Q. Can you tell us whether the northern white pine sales and Idaho white pine sales are in the proportion, say of ten to one or two to one, or any figures that you can name?

A. No; I could not tell you with any certainty at all.

287 Q. All you can tell us is that the sales of Idaho white pine greatly exceed the sales of northern white pine?

A. Yes.

Q. I am not sure whether you told me whether you sell more of pondosa pine or Idaho white pine?

A. I could not tell you that, either; we sell much of both.

Q. Do you face any competition from California sugar pine in this territory?

A. I would say not.

Q. This sugar pine does not compete with any of your grades of lumber?

A. I presume it does, but it does not stand out as a highly competitive wood to us.

Q. Would it be a more formidable competitor if it were sold here under the name of California white pine? You know that it is a white pine botanically?

A. Precisely.

Q. You know that it is produced largely in California?

A. Yes, sir.

Q. With that as a background, will you answer my question, whether you think it would be a more formidable competitor if it were sold as California white pine?

A. There would have to be some other things to go along with that; do you mean at its present price?

Q. You may put it with any qualifications you want.

288 Mr. BURR. It seems to me, if the examiner please, that that is a wildly hypothetical question, is it not?

Examiner SHEPPARD. I think so myself, but if he can answer it, I will allow him to.

A. I prefer not to answer it.

By Mr. MATTHEW:

Q. Let us make it on a parity of price with Idaho white pine.

A. At a comparative price with Idaho white pine?

Q. No; I said a parity of price; that is to say, the same price.

A. And call it California white pine?

Q. Yes.

A. I would say no.

Q. Then you have no objection to the dealers California sugar pine offering that wood to the trade under the name of California white pine?

A. Not as long as it is sold as white pine, which it naturally would.

Mr. MATTHEW. That is all.

Further cross-examination by Mr. ANDREWS:

Q. Mr. Williamson, you have been in the lumber business practically all your life, have you not?

A. Yes, sir.

289 Q. And in that time you have acquired a general knowledge of the history of the lumber business in this country, have you not?

A. Yes, sir.

Q. It began in the Northern States, did it not? They were the States in which lumber was first produced, I mean, from Maine extending around to Michigan?

A. Yes.

Q. Those States have been pretty well cut out?

A. Yes, sir.

Q. You have no competition in your business on lumber manufactured in any of those States?

A. Oh, yes.

Q. Do you have any competition in your sale of pondosa pine from lumber manufactured in those States?

A. I would say none.

Q. That is what I am talking about.

Those were the States in which what has been referred to here as the Pinus strobus was cut?

A. Yes.

Q. The lumber resources of Minnesota are fast being depleted, aren't they?

A. How fast, I do not know.

Q. But they are being depleted?

A. I think there is no doubt about that.

290 Q. Do you know how much lumber, that we have referred to here as Pinus strobus, is produced annually in Minnesota?

A. No, sir.

Q. The fact is, is it not, that our principal sources of lumber supplies are now in the West and Northwest, with a considerable stand of timber still left in the South; that is true, is it not?

A. Yes, sir.

Q. You say that you began buying lumber for the Curtiss Company about in 1907?

A. Yes, sir.

Q. And in 1927, your company discontinued the name western white pine and adopted the name of pondosa pine?

A. Yes.

Q. So we may account there for 20 years of your own active experience in which you knew this lumber that botanically is Pinus ponderosa as having been sold as either western white pine or California white pine?

A. Yes, sir.

Q. And that terminology had been there prior to the time that you began buying lumber, had it not?

A. I think so, yes.

Q. Can you tell us at what earlier date the practice sprang up of calling the lumber botanically Pinus ponderosa, California white pine?

291 Mr. BURR. I object, if the examiner please. Let us prove it by someone whose memory goes back further. Why ask someone if he knows, except by hearsay?

By Examiner SHEPPARD:

Q. If you know that, you may answer.

A. I cannot answer that question.

By Mr. ANDREWS:

Q. It was a well-established practice when you became acquainted with it in 1907?

A. Yes, sir.

Q. It was well established for that lumber to be called California white pine or western white pine?

A. Yes, sir.

Q. So that when you were asked by counsel in the beginning of your examination what lumber you sold, you said Idaho white pine, among others?

A. Yes, sir.

Q. And you attached to white pine the name of the State of Idaho in order to identify it; that is it, is it not?

A. Presumably so; I do not know. I did not coin the name.

Q. It is known, then, that the name has been coined, and the coined name is Idaho white pine?

A. Yes, sir.

Q. Not just "white pine", but "Idaho white pine"; that is correct, is it not?

292 A. Yes, sir.

Q. You said that sometimes you get orders for simply white pine, but that you contacted with the persons placing those orders with you in order to ascertain what they wanted—whether they wanted what you sell as pondosa or whether they wanted what has been referred to here botanically as Pinus strobus; in other words, during this long period of years in which the name white pine has been used in connection with the California timber and the inland empire timber, it is true, is it not, that white pine has become, in connection with the word "California" to indicate Pinus ponderosa, and in connection with the name "Idaho" to indicate Pinus monticola; that is true, is it not?

A. It must be; yes.

Q. And the white pine has lost its original specific signification, if it ever had any, is that not true?

A. No.

Q. That is not true?

A. No.

Q. Then why is it when a dealer places with you an order for white pine, as you previously testified, you contacted with him to ascertain what it is that he wants?

A. Well, in the first place, we know much of the minds of the people that are buying lumber, and we know this confusion ex-
293 ists to a very marked degree, and our good common sense permits us to ask the man if he really means white pine or does he mean something else.

Q. You are not sure but what he may mean California white pine, are you?

A. No, sir.

Q. And that is true, is it not, because of this long period of years in which this lumber has been referred to as California white pine; is that not true?

A. What is the question again?

Q. I say you are not certain what he wants, because of the fact that for a great many years white pine has been applied both to the California product and the Idaho product?

A. That could be true in certain cases; then there are other cases that it would not apply to at all.

Q. I am speaking of each instance in which you go back to the dealer and contact with him to ascertain what he wants.

Now, you do that, do you not, because you are not certain, when a man uses the term "white pine" alone, whether he wants California white pine or whether he wants Idaho white pine; is that not true?

A. That is true.

Q. Can you give us the names of some of the dealers who have told you that they prefer to buy from your competitors California white pine rather than your so-called "pondosa" pine, be-
294 cause they could more easily pass it off to their customers or buyers; will you give us the names of some of those customers?

Mr. BURR. If the examiner please, the Federal Trade Commission Act precludes the requirement of furnishing names of customers, as I recall it, and it seems to me that ought to apply in principle, unless the witness is agreeable to giving the names of customers, to the defense as well as to the Commission itself; may we not consult that part of the statute that I have in mind, unless the examiner is more familiar with it than I am?

Examiner SHEPPARD. Mr. Burr and Mr. Andrews, let me say this: Where the giving of a name by a witness would tend to give away some trade secret we do no require the witness to divulge such name.

Mr. ANDREWS. I do not want to do that, of course.

Examiner SHEPPARD. As I have just stated, when a witness is asked to produce the names of certain customers and in the giving of such names he would jeopardize some trade secret that he may have or may be existing between them, it has been my rule always not to allow that, but, Mr. Williamson, if you have no objection to it, I shall allow you to testify to it.

A. I prefer not to.

Examiner SHEPPARD. When the witness objects, I will support him.

295 Mr. ANDREWS. If the witness objects, I shall not press it.

Mr. MATTHEW. But, your honor, you understand there is no way for us to check up on such testimony.

Examiner SHEPPARD. I always give that testimony probative value. Before you proceed further, I would like to ask one question.

By Examiner SHEPPARD:

Q. Mr. Williamson, you spoke of selling pondosa lumber but under the trade name of pondosa; what do you mean by pondosa; is that California white pine sold under the name of pondosa?

A. I understand so; yes, sir.

Q. Then I understood you to say that you did not handle California white pine?

A. Not within the bounds of the State of California.

Mr. BURR. May I clarify that by a question?

Examiner SHEPPARD. Yes.

By Mr. BURR:

Q. Is there any difference in the species between that is sold on the market as California white pine and what is sold on the market as pondosa?

A. I understand there is none.

Q. When you say pondosa, you mean the product made from the ponderosa species but sold under the trade name pondosa?

296 A. Yes, sir.

Q. When you refer to California white pine, you mean products made from ponderosa, which is made and sold under the trade name of California white pine; is that true?

A. That is right, as I understand it.

Q. Now, then, when you say that you do not sell California white pine and you do not make California white pine, you do not mean that you do not make ponderosa, but you do not use the term California white pine, but you do use the term pondosa in lieu thereof?

A. Precisely.

By Examiner SHEPPARD:

Q. You do, then, sell California white pine under the name of pondosa?

A. Yes, sir.

Mr. BURR. He sells the product of ponderosa—that is, from pinus ponderosa trees; however, that does not grow in California.

Q. It grows in Idaho?

A. It grows in Idaho, in Oregon, in Montana, and in Washington. If I am asked if I sell California white pine, I may think of it in geographical terms and not botanically.

By Mr. MATTHEW:

Q. You do not handle any lumber that originates in California?

297 A. No, sir.

Q. Your pondosa pine originates in the inland empire; that is, Idaho, eastern Washington, and eastern Oregon?

A. Yes.

Examiner SHEPPARD. I understand that.

Redirect examination by Mr. BURR:

Q. When you say that you do not handle California white pine, do you mean that you do not handle the same product under a different name or do you mean you handle the same product but you do not call it California white pine?

A. We regard it as handling the same product under a different name and try to so explain to our customers.

Q. Are you always successful in explaining that situation to your customers?

A. Not always; no.

Q. When you have a customer who wants white pine, and you ask him whether what he wants is Idaho white pine, or what he does mean by white pine, that is for the reason that he may mean California white pine, is that true?

A. Yes, sir.

Q. Then there is a confusion between the two terms that you have to clear up by getting that information, is that true, Mr. Williamson?

A. Every time.

298 Q. Some customers answer, "We want California white pine"; some answer, "We want Idaho white pine"; is that true?

A. Yes, sir; most generally they will say, "We want California white pine", or "we want real white pine."

Q. What do they mean by "real white pine"?

A. Idaho white pine.

Q. You find out by further questions that it is Idaho white pine or strobus is what they want?

A. That is true.

Q. That is one class; others want California white pine?

A. Yes, sir.

Examiner SHEPPARD. One more question, Mr. Williamson——

Mr. BURR. Will you excuse me just a moment, Mr. Examiner, before you put another question?

Examiner SHEPPARD. Yes.

Q. Is it true or not that you make more of an effort to sell northern white pine, or is it Idaho white pine; which do you push?

A. Neither. We are equally responsible for both.

Q. Do you have any competition here with Canadian white pine?

A. Oh, yes.

Q. I believe one of opposing counsel asked you whether the word "white pine" has lost its significance; there are those who refer to "real white pine", are there?

299 Mr. ANDREWS. I suggest, if your honor please, that counsel do not lead him so much.

Mr. BURR. I think you are probably correct in that; that is rather leading.

Mr. MATTHEW. Then do not lead him.

By Mr. BURR:

Q. I believe you testified that you have customers who respond to a query which you named, as to what they meant by saying that they wanted the real white pine; has that question any significance to you?

A. It certainly has.

Q. What did you find it to mean on further pushing of your sales efforts? What did you find it means when he asks for real white pine?

A. That durability and all of the qualifications that white pine possesses.

Q. And has a reputation for?

A. No question about that at all.

Q. What species does "real white pine" signify?

A. What is that?

Q. What species does "real white pine" signify?

A. Pinus strobus, Pinus monticola, and Pinus lambertina.

Q. How about Pinus ponderosa? Does it signify Pinus ponderosa?

A. Never.

Q. When they come back and say "real white pine", they
300 do not mean Pinus ponderosa?

A. No, sir; when they say that, they know what they want.

Q. And do you give it to them?

A. Give them ponderosa?

Q. Do you give them what they want?

A. Absolutely.

Q. And if they say California white pine, what do you give them then?

A. We try to sell them Pinus ponderosa—pondosa pine.

Q. With the experience you outlined in your direct testimony in the beginning?

A. Precisely.

Re-cross-examination by Mr. MATTHEW:

Q. Mr. Williamson, when a customer insists upon what has been called real white pine, does he sometimes mean Pinus strobus only?

A. I presume there are cases where he does; yes.

Q. That is, he uses the term real white pine, referring to northern white pine, to the exclusion of Idaho white pine and everything else?

A. When you say exclusion of Idaho white pine and everything else, I would say no. Everything else does not fit in with real white pine.

Q. Did you not just state that when customers ask for real
301 white pine, they mean Pinus strobus?

A. Oh, yes; but in a general way; he wants five-needle pine.

Q. So he is interested in the needles and not in the lumber?

A. Yes.

Q. So he sometimes says to you, "I want five needle pine"?

A. Oh, yes.

Q. He never says, "I want Pinus strobus and I don't want Idaho pine"?

A. You are talking about specific cases?

Q. I am talking about any specific case, and occasional cases.

A. We have all kinds of cases like these, all meaning the same thing.

Real white pine—they do not all call for five needles and they do not all call for Pinus strobus, but there are all kinds of cases.

Q. But in some instances, at least, some customers do ask for real white pine, meaning Pinus strobus?

A. And sometimes they mean the Idaho white pine.

Q. Sometimes they mean Pinus strobus?

A. Sometimes they mean Pinus strobus.

Q. Do you know whether your pondosa pine is ever resold by your customers as white pine?

A. I have no doubt that it is.

Q. How can you prevent that?

A. I suppose that is why we have jails in the country, I do
302 not know.

Q. In other words, you are not in a position to prevent your customers from selling pondosa pine for real white pine?

A. No, sir.

Mr. MATTHEW. That is all.

Redirect examination by Mr. BURR:

Q. If one of your customers asks for California white pine, do you ever tell him that you have lumber to sell that is made from the same species?

A. You mean ponderosa?

Q. Yes.

A. Certainly.

Q. And when you sell him that, do you ever tell him that he is buying the same thing as California white pine?

A. Yes, sir; every time we get a chance.

Q. Then when he sells it, he may sell it as California white pine or not, in competition with yards that sell California white pine, may he?

A. Yes.

Mr. BURR. That is all.

By Examiner SHEPPARD:

Q. Mr. Williamson, as you do not handle California white pine and the customer asks for California white pine, you could not deliver it, so you would try to sell him something else?

303 A. I would try to sell him the same lumber from the same botanical tree, but I am given positive instructions from my company to describe it and invoice it as pondosa pine.

Mr. SHEPPARD. That is all.

(Witness excused.)

C. H. CULLEN was thereupon called as a witness and, having been first duly sworn, testified as follows:

Direct examination by Mr. BURR:

Q. Mr. Cullen, you are an architect, are you, sir?

A. Yes, sir.

Q. How long have you been in that business or profession?

A. Twenty-eight years—more than that.

Q. You are with what concern?

A. Charles A. Platt.

Q. He is in business for himself, is he?

A. Yes.

Q. May I ask whether or not Mr. Platt's concern is not one of the larger ones among the architects here in the city?

A. Yes, one of the largest; you might say one of the most important offices.

Q. Just to get oriented, can you give me any of the important jobs that he has been architect of here?

A. In New York City do you mean?

304 Q. Yes, or in the vicinity, but preferably New York.

A. Well, for instance, the Astor House Building; the Astor Court Apartments; he is just finishing two large apartment houses for Mr. Astor on the East Side; architect for the Freer Gallery in Washington; the Corcoran Gallery in Washington; a number of buildings at Philips-Andover; the Hanna buildings in Cleveland, besides a number of important country residences.

Q. All right, that will be sufficient I am sure.

Do you have occasion to specify lumber for outside purposes in your profession?

A. Very little for outside work; it is confined mostly to window and door frames and sash and blinds.

Q. By the by, do you have anything to do with preparing specifications for Mr. Platt?

A. I did, up to within about ten years.

Q. You do not have much to do with it now, I take it?

A. No.

Q. Do you happen to know how your specifications read with regard to the material for sash and frame construction?

A. We had a specification man who was thoroughly competent and an expert mechanic, originally a carpenter by trade, who became an architect's superintendent, and he always specified in good work, I mean the highest quality of work, as a matter of fact that is about the only kind we do, he specified old white pine for window
305 frames, door frames, doors, sash, and blinds.

Q. Did he ever specify that by botanical names?

A. No.

Q. Let me ask you, do architects understand wood technology sufficiently themselves to verify the species of the various woods?

A. No, sir.

I am not talking for all architects, but I am simply talking for all that I know, and I know I personally would not know the difference between the different varieties of white pine.

Q. And if you were specifying a certain wood, there was no way of checking?

A. I would not know it even then.

Q. They leave that to the integrity of the contractor, do they, Mr. Cullen?

A. Of the contractors; yes.

Q. Did you ever have an experience as regards specifying white pine and finding that other material had been furnished?

A. No.

Q. You never have had that?

A. There might have been an odd case but I would not know about it.

Q. It did not come within your recollection?

A. I do not know it of my own knowledge.

306 Q. You have come here under subpena addressed to Mr. Platt, did you not?

A. Yes.

Q. Do architects have rules or a code of any sort whereby they specify what the duties and relations of architects and the contractors on one side, and to the owner or client on the other?

A. Oh, yes.

Q. Do those rules, if you know, specify whether or not the architect is charged with the responsibility of identifying and detecting the substitutions in wood?

A. I would say that basically he was charged with that responsibility.

Q. He was?

A. Yes.

Q. It is expecting too much, is it not, to have the architect a technologist in wood?

A. Absolutely.

Q. Just how does it work out? But I think you have described that and I will waive that.

A. I would say this: The way it operates is this:

To begin with, we employ only the best and most reputable contractors. Our experience with those contractors is that we can depend upon them. In case any change has to be made, and
307 they cannot comply entirely with the specification, they come and explain to us and ask us if we will approve the specification; furthermore, a general contractor will depend to a great extent upon his inspectors to examine all this stuff, where it is made in the mill, watch it in the course of fabrication and inspect it.

So they have their inspection as well as our knowledge of the particular contractor, who is doing the work for us.

Q. Are those inspectors technologists in wood sufficiently so that they would be able to tell the difference California white pine, for example, and other white pine?

A. I should doubt it.

Q. Then again it would go back to the contractor's integrity?

A. Yes.

Q. And picking out and selecting out reputable contractors who will actually make good on the specification?

A. The contractor himself.

Q. Has your firm had occasion to reject pine lumber that you know of?

A. That I would not know.

Mr. BURR. That is all.

Examiner SHEPPARD. Any cross-examination?

Cross-examination by Mr. MATTHEW:

Q. Some reference was made to specifications that contem-
308 plated the use of old white-pine lumber, was that the term?

A. Old white pine.

Q. By "old white pine", just what is meant?

A. I do not think I can answer you that. My only theory is that it referred to the old or first-growth white pine. That is the only thing I can say and the only explanation that I know.

Q. That would mean the original white pine of the eastern country?

A. Rather than second growth.

Q. You mean old trees?

A. That is as far as my knowledge of things goes?

Q. Would it necessarily mean that it was the white-pine lumber of the Northern and Eastern States?

A. Our original source of supply theoretically comes from the East and we theoretically expect it when we call for it and think that we are getting eastern pine.

Q. And you would expect pine of that particular species?

A. Yes.

Q. Those specifications, then, would not be satisfied by supplying lumber which is known as Idaho white pine?

A. That I would not know.

Mr. MATTHEW. That is all.

309 Redirect examination by Mr. BURR:

Q. You would not know whether California white pine would be accepted?

A. That I would not know.

(Witness excused.)

A. W. BROWN was thereupon called as a witness, and having been first duly sworn, testified as follows:

Direct examination by Mr. BURR:

Q. Mr. Brown, your occupation is that of a lumber salesman, is it?

A. Yes, sir.

Q. You work for what company?

A. The Weyerhaeuser Sales Company.

Q. How long has that been true, sir?

A. Since they started.

Q. Since they started where?

A. About ten years ago.

Q. Where have they been located during that ten years' period?

A. In Illinois, northern New York, and New Jersey.

Q. Have you ever had any experience in the forest?

A. Yes.

Q. Whereabouts, how much, and with what lumber?

310 A. With the Potlash Lumber Company, Potlash, Idaho; I was in the woods for them two years, graded the lumber at the sawmill for four or five years.

Q. That was what species of lumber or timber, I should say?

A. Mixed woods of the inland empire.

Q. What kind of pine did that include?

A. Idaho white pine and pondosa pine.

By Examiner SHEPPARD:

Q. I wonder if you make any distinction——

A. Between Idaho white pine and pondosa pine? Very decidedly.

Q. I beg pardon. I thought you meant strobus.

By Mr. BURR:

Q. There is not any strobus in there, is there?

A. No, sir.

Q. You had not been in California?

A. No, sir.

Q. What are the duties, if you please, sir, of the office that you call a grader; what do you do?

A. It is inspecting lumber; I inspected lumber in the yard, rough lumber—I inspected lumber behind the planer after it was dressed, and in the shed.

Q. Do they grade the logs before they take the strip off?

A. Not necessarily.

Q. In other words, it is the grading of lumber rather than of the timber or logs?

311 A. Yes.

Q. How many thousand feet a day would be a fair output for a grader—for his particular duty?

A. That would depend on how ambitious he was.

Q. What I mean is, do you inspect for grading purposes a large volume during the course of a month?

A. Yes.

Q. I wish you would state what the first operation in the mill is after the log is brought in and they are preparing to turn the log into lumber.

Mr. MATTHEW. Has that not been fully described?

Mr. BURR. Did you hear the description of Mr. Williamson?

The WITNESS. Yes.

By Mr. BURR:

Q. I will shorten the matter by asking you whether that was a correct description, or if not in what respect you would modify it if I would ask you the questions in detail; did you notice any flaw or anything that might be clarified?

A. No; that is just about the same thing that I would know about it.

Q. Again to shorten the questioning, did you hear Mr. Williamson's testimony with regard to his experience in meeting competition here in the city of New York?

A. Yes, sir.

312 Q. Did you hear his testimony with regard to the reasons why sales are lost by the Weyerhaeuser sales forces?

A. Yes, sir.

Q. Did you hear anything in that testimony that you think should be modified if the same questions were asked of you, and, if so, I would like to have the modifications.

Mr. MATTHEW. If the examiner please, I do not think that there should be any such general corroboration of the testimony of another witness. I think this witness ought to be asked some specific questions.

Mr. BURR. I am perfectly agreeable to ask the same questions that were asked of the other witness, but I thought that you would be agreeable to have a corroboration of the questions in this fashion.

Mr. MATTHEW. I never intended any such thing.

Examiner SHEPPARD. Go on and examine this witness just as if he had not heard the testimony.

By Mr. BURR:

Q. Mr. Brown, referring to the slab operation, does that affect the Pinus ponderosa log and the Idaho white pine log in the same fashion, or if it differs please state how it differs.

A. The operation is exactly the same, only the size of the log has a great deal to do with it.

Q. Please describe how the operation differs and what the result is in each case.

313 Mr. MATTHEW. I am willing to stipulate, Mr. Burr, that the testimony of this witness regarding the slab operation and the effect on the logs of the two species of pine is the same as the testimony given by the other witness.

Examiner SHEPPARD. I will allow it.

Mr. BURR. I would rather have it in the other fashion because counsel can only stipulate as to his clients, and we have other respondents who are not present at this hearing.

If the answers were acceptable to the other respondents, then, of course, if they made the same stipulation, they would have to stand by it; otherwise, I am afraid I will have to go through the same questions with this witness.

Examiner SHEPPARD. Very well, go ahead and examine him as though the other man had not testified.

Mr. BURR. Will you read the last answer.

(The answer was thereupon repeated by the reporter as above recorded.)

Q. What is the difference, in average size, if any, between the Pinus ponderosa and Pinus monticola, as you have experienced it?

A. The pondosa logs run quite a lot larger than the white-pine logs; the white-pine tree is a smaller tree.

Q. Then what effect does the slabbing operation have upon the white-pine log which it does not have on the Pinus ponderosa

314 log as regards sap and heart of the log?

A. If you are squaring for your log, naturally in the small log you are going to reduce your sap area practically entirely by slabbing, whereas in the case of the pondosa log, on account of the size, there will be quite a lot of sap left after the first slab is taken off.

Q. How long were you a grader?

A. I graded for four years.

Q. How long have you been in the lumber business altogether?

A. I started to work in 1909.

Q. And you have been in the lumber business continually since?

A. Yes, sir.

Q. In your sales efforts you have competition from what types of lumber, particularly of the pine genus or variety?

A. We have California pine, sugar pine——

Q. Do you lose sales——

Mr. ANDREWS. I think you interrupted him; I do not think he finished his answer.

Q. Have you finished your answer?

A. Where did I leave off?

Mr. BURR. Read the answer as far as it has gone.

(The answer was thereupon repeated by the reporter as above recorded.)

The WITNESS. We have California pine and sugar pine,
315 and any other varieties we have, and there is competition in those same varieties.

Q. You have other ponderosa manufacturers competing with you, do you?

A. Yes.

Q. And you have manufacturers competing with you in the manufacture of strobus?

A. Yes.

Q. What other manufacturers are manufacturing strobus lumber; do you recall any?

A. There are different ones; I cannot name them.

Q. Does Canadian strobus come in competition with you?

A. Some.

Q. When you call upon the trade, do you have occasion to find out the reasons why you lose sales to manufacturers of California white pine?

A. We try to find out.

Q. Do you succeed in finding out what the reasons are for the losses of sales?

A. Yes; the reasons are, in some cases, price.

Other cases we have some of the dealers who feel that the California white pine is better than our pondosa pine; we also have cases where some other dealers demand it because it is called white pine and they feel that they can pass it on to their customers with clear conscience as a white pine.

316 By Mr. MATTHEW:

Q. That is, they tell you that?

A. Yes.

By Mr. BURR:

Q. Do you offer them the pondosa under those circumstances or do you push the Idaho white pine?

A. If it is a price proposition we are entirely out on Idaho pine, and we go after it on pondosa.

If we are not sure, we try to find out what species he wants.

Q. If you fail to sell pondosa under those circumstances, and it is not a price consideration, what is the consideration?

A. There are different reasons; some absolutely demand it over pondosa. They think, as I said before, that it is better and others on account of its being called white pine.

Mr. BURR. That is all.

Cross-examination by Mr. MATTHEW:

Q. Mr. Brown, were you employed in this area at the time when the name of your inland empire pine was changed from western white to pondosa?

A. No; I was in northern New York, northwestern New York, at the time.

Q. During what years were you in the inland empire section
317 in the lumber business?

A. From 1908 to 1915.

Q. Was that prior to the opening up of the Weyerhaeuser lumber operation in what is called the clear water district?

A. Yes.

Q. The bulk of your Idaho white pine comes from the clear water district in Idaho, does it not?

A. Not necessarily.

Q. What other sources have you for Idaho white pine?

A. The Potlatch Lumber Company, the Humbird Lumber Company, and the Edward Rutledge Lumber Company.

Q. Are those Weyerhaeuser companies?

A. So I understand.

Q. Then the Weyerhaeuser companies have been engaged in the production and marketing of Idaho white pine for a considerable number of years, more than 20 years, say?

A. Yes.

Q. Has this particular lumber, that is, the lumber yielded by Pinus monticola been sold during all that period as Idaho white pine?

A. Yes.

Q. You do not know just how far back that practice has existed?

A. I do not.

Q. You stated that you had some competition from Cali-
318 fornia sugar pine?

A. Yes.

Q. In what respect?

A. Very little. Some of it is on account of dealers or industrials who demand a heavier lumber, a wider lumber than we can get in Idaho white pine.

Q. You believe the California sugar pine is heavier lumber than Idaho white pine?

A. I mean they can produce it in sizes that we cannot produce in Idaho.

Q. That does not mean that the specific gravity is greater?

A. No.

Q. The principal reason for the competition that you feel from California sugar pine is the larger sizes that can be obtained from California sugar pine?

A. Yes.

Q. Would that competition be any more servere, in your opinion, if California sugar pine were marketed under the term California white pine?

A. No.

Q. Suppose, for any reason, the lumber which is now marketed as California white pine, and which comes from the ponderosa tree, were to be hereafter sold under another name, and California sugar pine should adopt the name of California white pine,
319 would that make any difference in your competition?

A. I do not know.

Q. You have no opinion to express as to that?

A. No.

Q. Would it cause any confusion in the trade if California sugar pine were marketed under the name of California white pine?

A. Yes.

Mr. MATTHEW. That is all.

Further cross-examination by Mr. ANDREWS:

Q. You market your Idaho pine, that is, this Pinus monticola as Idaho white pine, do you not?

A. Yes, sir.

Q. I noticed, when you were asked by counsel for the Commission what product you sold, you said Idaho white pine and pondosa pine; I observed that you did not say white pine and pondosa pine, but you qualified it by calling it Idaho white pine?

A. My particular district here uses nothing more than Idaho white pine in the products that I sell.

Q. You have known of ponderosa pine being sold for many years as California white pine or some other qualifying white pine?

A. Yes.

Q. When you sold your own ponderosa pine as western
320 for many years——

A. Western white pine, western pine, and western soft pine.

Q. Did you feel that you were assisting in deceiving anyone by doing so?

A. I do not understand that.

Q. I say, in selling your ponderosa white pine as western white pine, did you feel that you were misleading anyone by what you were selling?

A. None whatever.

Q. Is it not true that when you sold it as western white pine the purchaser knew what he was buying?

A. At that time I was selling further in the West and they did know what they were buying.

Q. You said that you were selling in western New York.

A. That was—it was called pondosa when I was in northern New York.

Q. You think that the expression, "California white pine" or "western white pine" is better understood in the Middle West than on the Atlantic seaboard?

A. They have used it longer and they know what they are getting.

Q. What is your opinion with respect to the Atlantic seaboard on that subject; if you come to a dealer and sell him California white pine, the average dealer, does he know he is getting ponderosa pine?

321 A. He knows it now; that is, on the seaboard, on the Atlantic seaboard.

Q. Is there any section of the country in which that is not true?

A. I do not know.

Mr. BURR. If the examiner please, this man has not been qualified to testify as to that, and I move that it be stricken out.

He is not qualified to answer for the entire United States.

Mr. ANDREWS. The witness has said that there is no section in the United States—that was his answer in the last question—in which the dealer does not well understand what is sold.

Mr. BURR. That is the question I move to strike out. He has not been qualified to answer for every case.

Examiner SHEPPARD. That is just the question; is this witness competent to testify what people do really believe about it?

I would a great deal rather have men come before me and testify themselves than have one man say that his opinion is so and so—I think his opinion is subject to probative value only.

Mr. BURR. If the examiner please, I move to strike the
322 answer that he just gave on the ground that he has not shown any knowledge of any other section except those in which he has actually been selling the pine.

It seems to me it is difficult enough to know what the trade thinks. That has been admitted, and properly so, when testified to by salesman who are familiar with the territory, but this witness has not qualified to testify for the entire country.

Examiner SHEPPARD. I think so. Strike from the testimony all of this witness's testimony as to any section of the country except that in which he does his work.

By Mr. ANDREWS:

Q. In what sections have you worked?

A. I work Manhattan Island now.

Q. Have you worked anywhere else?

A. Northern New York.

Q. Your answers are true as to those sections in which you have worked?

A. Yes.

By Examiner SHEPPARD:

Q. I take that as being based on your intimate association with your customers?

A. Yes, sir.

323 Redirect examination by Mr. BURR:

Q. I think you testified a little differently as regards northern New York and Illinois, did you not?

Did you not draw a distinction between New York and the trade in the Middle West, and that as far east as northern New York, or am I in error?

A. Yes; there seemed to be some difference in their opinion there.

Q. The term "western white pine" was continued by Weyerhaeuser Sales Company up until what time, according to your best recollection?

A. I think it was about three years ago—three or four years ago, something like that; I do not know positively when that time was.

Examiner SHEPPARD. That is already in the record and if it is not, the Commission has a record of it and there is no use questioning witnesses on that any more.

Q. Did the Weyerhaeuser interests and sales company discontinue the words "western white pine" and substitute "western soft pine" as a trade name for a while; do you recall anything of that kind?

A. Yes; a number of years ago.

Q. Was that true up until the time when the word "pondosa pine" was coined?

324 A. I do not know what their name was up to the time pondosa pine was designated.

Q. But you do recall a time when they were referring to it as soft pine rather than white pine?

A. Yes.

Mr. BURR. That is all.

Re-cross examination by Mr. MATTHEW:

Q. Was the term "western white pine" discontinued because the Weyerhaeusers considered if they could have the name Idaho white pine exclusively for the Pinus monticola lumber, they would have a marked advantage as against the producers of lumber from ponderosa pine in the inland empire?

A. I do not know.

Q. You never heard any discussion in the Weyerhaeuser Sales organization as to the occasion for dropping the term "western white"?

A. No.

(Mr. MATTHEW. That is all.

(Witness excused.)

325 JAMES W. O'CONNOR was thereupon called as a witness and, having been first duly sworn, testified as follows:

Direct examination by Mr. BURR:

Q. Mr. O'Connor, you are an architect, are you, sir?

A. Yes, sir.

Q. How long have you been an architect?

A. Twenty years.

Q. What concern are you affiliated with?

A. Myself.

Q. How long have you been in the independent practice of your profession?

A. Twenty years.

Q. Where are you located?

A. 162 East 37th.

Q. You have been on Manhattan Island during the entire twenty years?

A. Yes.

Q. What type of work do you specialize in?

A. Fine residential work.

Q. Could you name any particular work that you have handled?

A. Yes; the S. C. Mitchell Electric Bond & Share Co.; W. R. Grace & Co.; George Whitney, of Pierpont Morgan & Co.

Q. That is sufficient. Those are residences, are they?

326 A. Yes.

Q. Do you have occasion to specify from time to time various types of lumber for exterior purposes?

A. Interior and exterior; yes, sir.

Q. Do you have any preferences for exterior use in your specification, and, if so, I would like to know what they are, sir?

A. I use white pine.

Q. You use white pine and some cypress, or does not that come into that class of work?

A. No.

Q. When you specify white pine, do you qualify that in any fashion?

A. There are so many trade names; I do not qualify it; I say white pine, sample to be submitted, and when the sample comes in——

Q. When the samples comes in, what do you do with it?

A. When the sample comes in, I look it over to see that it has not any sap, has a straight grain, has no flat grain. I use it a lot for interior panels, and so on.

Q. Do you know what kind of white pines are acceptable to your firm?

A. I know that California is not.

Q. How do you find out if it is California or not?

A. When they bring it in, I ask them. It is always so full

327 of sap—this is my experience—and full of grain, that it is not acceptable.

Q. Do you think you can tell it when it is brought to you?

A. No; I am not an expert on wood; no.

Q. You inquire whether it is California pine—California white pine?

A. Yes.

Q. And if it is California white pine, you reject it, is that right?

A. That is right.

Q. Have you ever had this experience, that California white pine would be delivered on the ground and you would have to reject it on the ground, or do you forestall that?

A. I have rejected some, but I do not know whether it comes from California or not.

Q. I mean, do you have to reject it after it was delivered on the ground?

By Mr. MATTHEW:

Q. California white pine?

A. I am not an expert enough to know.

By Mr. BURR:

Q. You have rejected pine after it was delivered on the job?

A. Yes.

Q. On what ground have you rejected it?

A. Too much sap and too much grain.

328 Q. It was delivered under a specification for white pine, was it?

A. Yes.

Mr. MATTHEW. My objection may be reserved as to this?

Examiner SHEPPARD. Yes.

Q. As a matter of fact, you did not know whether it was ponderosa, California white pine, or what it was?

A. No; I did not know what the name was.

Mr. MATTHEW. Your Honor, I move to strike the testimony of the witness.

Mr. BURR. If the examiner please, this whole soft-pine industry is entirely confused, and I think that anything which shows that the actual consumer and his representatives are confused on this situation is proper to remain in the record.

Examiner SHEPPARD. That is something, Mr. Burr, that the Commission has to determine by the facts in the case.

Mr. BURR. I think so.

Examiner SHEPPARD. It is not a question to argue before me.

It is a matter that witnesses have to testify to, and the Commission draw its conclusion.

Mr. BURR. But Your Honor has to report.

329 Mr. MATTHEW. Your Honor understands that there has been no identification of this rejected lumber as California white pine.

Mr. ANDREWS. For all Your Honor knows, it may have been Pinus strobus.

Mr. BURR. That all goes to the weight.

Mr. MATTHEW. It has no weight.

Examiner SHEPPARD. There is no use discussing that at this time.

By Mr. BURR:

Q. Do architects generally have their rules as to what their responsibilities are in these matters?

A. Yes.

Q. Is it one of the professional requirements of architects in the city of New York that they themselves be qualified to detect blunders on the part of those who are contractors and who deliver lumber?

A. I do not think that there any architects who are expert enough enough on lumber to be able to tell the different names of the lumber.

Q. You have never specified the species in the specifications that you make for residences?

A. No; all I know is that when they come in with Idaho, it is more satisfactory to me than the others.

Q. You do know that?

A. Yes.

330 Q. You have used white pine that was not Idaho, have you?

A. Yes; I have used Norway.

Q. But you have not used California white pine to your own knowledge?

A. No.

Mr. BURR. That is all.

Cross-examination by Mr. MATTHEW:

Q. Do I understand you to say that you have used Norway pine?

A. Yes.

Q. And accepted that as satisfactory compliance with specifications calling for white pine?

A. Yes.

Q. You know that Norway pine is not a soft pine?

A. I know.

Q. I take it from that that you are not interested in the botany or the species of the lumber?

A. No; I am not. I am interested in the effect.

Q. You are interested in——

A. In the quality—the lasting quality.

Q. The utility of the wood?

A. Right.

Q. Your particular desire is to avoid getting sapwood for these purposes, and in addition to that, you are interested in

331 the grain?

A. Right.

Q. If your requirements in those respects are met, you do not care what particular species of wood is presented?

A. No.

Q. Have you ever had any contact with California sugar pine?

A. No.

Q. You do not know whether or not you would accept sugar pine upon specifications calling for white pine?

A. I could not say that. I would not say that I would; I would have to see it.

Q. It all depends on inspection and such information as you may obtain about it?

A. Yes.

Q. If you were supplied with Idaho white pine and you found it contained too much sap, or the grain was not correct, you would reject it, I take it?

A. I would.

Mr. MATTHEW. That is all.

Redirect examination by Mr. BURR:

Q. Did I understand you to say that you had used California pine?

A. Yes.

Q. On the outside of the building?

332 A. No; for interior work.

Q. Did you refer to a substituted wood—did I catch you right—that Norway pine had been furnished as a substitution?

A. Yes.

Q. What do you mean by "substitution"?

A. Because the cabinetmaker brought in this Norway. I rejected the sample he had of the white pine, and he brought in a piece of Norway and he said he could furnish the Norway and it suited me very well, so I let him use it.

Mr. BURR. I think that is all.

333 J. M. BRADY was thereupon called as a witness, and having been first duly sworn, testified as follows:

Direct examination by Mr. BURR:

Q. You are in the lumber business, are you?

A. Yes, sir.

Q. And you are an employee of what concern?

A. The Weyerhaeuser Sales Company.

Q. You have a sales territory, have you?

A. Yes, sir.

Q. What part do you cover?

A. Kings County and part of Queens County.

Q. How long have you been in the lumber business?

A. Six years.

Q. Prior to that, did you have any lumber experience as a logging man or anything of that kind?

A. No, sir.

Q. You have competition, as has already been shown, on the part of California white pine—and other manufacturers besides yourself, with Idaho pine and pondosa pine?

A. Yes, sir.

Q. Do you have occasion to find out what the reason is for losing sales, Mr. Brady?

A. Yes, in some instances.

Q. What do you find those reasons to be?

334 A. They differ. Some of it is due to price, others in regard particularly to this California white pine, some claim they

prefer California white pine—some from a price standpoint; others say it is better and softer, and its name, white pine. Their specifications call for white pine and they buy California white pine and sell it as white pine on these specifications.

Q. Do you recall any particular instance that you could give, and that you would be willing to state, specifiying any particular case where you lost sales of that kind?

A. Yes; I have got one case in mind. A few years ago this man asked me for prices on Idaho white pine. I understood him to say that the contract he was bidding for called for genuine white pine. He got the contract, and when I went back to him to try to get the order out of him, he told me that he had bought California white pine.

Q. Do you mind stating who that was?

A. The Brooklyn Lumber Company.

Q. Do you have these reasons for failing to make sales of ponderosa pine comes to your attention quite often, or is it an exceptional situation, or how is it?

A. Usually if I cannot get the business, I want to know why.

Q. And you quite often find out why, don't you?

A. Quite often.

Q. And the reasons are those that you stated before?

335 A. Yes.

Mr. BURR. I think that is all.

Cross-examination by Mr. MATTHEW:

Q. Mr. Brady, this case of the Brooklyn Company arose some six years ago?

A. No,

Examiner SHEPPARD. Three years ago, he said.

The WITNESS. I think as near as I can remember it is about three years ago.

By Mr. MATTHEW:

Q. I misunderstood you. Can you give us the date a little more definitely?

A. No, sir.

Q. Under what name were you then selling your ponderosa lumber?

A. If it was three years ago, we were selling it as pondosa, and I believe it was not prior to selling it as pondosa, I am pretty certain of that.

Q. You are sure at that time, that you were selling this lumber as pondosa pine lumber?

A. Pretty sure.

Q. I take it then that you are not absolutely definite on the point?

A. No.

336 Q. Do you know the date definitely?

A. I do not know the date definitely; no.

Q. Can you give us the name of the representative of the Brooklyn Lumber Company who told you that he had purchased California white pine in preference to your kind?

A. Mr. Beres.

Q. How do you spell it?

A. B-e-r-e-s.

Q. I suppose he is the manager of the lumber company?

A. He runs that yard; I do not know just what his title is.

Q. Do you know his initials?

A. A. M.

Q. He is still a customer of your company?

A. We call on him.

Q. Have you sold any Idaho white pine to the Brooklyn Lumber Company?

A. No, sir.

Q. Or pondosa pine?

A. I do not recall. I have not sold them any in a couple of years. I am certain I did sell one car of pondosa pine; whether that was as pondosa or western soft pine, I am not certain.

Q. That sale was made prior to this particular incident to which you have referred?

A. Yes, sir.

337 Q. Have you sold him any of the northern white pine—that is, the strobus pine?

A. No, sir.

Q. Do you sell much of that to anybody?

A. Not a great deal; no, sir.

Q. Your principal sales are represented by your Idaho white pine?

A. To a large extent. I do not know whether they are greater than pondosa.

Q. You think they are perhaps equally divided between Idaho white pine and pondosa white pine?

A. I think Idaho would be a little more.

Q. Is the price of Idaho white pine higher than pondosa white pine?

A. Yes, sir.

Q. Do you know whether you dropped the price on your pondosa pine when you changed the name from western white to pondosa?

A. I was not with the sales company when they called it western soft. I do not remember that name with the Weyerhaeuser Company.

Q. How long have you been with them?

A. Six years.

Q. When you first came with the company, what name was used by the company for the wood which you now sell as pondosa?

338 A. Western soft pine.

Q. Can you tell when you changed from western soft to pondosa?

A. My recollection is three or four years.

Q. Was there a change in the price when you changed from western soft to pondosa?

A. I do not remember.

Q. Do you meet with any competition from California sugar pine?

A. Very little.

Q. Do you meet with any competition from Arkansas soft pine?

A. I have heard of only one or two instances of competition with the Arkansas and that was some time ago.

Q. Then your principal competition is simply from California white pine and from other dealers in northern white and pondosa pine?

A. And Idaho white pine.

Q. Do you recall whether you had any objection to the use of western soft pine for your ponderosa pine products?

A. I beg your pardon?

Q. Do you recall whether you had any objection, from a market point of view, to the term western soft pine during the period while you used it?

A. Did I have any objection?

389 Q. Yes.

A. No, sir.

Q. That term was entirely satisfactory to you?

A. It was the term in general use.

Q. That was entirely satisfactory to you, as a salesman?

A. Yes.

Q. Would you prefer it to the term pondosa pine?

A. No, sir.

Q. You would prefer pondosa pine?

A. Yes.

Q. Is that because you have got it quite well established now?

A. No; it is because it more satisfactorily identifies the lumber.

Mr. MATTHEW. That is all, thank you.

Redirect examination by Mr. BURR:

Q. In the choice of a trade term, as a salesman, you want to have—and your desire is to have an identification of the lumber?

A. Yes, sir.

Q. Have you any other desire?

A. No, sir.

Q. Do you regard the proper identification of lumber as an advantage to sales?

340 A. Yes, sir.

Q. Can you explain that a little more fully?

A. Well, a lot of these retail dealers that we call on ask the price for a certain grade of white pine, and I always feel that they are not talking of real white pine. I have learned that in the beginning, when they asked for a price of white pine, and I have given them a price on Idaho white pine, they would say that the price was too

high and that they could buy it from so and so at a lower price, and the price they gave was the price at which pondosa pine was selling at.

I would say, "It is pondosa pine you want." And they would say, "Yes; that is what I am talking about."

Q. Pondosa pine?

A. Yes.

Q. Pondosa is actually identified in the minds of some, even under the trade name of pondosa, as white pine?

A. Pondosa and California white pine.

Q. Both?

A. Yes.

Q. Has it come to be known in the trade that California white pine and pondosa pine are from the same tree?

A. I would say it has.

Q. That has got to be known?

A. Yes.

341 Q. In competition with California white pine, you tell them that, do you?

A. Yes.

Recross-examination by Mr. ANDREWS:

Q. Mr. Brady, I take it from your last answer, when they talked of white pine, they referred to pondosa more particularly than to Idaho white pine?

A. Yes.

Q. In other words, white pine has become more prominently identified with pondosa than sugar white pine?

A. Among some of them.

Q. I am speaking generally.

A. No, not in general. There is a certain percentage of the dealers—a good many of them, that told of white pine—they say—"white pine" and mean either pondosa or California white pine. They do not mean Idaho or the northern white pine.

Q. Is my recollection correct of your testimony, that when they said "white pine", that you generally found, in a majority of instances, that they were referring to ponderosa pine?

A. Yes, sir.

342 Redirect examination by Mr. BURR:

Q. And by ponderosa pine, you mean under either of these trade names, pondosa pine or California white pine?

A. Yes.

Q. When somebody asks for genuine white pine, what does he mean?

A. He means either Idaho white pine or northern white pine.

Q. So you have white pine, meaning one thing very often, and you have genuine white pine meaning something very different?

A. Yes.

Mr. MATTHEW. Isn't that rather leading?

Mr. BURR. Yes, it is. Strike the last question and answer.

Mr. ANDREWS. I prefer to leave it in.

Mr. BURR. Very well, leave it in.

(Whereupon, at 4:00 p. m. an adjournment was taken to October 9th, 1929, at 10:30 a.m.)

343 Dockets Nos. 1620 to 1669, inc.

NEW YORK, *October 9th, 1929.*

Met pursuant to adjournment, 10:00 a.m.

Before William W. Sheppard, examiner.

Appearances:

Eugene W. Burr and J. G. Birks, attorneys for the Commission.

McCutcheon, Olney, Mannon & Greene, by Allan P. Matthew and Carl I. Wheat, attorneys for the respondents, Clover Valley Lumber Co., et al., Davies-Johnson Lumber Co., et al., Diamond Match Company, et al., California Fruit Exchange, et al., Penman Peak Lumber Co., et al., Feather River Lumber Company, et al., Kesterson Lumber Company, et al., Hobart Estate Company, et al., Fruit Growers Supply Company, et al., Quincy Lumber Company, et al., Spanish Peak Lumber Company, et al., Lassen Lumber and Box Company, et al., Red River Lumber Company, et al., Owen-Oregon Lumber Company, et al., Big Lakes Box Company, et al., Ewauna Box Company, et al., Klamath Lumber & Box Company, et al., Lamm Lumber Company, et al., Pelican Bay Lumber Company, et al., Algoma Lumber Company, et al., Shaw Bertram Lumber Company, et al.

Jesse Andrews, attorney for the respondents, Pickering Lumber Company and the Forest Lumber Company, et al.

344 M. W. WILLIAMSON, recalled, further testified as follows:

Redirect examination by Mr. BURR:

Q. Mr. Williamson, I believe you testified yesterday that you worked for a time for Curtiss in the millwork line.

A. Yes, sir.

Q. And I believe you testified that the firm for which you worked was accustomed to purchase, in the main, California white pine, and in part, the so-called "genuine white pine"; did both of those types of lumber as purchased contain both heart and sap wood?

A. Well, in the genuine white pine that we received from the north at that time there was very little sapwood in the lumber. I could not say that there was not any, but there certainly was a very small amount.

By Examiner SHEPPARD:

Q. What time are you talking about?

A. This was during the period of 1900 to—well, it was during the time I was with these people; that was perhaps from 1900 to 1909.

I may explain this by saying that it was a shop type of lumber, no. 1, 2, and 3 shop, obviously coming from that part of the log which was practically devoid of sap.

By Mr. BURR:

Q. It was white in color?

A. Certainly.

345 Q. Was it possible for you to so cut the shop lumber as to prevent the exposure to the weather of such portions of sap as there were in the Idaho white pine?

A. I don't believe I understand that question.

Mr. BURR. Read the question.

(The question was thereupon repeated by the reporter as above recorded.)

Q. Was it not Idaho white pine that you used there?

A. No, Pinus strobus.

Q. Very well; let me start that question again. You say that part of your Pinus strobus would be composed of sapwood, here and there, in minor portions; is that true; is that your testimony?

A. Yes, sir.

Q. That sapwood where exposed to the weather, would be less durable than the heartwood, would it?

A. I would say so.

Q. Was it so possible for you to cut that strobus shop lumber in the mill, that the sap portions would not be exposed to the weather, but would be protected?

A. Absolutely.

Q. The California white pine that you used, that was white in color, was it?

A. The sap was white in color, and oftentimes the heart was more of a reddish cast.

346 Q. Was it possible for you to so cut the shop lumber, made of ponderosa pine and California white pine so as to protect the sap portions from the weather?

A. I would say that no attention was paid to that in the cutting of California white pine.

Q. Was the major part of it, heart or sapwood of the California white pine, made in millwork products?

A. There was an enormous amount of sapwood, and it would have to be—what proportion, I could not say.

Q. Was it a larger or smaller proportion of sapwood in the California white pine that you used, as contrasted with the strobus that you used?

A. Very considerably more.

Q. In which?

A. Very considerably more sap in the California white pine than the strobus, naturally.

Mr. BURR. That is all.

Re-cross-examination by Mr. MATTHEW:

Q. Do the shop grades of lumber come largely from the heart of the trees?

A. I would say they do; yes.

Q. That is the fact, both with respect to Pinus strobus and ponderosa, is it not?

A. Very much more so in the case of strobus than ponderosa.

Q. Is it not likewise the fact with respect to the California
347 white pine?

A. Sir?

Q. I say, is it not likewise the fact with respect to California white pine?

A. To a degree; yes.

Q. Let us take your pondosa pine—you make a considerable amount of pondosa pine in the shop grades, do you not?

A. Yes, sir.

Q. And your shop lumber pondosa pine comes largely from the heart of the tree, does it not?

A. Yes, sir.

Q. Is there a great proportion of sap in the pondosa pine shop lumber which you market?

A. There is some; yes.

Q. Well, is it relatively large or relatively small?

A. As compared with what?

Q. As compared with anything you want; compared with Idaho white or northern white.

A. Very much more so than Idaho white pine.

Q. You have the greater percentage of sap——

A. In the pondosa.

Q. In your pondosa shop lumber than you find in Idaho white or northern white?

A. Very much more so.

Q. Is it your best judgment that the California white cor-
348 responds closely to pondosa white?

A. There is no question about that at all.

Q. What was the actual practice of the Curtiss Company in the cutting of shop lumber for the purpose of obtaining materials for doors, sash, and frame; did they make any differentiation between sap and heart wood?

A. Not any.

By Mr. BURR:

Q. In cutting which?

A. He asked about shop lumber, and I said, "Not any, sir."

By Mr. MATTHEW:

Q. Irrespective of the species of wood which they were using——

A. Not irrespective of the species of the wood they were using. In cutting clear white pine, true white pine, sap was eliminated.

Q. They did that of purpose?

A. I presume they did; yes. That is part of the specifications, as I recall it, at that time.

Q. That is, for a clear northern white pine, for doors and things of that character?

A. Yes, sir.

Q. So it is your best recollection that the Curtiss Company would, of purpose, cut out the sapwood when using northern white pine in the use of sash, doors, and frames?

A. Because of——

Q. No; just answer the question.

349 A. Yes.

Q. They did it?

A. Yes.

Q. All right. But in handling the California white pine shop lumber they made no distinction between that and heartwood?

A. Not any.

Mr. MATTHEW. That is all.

Redirect examination by Mr. BURR:

Q. Why was it? You wanted to add something to your answer. Counsel wanted merely your answer of "Yes." Now, will you continue your answer.

A. Because in the specification of white pine it was clear that was called for, and the specification of clear eliminated the sap. Therefore any sap traces that were found in the plank were eliminated; but that was not a difficult task, because, as I explained yesterday, in slabbing the white pine logs you pretty nearly wipe out the sap area on account of the very small sap line in the true white pine log, such as you find in strobus.

Q. This, perhaps, is not proper redirect, but I would like to ask, if the examiner is willing, just what type of lumber is supposed to be shop lumber; can you tell me that briefly?

A. What type of lumber is shop lumber?

Q. Yes; is it thicker stuff, or just what do you cut?

A. Very largely 5/4, 6/4, and 8/4—6/4 is 1½ and 8/4 is 2

350 inch.

There is one grade recognized as inch lumber, which is recognized as inch shop common; in the old days that was established because they made inch doors, a very light, white door; but that has been practically eliminated now, and it is just the one grade of shop lumber in inch, known as inch shop common. The grade is established by a certain percentage of cuttings—five inches or six inches and wider, and thirteen feet or longer, and nine inches wide or wider, and so on.

Q. Shop lumber, then, refers to the grade and quality of it more than it does to the dimensions, or do you include both?

A. I would not say quality. A piece of sash or trim or style of panel for a door can come from a low grade of shop and be

just as high grade quality as might come from no. 2 shop; the piece itself is of the same quality, grade for grade. One might be obtained from no. 2 shop; the other might be obtained from no. 1 shop. One to sell at a higher price than the other, but the value of one as compared to the other is established from the amount of cuttings one produces over the other, which makes one more valuable than the other. Is that clear?

By Examiner SHEPPARD:

Q. You do not want any sap lumber to go into shop lumber, do you?

A. Sir?

Q. Do you use sap lumber for indoor work?

351 A. For indoor work sap is being put in in Pinus ponderosa; yes, sir. So far as I know, nobody is making any distinction between sap and heart in the so-called "manufacture" of sash, doors, and blinds in Pinus ponderosa. I believe that is a correct statement, all right.

Re-cross-examination by Mr. MATTHEW:

Q. You know, Mr. Williamson, that sap lumber is greatly preferred for some interior work, do you not?

A. Yes.

Q. It is very valuable for certain purposes?

A. It is very satisfactory for certain purposes, yes.

Q. Are we to understand from one of your answers that the term "clear", as applied to lumber, means that it must be free from sap?

A. It was for that period that I referred to.

Q. Does it mean that today?

A. Yes; I would say that it does, but how closely it is followed, I do not know.

Q. In the term "clear", as you understand it, there must be no sapwood in the lumber?

A. As applied to true white pine.

Q. Let us compare it as applied to your pondosa pine?

A. No, sir; it does not.

Q. Applying it to Idaho white pine?

352 A. It does not.

Q. It does not imply that it must be free from sap?

A. As a matter of fact, the grade of clear, as established in the present groups, there is no grade of clear white pine.

By Mr. BURR:

Q. You say there is no grade of clear white pine?

A. No, sir; it is a grade of B and better, but when an architect's specification comes in asking for true white pine clear, it is understood in that case that sap must be eliminated, that is, for the millwork it must be eliminated, but not the lumber manufacturer. We may ship white pine with a small amount of sap, but it is shipped on our grade specification of B and better; the millwork takes the

architect's specification for clear and eliminates that sap, if there is any there.

By Mr. MATTHEW:

Q. As far as your grade rules are concerned, the word "clear"——
A. Does not exist, to my belief.
Q. You do not find that in the grading rules?
A. I think not.
Q. What is the highest grade of lumber in Idaho white pine?
A. B and better.
Q. And so specified in the grading rules?
A. Yes.
Q. Briefly, what is the meaning of B and better; what are the specifications?

353 Mr. BURR. I think we better have the specifications in rather than this witness's testimony as to that.

Mr. MATTHEW. All right; it will all be covered later on.

The WITNESS. It is all written in the book; it is a matter of record, anyhow.

Mr. MATTHEW. That is all I have.

(Witness excused.)

A. EMBURY, II, was thereupon called as a witness and, having been duly sworn, testified as follows:

Direct examination by Mr. BURR:

Q. Mr. Embury, you are an architect, sir?
A. Yes, sir.
Q. How long have you been in the profession of architect?
A. Since 1901.
Q. Have you been in New York City all that length of time?
A. Yes, sir.
Q. How long have you been an architect for yourself?
A. Since 1905. The first house I did was in 1903 or 1902.
Q. What is the nature of your work; is it residences largely?
A. I have done more residences than any other one class of building, but I have done all sorts of buildings.
Q. You are in business for yourself, are you, or is there a firm name?

354 A. No; by myself.

Q. You are located in what place in New York City at the present time?
A. 150 East 61st Street.
Q. Now, Mr. Embury, have you had occasion, from time to time, to specify pine lumber for your clients in the construction of residences and other structures?
A. We almost always specify it for exterior trim, cornices, sash, and doors—exterior doors.
Q. Do you specify what kind of pine?

A. I specify at the present time "C" select northern white pine, free from sap.

Q. Do you ever, in your specifications, say strobus?

A. No. We find that the mills do not know what it is. They do know what northern white pine is.

Q. Are you a student of the technical and botanical distinctions between white pine and other varieties of pine at all?

A. No; I am not.

Q. You do not pretend to that class of education along that line?

A. No; I do not know much about it.

Q. That is a profession independent of yours, is it?

A. I suppose so; yes.

Q. After you specify northern white pine, free from sap, what are your methods of assuring yourself that that type of lumber is laid on the ground; do you rely on the contractor, or how is

355 handled?

A. As a matter of fact, we have it soft and unprimed—we look at it, and if it is decent looking, and it is not too suspicious looking, we place it, because you cannot do very much else, in doing a great many houses, we cannot stop to analyze every piece of lumber that comes to your job.

Q. In other words, you cannot send it to a forest laboratory every time you turn around; is that what you mean?

A. As a matter of fact, usually they bring the material the very day they are about to be put up, and I haven't time to look it up.

Q. In point of fact, do the exigencies for the necessity of immediate work have an effect on the material that is used?

A. Do you mean affect the specifications or affect the actual use?

Q. Affect the loyalty of the contractor, or whoever it is you purchase from, to the specifications.

A. No; we can get pine quickly enough.

Q. You can get the northern white pine quickly enough?

A. Yes; if the mill will take the trouble to get it for us.

Q. You do turn down pine occasionally, if it is not up to specications?

A. Yes; we have from time to time—but from time to time we used material that we knew was not pine because we did not have time to change.

356 Q. What do you mean by that? I don't quite get that.

A. We permitted the use of millwork that was not up to specifications——

Q. What do you mean by "pine" in that connection?

A. We mean what you people speak of as northern white pine; I think it is Pinus strobus.

Q. When you said "pine", you did not mean yellow pine?

A. No; I meant strobus.

Q. Now, will you finish your last answer?

A. Because we haven't time to reject it, or send the work back.

Q. Have you had any experience in having specified northern white pine and finding that Pinus ponderosa—that is to say, California white pine, or pondosa pine, from the Pacific Northwest—had been brought on the job instead of northern white pine?

Mr. MATTHEW. If the question will be confined to California white pine, I have no objection. I move to strike "pondosa" from the question.

Mr. BURR. All right.

The WITNESS. May I qualify my answer?

By Mr. BURR:

Q. Please answer the question with reference to white pine, disregarding the other part of the question.

A. The answer is, I don't know what is substituted. I cannot say that we had California white pine substituted, because I do not know the varieties.

357 Q. You don't know whether there has been any attempt to substitute California white pine for northern white pine in your specifications?

A. You see, I do not know your names. We have had what we know as western soft pine substituted for what we believe is white pine a number of times.

Q. It was furnished under that name, was it?

A. No; it was furnished under the name of white pine.

Q. Just what would do to try to find out what happened?

Mr. MATTHEW. I will object to these questions unless the witness identifies the lumber which is understood to have been furnished as California white pine. There isn't any objection to it if he identifies it, otherwise I have not anything to base a cross-examination on.

Examiner SHEPPARD. The witness has said nothing yet as to California white pine. His answers have been "soft pine", I think he said.

The WITNESS. May I explain my knowledge of the thing?

By Mr. BURR:

Q. Please?

A. My real trouble is that I don't know what I am getting. That is the real trouble in your work right straight along. As far as I know, there are three woods which we get as white pine, when we specify white pine—I may be entirely wrong in the names, but we call them as western soft pine, California sugar pine, and

358 northern white pine, and we quite often get woods which we believe to be the other woods. When we can, we check back, because I had one very bad experience about fifteen years ago.

By Examiner SHEPPARD:

Q. Those are the things you get when you order white pine?

A. Yes; those are what the mill people call them.

By Mr. BURR:

Q. Do you regard sugar pine as compliance with your northern white pine specifications?

A. No; I do not.

Q. Do you know where the material that you have referred to as western soft pine comes from?

A. No.

Q. Did you ever have occasion to go into the matter of the building erected for Yale & Towne Corporation?

A. I guess you are referring to the dwelling house of Henry Towne, in Litchfield, Connecticut.

Q. In that case, will you describe how you came to learn anything about that so-called "Towne house"?

A. I built the house just before the war, I think in 1913, and just after the war I suppose probably in 1919—because I was not back until 1919, Mr. Towne called me up and said his millwork was rotting. Mr. Towne was particularly fussy—he was a fussy gentleman—we had all the millwork come to the job unprimed, so
359 that we could see any knots which were found standing there, and the wood looked to me beautiful before we primed it. This was in 1913 or 1914, but I think it was 1913.

About six or seven years afterwards I was up there and I found the bases of all the columns, the lower parts of all the sash, the water table and a large part of the cornice, certain parts of the trim, the ornamental carved trim around the windows had all rotted away. And when I say "rotted", I do not mean little rotted parts; it was literally rotted away; the bottom parts you could squash like that [indicating]. You could imagine the position I was in.

Here I had specified something, which had rotted out in seven years, while there were old houses in Litchfield, Connecticut, which had stood from a hundred and twenty to a hundred and thirty years, presumably built of the same material.

I took one of the boards—took a piece off and brought it to the white pine bureau and said, "Look at that white pine." I said, "This is what we specified and this is what we got from a reputable mill."

Thereafter I sent it to the Forest Products Laboratory, and they reported that it was western soft pine.

Q. Western soft pine?

A. I think that was the report. You have a copy of their letter.

Q. Their letter or your letter?

A. I think their letter.

Q. You are referring to the letter I handed you a few
360 moments ago for the purpose of refreshing your recollection?

A. Yes. I don't know what I should have done about the thing, but Mr. Towne died shortly afterwards. Fortunately, I was not sued, but they had a good case against me or the contractor.

Mr. BURR. I will endeavor to get the original of this letter, if counsel insists upon the original.

Mr. MATTHEW. Is there an offer of the letter in evidence?

Mr. BURR. Yes, if you are agreeable to waive objection to producing a copy instead of the original.

Mr. MATTHEW. Certainly I object to it. I do not see why any letter from Madison, Wisconsin, is admissible in evidence here, with as little identification or foundation laid for it.

Mr. BURR. I guess I will have to get the original, then.

Mr. MATTHEW. I guess you will. That is a sad fact.

Mr. BURR. If the facts in that letter are true——

Mr. MATTHEW. According to the letter and according to the witness's testimony, it is very possible that this might have been your pondosa pine.

Mr. BURR. It says ponderosa.

Mr. MATTHEW. That does not prevent it from coming from the inland empire and marketed under that name.

Mr. BURR. In my judgment, that is evidence——

Mr. MATTHEW. Certainly the letter is not admissible.

Mr. BURR. I admitted it is not admissible over objection, and I will ask to have it marked for identification.

361 Examiner SHEPPARD. Offer it in the regular way, and I will rule on it.

(The document was thereupon marked "Commission's Exhibit No. 9" for identification.)

By Mr. BURR:

Q. Handing you now a paper, which I wish you would describe briefly—it purports to be a copy of a letter written to you, does it?

A. Yes, sir.

Q. Do you remember receiving any such letter as that, Mr. Embury?

A. Yes; I do.

Q. Would that be in your files?

A. I doubt very much if it would.

Q. You doubt if it would?

A. Yes.

Q. How far back do you keep your files?

A. Oh, three or four years, as a rule.

Q. Will you be kind enough to look——

A. I have changed offices since that date and I tucked everything away since that time.

Q. And you are sure that it is gone?

A. I am not sure, but I do not know where to find it.

Q. Will you be kind enough to have someone look over your files and make sure whether that letter is still to be found?

362 A. I see that was written by the stenographer Katherine Drake.

Q. You are referring to the initials up on top of the letter?

A. Yes.

Q. Are those initials in pen or are they typewritten?

A. Typewritten.

Q. That is her initial after typewriting it, is it?

A. Yes.

Q. Will you be kind enough to look that up [redacted] telephone me at the Hotel Martinique?

A. Yes, sir.

Q. If I am not there, leave word as to whether or not it is available.

A. Yes, sir.

Q. Do you recall the substance of the letter now, sir?

A. I recalled the substance of it before I saw the letter. I was very clear on it; the only thing I could not tell was whether it was California white pine—whether that is western soft pine or not, I do not know.

Q. The letter, however, designates the species, does it?

Mr. MATTHEW. I will object to that.

Mr. BURR. I withdraw it.

The letter is not admissible, but I request that this be marked "Commission's exhibit" for identification, merely, as no. 9.

Q. Have you had the same experience of having material
363 furnished under specifications for white pine which subsequently failed to stand up under the wear and tear of time?

A. I have had a number of them, but the Towne house was the worst.

Q. Now, in any of these cases, did you check up with the Forest Products Laboratory to ascertain what the material was?

A. Yes; in two or three cases I have, then I gave it up, because I was pretty sure that was the trouble, and there was no use checking it—just made contractors correct it at their expense, without going through the formality of sending out there to find out.

Q. How recently have you had an experience of that kind?

A. I think the last one was on the Richardson house in Atlanta, Georgia, about two years ago.

Q. You say that was in Atlanta, Georgia?

A. Yes, sir.

Q. Will you describe what happened there?

A. The sills on some of the windows and blinds rotted, not very badly, because the house was comparatively new, and Mr. Richardson called my attention to it.

Q. How old was it; can you be a little more specific as to that?

A. About four years old.

Q. You say he called your attention to it, did he?

A. Mr. Richardson did, and I spoke to him and called his attention to some correspondence we had with the contractor who
364 built his house, in which we were very careful to insist on northern white pine, and the contractor corrected the faults without expense to Mr. Richardson.

Q. Did you check up to ascertain the nature of the wood that you had received?

A. No; I did not.

Q. Have you had several such instances?

A. Yes; I have had a number of them. I think in three cases I have checked them with the Forest Products Laboratory.

Q. Have you any of those answers in your files?

A. I might have; I am not sure.

Q. Will you be good enough to check up on that and let me know at the hotel?

A. Yes. I might say, in connection with the Towne house, one part of the exterior trim which did not rot were the columns, and that struck me as very curious; the caps of the columns and bases should have rotted while the shafts did not, for which reason I took the base of the column and sent it out at the same time, and found that the column was of northern white pine, where the others were western soft pine. The columns were Pinus strobus, whereas the others were not.

By Examiner SHEPPARD:

Q. That was the part that did not rot?

A. It did not rot, although the cap and base, which were manufactured by the millman—you see, the shaft was bought of
365 Hartman & Sanders.

By Mr. BURR:

Q. Did you check up to ascertain what concern furnished the western soft pine?

A. I tried to. The mill manufacturer was Patterson, of New York, I think they call it the Patterson Mill Company or Millworking Company; and they said they had a number of carloads come in, and they could not tell from which manufacturer it was bought. They said it was bought as northern white pine. We got as far as that. We tried to find out——

Mr. MATTHEW. Just a moment. I shall object to this continued indulging in hearsay.

The WITNESS. That is hearsay.

Mr. MATTHEW. I move to strike out the last statement.

Mr. BURR. I shall not object.

Examiner SHEPPARD. I was permitting him to go on in the hope of getting something definite for the benefit of all of us.

By Mr. BURR:

Q. Do you regard Pinus strobus as a superior variety of pine for exterior purposes?

A. Yes; I do.

Q. Do you regard Pinus strobus as superior for interior finish?

A. No; we do not.

Q. You never specify that?

A. No.

366 Q. What do you specify in the nature of pine, if you use pine at all, for interior finish?

A. We specify western soft pine, sometimes Arkansas soft pine—any pine which is easily worked and which is fairly free from knots. Of course, the knots would interfere in the carving or molding and painting.

Q. Pinus strobus you find to be of higher market price than other interior pine that you do specify?

A. I do not know that, because we do not require it for inside work.

Mr. BURR. I think that is all.

Cross-examination by Mr. MATTHEW:

Q. When you specify northern white pine, would you regard Idaho white pine as being satisfactory compliance with those specifications?

A. We believe it to be.

Q. And you will accept Idaho white pine in response to specifications calling for northern white pine?

A. Yes.

Q. Would you accept California sugar pine in response to specifications calling for northern white pine?

A. No.

Q. Do you know whether the sugar pine is a white pine or not?

A. No; I do not. I am told by the mill people that Cali-
367 fornia sugar pine stands up fairly well.

Q. If you do not know of your own knowledge what it is, we will not go into that.

A. I do not know.

Q. I take it from your direct testimony, Mr. Embury, that you know of no case which you can state with any positiveness that California white pine has been supplied in response to specifications calling for northern white pine?

A. I did not know that there was such a thing a California white pine.

Q. Let me explain this situation to you for a moment; if I may, to make this clear.

I want to get the matter before you for the purpose of my inquiry. There is a variety of pine tree which is common to the Pacific slope, which is known as Pinus ponderosa, found in California, Mexico, Arizona, Idaho, and elsewhere. The lumber that is manufactured from the Pinus ponderosa in the inland empire section—that is, eastern Washington, portions of Idaho and Oregon—is marketed under the term of ponderosa pine; the lumber manufactured from the same species of tree in California and southern Oregon is, I think, marketed under the name California white pine; the lumber manufactured from the same species in Arizona and New Mexico, under different names, sometimes Arizona white pine or New Mexico white pine. What I am asking you is whether or not you can state that California white pine lumber has at any time been supplied in response to your specifications calling for northern white pine?

A. Yes; I think it has. I think it was supplied in—yes; I am sure is was supplied in the Mid Pines Country Club, where
368 the material was supplied by the Morgan Lumber Company.

Q. Where are they, can you tell?

A. I don't know where their head office is, but that came from the Baltimore office.

Q. That is, the White Pines Country Club?

A. The Mid Pines Country Club, Moore County, North Carolina.

Q. Northern white pine was specified?

A. Yes.

Q. How do you know that California white pine was furnished?

A. Because I went on an inspection visit of the club when the material came in, and I noticed one of the doors and blinds, which you see most readily, were made of several different varieties of wood. I took one of the pieces and sent it to the Forest Products Laboratory, and they said it was made of three different varieties of wood in one blind.

Q. There was western soft pine in it?

A. To my remembrance, they said what is known—my remembrance of the letter is they said what is known as California white pine, what is known as California sugar pine, and what is known as northern white pine. The California sugar pine has a little flash in it which makes it reasonably easy to identify. The others are very difficult to identify by inspection.

Q. How do you know that this other pine lumber in that article came from California?

A. I only know what they said about it.

Q. That is all that you know about it; it might have been pine sold under the name of pondosa pine coming from the inland empire section, for aught you know?

A. Yes; my concern is not where the material is manufac-
369 tured, but what it will do.

Q. In other words, you are not interested in the place of origin nor are you interested the botany of the species; your interest is in the quality and utility of the wood; is that true?

A. Yes; we have found also that Pinus strobus will stand up and substitute whatever they may be, won't.

Q. Usually when you get Pinus scrobus, you get heart wood?

A. We get very little sap in it, and we specify that it shall be free from sap.

Q. Do you find that the heart wood of any one of these pines will have greater durability when exposed to conditions promoting decay than sapwood?

A. I do not think we get much heart wood in the soft pines; I think we get almost entirely sap. We use that mainly for interior work, where it has been furnished in substitution, and I would say it is almost all sap.

Q. You know that sapwood is more likely to decay than heart wood?

A. Yes.
Q. In almost any species of tree?
A. Yes.
Q. Did you ascertain whether or not the wood in the Towne house which had decayed was sapwood or heart wood?
A. No.
Q. You did not go that far?
370 A. No.
Q. Was this wood painted?
A. Yes.
Mr. MATTHEW. I think that is all.

Cross-examination by Mr. ANDREWS:

Q. Mr. Embury, I believe you said you did not know from what state or section of the country Pinus strobus comes; is that correct?
A. I do not know; no. My understanding is that it was common to the northern part of the United States. At the present time, most of it is marketed, I think, in Idaho, and we still get occasional northern white pine from Maine.
Q. That is just occasionally true, is it not?
A. Yes.
Q. If you know—I will ask you if you do know whether much lumber in the commercial sense comes from Maine now?
A. Not much; no.
Q. Do you know of the relative durability of ponderosa heart lumber and Pinus strobus heart lumber——
A. No; I don't.
Q. I have not finished yet—is when exposed to the elements?
A. No, sir.
Q. You do not know. Therefore you would not say, if you had Pinus ponderosa heart lumber, it would not be just as dur-
371 able as Pinus strobus heart lumber?
A. I would not permit it because——
Q. That is not answering the question, Mr. Embury. You stated you did not know, and I am now putting the question in different form. I am asking if it is true, therefore, that you would not say that Pinus strobus heart lumber was Pinus strobus heart lumber?
A. Is not the question confusing?
Mr. BURR. Do not answer it until you understand it. I think Mr. Andrews used the words "Pinus strobus" twice.

By Mr. ANDREWS:

Q. Do you know of the relative durability of Pinus ponderosa heart lumber and Pinus strobus heart lumber when exposed to the elements?
A. No.
Q. Then you are not in a position to say, is it not true, that Pinus ponderosa heart lumber is less durable than Pinus strobus heart lumber?

A. If you mean that in a purely technical sense, I am not in a position to say, but if you mean as to practical work, I think I am in a position to say that Pinus ponderosa—that is a species of yellow pine, isn't it?

Q. Do you know it when you see it?

A. No. I think that no hard yellow pine will stand up as well as heart white pine—as that is the type of pine which we have through the South, where we have done a great deal of work
372 and used it, and if the other is of the same species or variety, I would be afraid of it.

Q. I simply want to know, if you are in a position to state, whether if you take heart lumber of both kinds, Pinus strobus and Pinus ponderosa, if Pinus strobus was more durable than Pinus ponderosa?

A. No; I cannot answer that yes or no. I do not know.

Q. I believe you stated that in the Towne house you did not know and now do not know whether the lumber that decayed was sap or whether it was heart.

A. I do not know, but my belief was it was probably sap because most of the substitutions are made of sap, because it looks more like the heart of white pine, and I believe it was probably sap for that reason. I do not know.

Redirect examination by Mr. BURR:

Q. As a practical proposition, the yellow varieties of pine, so-called yellow pine, are regarded by you as different in their durability from the genuine white pines?

Mr. MATTHEW. I wish you would not lead so much, Mr. Burr.

Mr. BURR. I will try to avoid it.

Examiner SHEPPARD. It is a little leading; but go ahead; the question is on the record, and I will let him answer.

A. I know the so-called North Carolina yellow pine and the longleaf yellow pine—what is sold in the South as longleaf yellow pine—very well, and the heart lumber there does not last at all
373 well. Eight or ten years is enough to rot out a cornice.

Q. Now, as a practical proposition, when you obtained the so-called "western soft pine" that you referred to in your direct testimony, do you obtain heart wood of that type of lumber or sapwood of that type of lumber?

A. I think it is sapwood, but I do not know.

Q. What leads you to say you think it is sapwood?

A. It looks like sap; it does not have the solidity and the tightness of heart lumber; but I do not know the tree well enough to say. I do not know the Pinus ponderosa at all.

Q. By botanical name?

A. By botanical name.

Re-cross-examination by Mr. MATTHEW:

Q. You say that you are quite familiar with the yellow-pine lumber of the South?

A. Yes.

Q. You spoke particularly of North Carolina pine lumber?

A. North Carolina, what is sold as North Carolina, and it is actually cut there.

Q. Is that shortleaf pine or longleaf pine?

A. Shortleaf.

Q. There is practically no heart stock in it, as it is received?

A. Yes; you can get it cut within a few miles of where it is
374 grown, and have the heart cut in it.

Q. Is it quite easy to distinguish this southern yellow-pine lumber, this Carolina lumber, as you call it, from northern white pine?

A. Yes.

Q. And likewise is it easy to distinguish it from western soft pine?

A. Yes.

Q. As far as appearance is concerned, this western soft-pine lumber more nearly resembles the northern white pine, does it?

A. Yes.

Q. Than it resembles southern yellow pine?

A. Yes.

Q. And for purposes of general utility is it more commonly used for the same purposes for which northern white pine is used?

A. I beg your pardon—it depends on the section of the country. In the South it is not so much——

Q. Take it in this district with which you are familiar, New York and its environs; is the western soft pine commonly used for structural purposes?

A. It is used for trim, and it is not used for framing.

Q. Is southern yellow pine used for structural purposes?

A. It is used for trim.

Q. Then the western soft pine is more commonly used for the same purposes for which the northern white pine is used?

375 A. Because it works more easily.

Q. It is so used?

A. In the Towne house it was used for that reason.

Redirect examination by Mr. BURR:

Q. Does the term "northern white pine" have a definite meaning to an architect, or to the architect profession here?

A. Yes.

Q. What does it mean?

A. It means to us the same sort of pine which was used in New England in the old days.

Q. Does it carry with it a reputation for durability or the reverse?

A. It carries with it a reputation for durability.

Q. Do you know whether the architectural profession here generally accepts Idaho white pine on specifications calling for northern white pine?

A. I believe they do; yes.

Mr. BURR. That is all.

Re-cross-examination by Mr. ANDREWS:

Q. Mr. Embury, you specify northern white pine, do you?

A. Yes.

Q. You stated that had a definite signification.

376 A. It has; yes.

Q. Has white pine alone a definite signification?

A. It used to have, but with many architects, white pine alone today still means what we specified as northern white pine, because since this Towne house disaster I have been a little more careful in specification than a good many people, but most of the people, when they specify white pine, mean and expect to get exactly the same thing that was used in New England in the colonial houses.

Q. You said that used to be the case, did you not?

A. Substitutes are gradually becoming known, and the men are changing the specification as they are becoming known. You see, a lot of us had the same difficulty in this matter.

Q. In your specifications for the Towne house, you stated that you specified "C select northern white pine", did you not?

A. I do not think so. I don't think I said that. I say that we now specify C select.

Q. Northern white pine?

A. I do not believe in the Towne house I specified anything but white pine—that was sixteen years ago.

Q. Do you now specify northern white pine?

A. Yes.

Q. You are not very familiar with the extent of the use of California white pine, are you?

A. May I ask you to put that in terms that I know? No,

377 I will answer that, no, because I do not know just what California white pine is.

Q. But it is your opinion that if you just use "white pine" that means northern white pine?

A. At the present time you get a lot of things that we did not use to mean by it.

Q. And so it is ambiguous now; is that right?

A. It is becoming so; yes.

Q. And within what period of years?

A. The last ten years.

Q. It may be now either what you referred to as northern white pine or it may mean some other white pine; is that correct?

A. It means that to the millman, apparently, but it does not mean it to the architect, and that is the reason we qualify it by the word "northern."

Q. To avoid any doubt or misunderstanding or possibility of mistake, you specify northern white pine?

A. Yes; very often we don't get it.

Redirect examination by Mr. BURR:

Q. Did you ever see in a specification the words "genuine white pine"?

A. Yes.

Q. What does that mean?

A. That means northern white pine.

378 Q. Do you ever specify genuine white pine?

A. No.

Q. You do not use that phrase?

A. No.

Q. Do they have an architects' association here?

A. Yes.

Q. Are you a member?

A. No. They have three associations. I am a member of two, but I am not a member of the American Institute.

Q. Are there any practices in the associations that you are a member of giving any advice or instructions as to how to specify in order to get genuine white pine?

A. Not as far as I know.

Mr. BURR. That is all, I think.

(Witness excused.)

SIDNEY B. MILLER was thereupon called as a witness and, having been duly sworn, testified as follows:

Direct examination by Mr. BURR:

Q. Will you state your full name?

A. Sidney B. Miller.

Q. You are president of the Harlem Lumber Company, are you, sir?

A. Yes, sir.

Q. You are located at 101 East 112th Street, New York

379 City, are you?

A. 112th Street and Park Avenue.

Q. In your business you retail pine lumber, do you?

A. Yes.

Q. From what localities do you buy it?

A. This is a hard question, sir, because the shipper, as a rule, cuts out of the bill of lading the name and the origin of the shipping point. You can never establish the facts where it comes from. We specify California white pine, and you might get pondosa pine, or we might specify pondosa pine and get California white pine. We take it from the railroad companies, and they say that the Interstate Commerce Commission allows them to erase the name of the company and the shipping point, so we can never establish the fact.

As a matter of fact, we got a car of pine within the last six months—we ordered pondosa pine and it was from all appearances a California pine, hard knots and more reddish color—you could never establish the fact where it comes from.

Mr. MATTHEW. Will you read that answer, please? I did not get it at all.

(The answer was thereupon repeated by the reporter as above recorded.)

By Mr. BURR:

Q. Whom do you deal with; do you buy from wholesalers, or how do you get your supplies?

380 A. Wholesalers.

Q. Are they located here in the city, or where?

A. In the city; some are out-of town, but most are in the city of New York.

Q. They are really brokers?

A. Yes.

Q. They forward the orders and the shipment comes direct from the West to you?

A. It is shipped direct to us and they make the charge to us.

Q. In other words, it is a brokerage proposition; it does not come to their yards, but the shipment comes to you?

A. Yes.

Q. When you order from the wholesalers with whom you do business, do you order by trade name or botanical name? You order by trade name, do you not?

A. Trade name.

Q. Do you order the product known as California white pine, on occasion?

A. Yes.

Q. Do you order the product named commonly Idaho white pine on occasion?

A. Yes.

Q. Do you order northern white pine?

A. Pondosa.

Q. Are those the only soft pines you order?

381 A. Right.

Q. Or do you order Arkansas soft?

A. Those names are not known in the trade.

Q. What, Arkansas soft?

A. Arkansas is not a northern pine. It may be called that by some of the out-of-town concerns, but it is not known as that in the city of New York. We know Idaho, California sugar, California white pine, and pondosa, that used to be called the western. Very seldom we order by any other name—pondosa, California, and California sugar.

Q. Do you have customers who come in and ask for white pine?

A. Yes.

Q. Do you have customers who call for Idaho white pine or California white pine?

A. The average person, as a rule, orders white pine—white pine clear or common or soft or hard.

Q. Then what do you give them, Idaho, or California, or what?
A. Well, in the common we give the Idaho.
Q. Do any of your customers get California white pine, if you happen to be stocked up with that, when they ask for white pine?
A. Yes; we do give California white pine, but if they ask for Idaho white pine, that is, door manufacturers or the store manufacturer may ask for Idaho pine, when he wants to make doors or sashes or things like that.
Q. You carry a stock of Idaho pine, do you?
382 A. Yes.
Q. Which do you carry more of, California or Idaho?
A. In inch thicknesses, the Idaho white pine, mostly; in the five quarters and up we carry both California and California sugar—mostly sugar.
Q. You carry more sugar than Idaho, you mean?
A. Yes; in the five quarters and up thickness.
Q. When your customers come into your place and ask for white pine and your stock carries more California white pine than Idaho——
A. No, Idaho white pine mostly in the inch thickness.
Q. In the larger thicknesses you carry a stock of——
A. Of the better grades in California and sugar.
Q. When that grade is asked for, and he asks for white pine of those thicker dimensions, he gets California white pine or sugar?
A. I always ask whether he wants hard or soft. They don't know the difference as a rule; they ask for soft usually.
Q. When they ask for soft white pine you give them sugar pine?
A. When they ask for soft white pine I give them sugar.
Q. If price is the determining factor, the sugar pine is higher, is it?
A. The sugar pine is higher.
Q. And in such event they would get what if they——
A. California white pine.
Q. (Continued.) In answer to a request for white pine?
383 A. White pine.

By Examiner SHEPPARD:

Q. Who is it that you say doesn't know the difference, the customers?
A. The customers.
Q. Who are they; what is their business, mostly?
A. Carpenters, manufacturers, and architects.

By Mr. BURR:

Q. Do you carry pattern stock for manufacturers?
A. Yes; moldings.
Q. Patterns for moldings; what kind of moldings?
A. We carry California white pine and pondosa pine for moldings.
Q. Do you use the sugar pine for molding stock at all?

A. Once in a white, for a little molding.

Mr. BURR. I think that is all, sir.

Cross-examination by Mr. MATTHEW:

Q. Do you carry any pondosa pine moldings?

A. No; pondosa.

Q. Why don't you carry any Idaho white pine moldings?

A. Because it is a little more expensive.

Q. That is the only reason?

A. The only reason.

Q. Do you carry any pondosa pine moldings?

A. Yes, sir.

384 Q. And also California white pine moldings?

A. Yes.

Q. You have customers who order white pine, and you say that then you undertake to ascertain if they want a common grade of lumber, in which event you give them Idaho white in the commons?

A. In the commons; yes.

Q. But in other instances you give California white pine?

A. Not in inch thicknesses—are you talking about inch thicknesses?

Q. How do you fill these orders, how do you determine whether you are going to furnish Idaho white pine or California white?

A. As a rule they ask for either soft or hard pine, and the price is different. Idaho white pine is better than pondosa or California in the no. 3 grades.

Q. Now, when he wants a soft pine, you give him what?

A. I give him Idaho.

Q. And when he wants a harder pine, what do you give him?

A. Pondosa or California.

Q. How do you determine whether you will give pondosa or California pine?

A. Generally what we have most in stock of.

Q. You furnish and you feel free to furnish either pondosa pine or California white pine in response to an order for white pine?

A. Yes. They ask for pine.

Q. They just ask for pine?

385 A. Yes.

Q. They are not asking for white pine?

A. Yes; white pine they ask for.

Q. Well, which is it; do they ask for pine or white pine?

A. White pine.

Q. When they ask for white pine, you feel free to furnish pondosa pine in response to such an order?

A. Yes.

Q. In other words, you think the name has nothing to do with it, but you try to give the customer what you believe he wants?

A. What he asks for.

Q. He asks for white pine—

A. Yes.

Q. You feel free to give him either?

A. California or the pondosa.

Q. There the trade name has nothing to do with it; you furnish pondosa as freely as California white?

A. Exactly.

Q. If California white pine bore some other name, you would still feel free to furnish that lumber in response to such an order?

A. Yes, sir.

Q. How does it happen that you so seldom order Michigan pine?

A. To be frank with you, the California sugar dominates the market. Customers are educated to ask for soft sugar pine, therefore we don't handle the Michigan.

386 Q. And the California sugar pine takes the market for that particular class of pine lumber?

A. Yes; right.

Q. I suppose by the term "Michigan pine", you mean this so-called northern white pine?

A. Northern white pine; soft pine.

Q. Do you purchase any lumber from the Weyerhaeuser lumber interests?

A. Yes.

Q. I take it that you obtain your Idaho white pine lumber from the Weyerhaeusers?

A. Some genuine white pine——

Q. My question is, You get your Idaho white pine lumber largely from the Weyerhaeusers?

A. In Idaho; yes.

Q. Most of it?

A. In Idaho, most of it.

Q. How about pondosa pine?

A. From different dealers.

Q. Do you purchase some of that from the Weyerhaeusers interests?

A. Yes; once in a while.

Q. Are you willing to let us know the names of wholesalers from whom you purchase California white pine lumber?

A. The Red River Lumber Company.

Q. That is, you buy directly from the Red River Lumber Company?

387 A. Directly from the Red River and Lumberman's Exchange.

Q. The Lumberman's Exchange?

A. Yes; in California.

Q. When you order lumber from either of those concerns, do you order it under the name of either California white pine or California sugar pine?

A. Either one; either California or sugar.

Q. You are a retailer, I understand, Mr. Miller?

A. I am a retailer.

Q. And the term "California white pine" has been known to the retail trade here for a considerable period of time, has it?

A. Oh, yes.

Q. And it is clearly understood?

A. It is clearly understood, California white pine.

Q. How long has it been known to the trade as California white pine?

A. I should judge about five or six years, perhaps longer.

Q. How long have you been in this business?

A. 22 years.

Q. And throughout what period have you been dealing in California white pine?

A. For the past eight or ten years.

Q. Do you purchase any of your pine lumber from eastern wholesalers?

A. You mean New York City?

388 Q. Yes.

A. Yes.

Q. Would you mind letting me having the names of some dealers that you purchase of?

A. Walker Brothers, West 34th Street.

Q. Here in New York?

A. Yes; and J. Herbert Bate Company.

Q. New York?

A. New York, and Chanady & Parker, of Saginaw, Michigan.

Q. I am talking about New York wholesalers.

A. I cannot recall any others. Oh, yes; Arthur E. Lane—I buy a good deal from him.

Mr. MATTHEW. I think that is all.

Redirect examination by Mr. BURR:

Q. Do you understand whether or not the pendosa pine and the California white pine is cut from the same variety of tree?

A. The same species.

Q. You knew that to be the case before you came into the room and gave testimony this morning, did you?

A. Yes, sir.

Q. You buy pondosa from the Weyerhaeuser people, don't you?

A. Yes; but we refrain from buying the California no. 3 grade, because it does not compare with the pondosa grade; it has larger knots, and we get a little better grade in no. 3 in pondosa.

389 Q. On what ground do you call pondosa pine, white pine, in filling some of these requests for white pine?

A. It used to be western white pine, but it was changed to pondosa. We used to say pondonsa white pine, that is all—no particular reason.

(Witness excused.)

S. A. McGUIRE was thereupon called as a witness and, having been duly sworn, testified as follows:

Direct examination by Mr. BURR:

Q. You are an architect in the organization of Mr. Cass Gilbert, are you?

A. Yes.

Q. Is that the firm name, Cass Gilbert?

A. He has a corporate name, known as Cass Gilbert, Incorporated.

Q. How long has that concern been in the architectural line here in New York City?

A. Thirty-five to forty years.

Q. How long have you been with them?

A. Going on 11 years.

Q. How long have you been engaged in the profession of architect?

A. About twenty.

Q. Were you in New York City all that time?

A. Yes, sir.

390 Q. It is your duty to draw specifications for Cass Gilbert, Incorporated?

A. Yes.

Q. How long have you been drawing their specifications?

A. Ever since I have been there.

Q. Do you have occasion to specify soft pine lumber?

A. Our work has been and is of such a high character that we use very little lumber except rough lumber. The buildings here require steel trim or fireproof stuff, and we usually prefer the steel.

Q. Can you give the names of some jobs that Cass Gilbert, Incorporated, have served as architects for—a few of the important ones, so that we can just get a picture of it?

A. We have just completed the New York Life Building.

Q. The New York Life Building here in New York?

A. Yes; Twenty-sixth Street and Madison Avenue; the Woolworth Building, the United States Customhouse, the Rodin Studios, the Union Club.

Q. Do you do any work outside of the city?

A. Yes.

Q. You say you generally specify steel rather than varieties of lumber, but you do have occasion to specify lumber, do you?

A. Yes; we do.

Q. Do you specify white pine at all for exterior work?

A. Occasionally.

391 Q. How do you specify it?

A. Well, we have been designating it as clear white pine.

Q. Clear white pine. Do you specify anything as to its heart or sap character?

A. Free from sap, free from imperfections generally.

Q. Do you know how Cass Gilbert, Incorporated, ascertain whether what they get is really white pine, or whether it is some substitute article?

A. We make careful inspections both at the mill and at the building.

Q. Do you have a wood technologist or do you just make a practical inspection?

A. Just a practical inspection.

Q. Have you had any occasions when other wood than northern white pine was furnished or attempted to be furnished on any of your jobs?

A. Yes. I do not recall what job it was, but I know there was something else substituted of loblolly character.

Q. More of a loblolly character?

A. Yes.

Q. Do architects generally have any means of checking up the variety of lumber that has been specified, as to whether it is actually furnished, according to specifications?

A. I do not think there is any standard practice along that line.

Mr. BURR. That is all.

392 Mr. MATTHEW. No cross-examination.

(Witness excused.)

LEONARD MORGENTHALER was thereupon called as a witness, and, having been duly sworn, testified as follows:

Direct examination by Mr. BURR:

Q. Will your full name, please?

A. Leonard Morgenthaler.

Q. You are connected with the firm of Jacob Morgenthaler Sons?

A. I am a partner.

Q. You are located in Brooklyn?

A. Yes.

Q. 663 Sackett Street; is that right?

A. Yes.

Q. How long has that concern been in business?

A. Since 1846.

Q. What is your line of business?

A. Manufacturer of doors, sash, and trim.

Q. You have orders for white pine, sash, door and trim, do you?

A. Yes; and in specialty work.

Q. Where do you get the lumber that you manufacture into the final product?

A. Mostly California sugar pine is used.

Q. You use mostly California sugar pine; from what con-

393 cern do you buy that from, if you do not mind telling me?

A. The California White & Sugar Pine Company, Stanton & Company, of New York, and Payne & Payne.

Q. Do you handle Idaho white pine?

A. Yes.

Q. Do you handle California white pine?

A. Yes, sir.

Q. When you have inquiries calling for white pine, which do you furnish, sugar pine, California white pine, or Idaho white pine?

A. If they just ask for white pine, we generally give them the California sugar pine.

Q. You say generally, but they may receive either of the other two; is that so?

A. If anybody comes to us, we will ask them what they want, and they get what they ask for, Idaho, pondosa, or Canadian.

Q. Do you handle pondosa pine, too?

A. Yes.

Q. You handle Canadian northern pine, do you?

A. Yes.

Q. From whom do you get the Canadian northern pine?

A. From Payne & Payne.

Q. Do you order any Minnesota white pine, northern white pine, from Minnesota?

A. No; not much; very little.

Q. Do you get any of your northern material from the Weyerhaeusers?

394 A. I never get any white pine from Weyerhaeusers; mostly cedar.

Q. You get cedar from them?

A. Yes.

Q. From whom do you get your pondosa pine?

A. Herbert Turner.

Q. You say sometimes they ask for California white pine and sometimes they ask for Idaho white pine?

A. Yes.

Q. You say, furthermore, if they ask for white pine, they generally get sugar pine?

A. That is right.

Q. You say generally, if they ask for white pine, and you do not furnish sugar pine, what are you furnishing; either of the other two, or which one?

A. If they ask for clear white pine, why, we give them California sugar pine.

Q. Without any variation or difference in practice?

A. Why, we set a price, and we know very well when we put that price what they are asking for.

Q. What if they object to the price of sugar pine; then what do you give them?

A. We ask them if they can use California white pine—it is a little harder in texture than the California sugar pine.

By Examiner SHEPPARD:

Q. And a little cheaper?

395 A. And a little cheaper; yes, sir.

By Mr. BURR:

Q. California white pine, is that cheaper than Idaho white pine?

A. I think the Idaho is just a wee little bit more expensive than the California white.

Mr. BURR. That is all, sir.

Cross-examination by Mr. MATTHEW:

Q. Is the term "California sugar pine" quite well known to the lumber manufacturing trade?

A. Everybody knows it, I imagine, California sugar pine.

Q. And the term "California white pine" is likewise well known to the trade?

A. Well known; yes, sir.

Q. And has been for many years past?

A. Yes.

Q. About how many, would you say?

A. I should judge fifteen years or longer.

Q. I take it from your answers upon the direct examination, Mr. Morgenthaler, that it is your effort to supply your trade with exactly what it wants, and that when you furnish the California sugar pine it is because you understand that they desire the sugar pine for doors, sash, or trim, as the case may be?

A. Yes. If they want Michigan pine, you can tell by the price, and usually the price is too high, and the customer won't pay

396 for that, but they will want something just as practically as good, and we give them California sugar pine, and we think that is the nearest thing you can come to Michigan pine.

Q. And that does satisfy them?

A. Everybody seems to be satisfied.

Q. I understand further from your testimony that it is not your practice to furnish California pine——

A. Unless it is specified.

Q. Unless it is specified, that is your practice?

A. I try not to give anybody anything they don't ask for. If they want ponderosa shelving or no. 2 Idaho shelving, we give them what they ask for.

Q. And if they ask for California white pine you give them that?

A. Yes, sir.

Mr. MATTHEW. That is all; thank you.

Redirect examination by Mr. BURR:

Q. Is it your understanding that California white pine is the same variety of tree as the Idaho white pine or is it different, or don't you know?

A. I could not answer that very good—I mean I really don't know.

Q. What is your best judgment?

A. From what I understand California sugar pine——

Q. No; I did not ask about sugar pine.

397 A. Well, the white pine is harder texture pine—yes; it is a harder texture than California sugar pine.

Mr. BURR. Read the question, please?

(The question was thereupon repeated by the reporter as above recorded.)

A. I could not answer that.

Q. Is it your understanding that California white pine and ponderosa or pondosa comes from the same tree?

A. I could not answer that.

Q. You don't know that. Is sugar pine a distinct species from any of those that you have just named, or don't you know?

A. I would not want to answer that.

Q. You would not want to answer it for what reason; because you are not posted?

A. I am not thoroughly posted. I have never been in the woods really to learn the woods. I have worked the wood in the manufacturing end of it for about twenty-eight years; and if we buy California sugar pine, I know California sugar pine, and I know California white pine, and I know pondosa, and I know Canadian white pine.

Q. Can you distinguish those apart?

A. Yes.

Q. Is the pondosa different from the California white pine—does it come from a different tree, would you say?

A. Yes, sir; it is.

398 Q. It is a different tree, you think?

A. Yes.

By Mr. MATTHEW:

Q. Lumber or tree?

A. Lumber.

By Mr. BURR:

Q. It comes from a different tree, does it?

A. I do not know whether it comes from a different tree or not.

Q. Is it a different type of lumber?

A. Yes; it is a little different; it has more of a closer grain, and I can tell the difference.

Q. Is California white pine preferable to pondosa for the purposes you use in manufacture?

A. No, sir.

Q. Which is preferable?

A. The California sugar pine.

Q. I am speaking of those two; I only asked about those two types—I did not ask about the sugar; which is preferable, pondosa or California white pine, or don't you find any distinction between them?

A. I would prefer California white pine to pondosa.
Q. For what reason?
A. It works a whole lot better.

By Examiner SHEPPARD:

Q. You can get a better cut from it, can you?
399 A. Yes; it is a wider lumber and you can get more for your money.

By Mr. BURR:

Q. The representatives of the wholesalers call upon you, do they?
A. Yes, sir.
Q. And try to sell lumber to you?
A. Yes, sir.
Q. Do they represent that the California white pine is genuine white pine or don't they ever go into that?
A. Well, I have had some of them tell me that California white pine was genuine pine.
Q. Genuine white pine or genuine pine; it is pine, of course?
A. Genuine white pine.
Q. Has Idaho white pine been represented to you as genuine white pine?
A. I never heard anybody say that.
Q. You get specifications for white pine, and do you fill those freely with sugar pine, without consulting the buyer?
A. If he just asks for white pine——
Q. You would, is that right?
A. If it is to be used for doors, or the like of that, where you want something that is not going to warp or twist, we use California sugar pine, and we know we won't have any come-back, but the California white pine has a tendency to warp and twist.
Q. Is the same true of pondosa?
A. Yes; I think it is.
400 Q. When you get an order for white pine, would you feel free to furnish Idaho white pine products?
A. I don't know. I believe I would tell the party I was going to give Idaho white pine.
Q. That you were going to substitute it?
A. Yes, sir.

Recross-examination by Mr. MATTHEW:

Q. Mr. Morgenthaler, I take it you are not interested in the botanical species of these trees, but as a practical manufacturer you are interested in the quality and utility of the woods?
A. And what we can get for our money. That is the reason we cannot use Michigan white pine today, because it is too high in price to compete against your competitior.
Q. Is there much Michigan white pine used in this territory?
A. I should think very, very little.
Mr. MATTHEW. That is all.

(Witness excused.)

CHARLES GROSSKURTH, Jr., was thereupon called as a witness and, having been duly sworn, testified as follows:

Direct examination by Mr. BURR:

Q. You are with what concern, Mr. Grosskurth?

A. The A. P. Bigelow Company.

401 Q. They are located at 215 Harris Avenue, Long Island City?

A. Yes, sir.

Q. You are engaged in what line of business, Mr. Grosskurth?

A. Retail lumber.

Q. Do you buy Idaho white pine?

A. Yes, sir.

Q. Do you buy California white pine also?

A. No, sir.

Q. None at all?

A. None at all.

Q. How long has that been the case?

A. Always.

Q. How about sugar pine; do you handle that?

A. Yes, sir.

Q. Do you specialize in any line, or is it the retail trade generally?

A. Industrial trade, retail, jobbing, and specialty work.

Q. You do the specialty work yourself?

A. No; we do not manufacture.

Q. You are not running a specialty mill of any kind?

A. No, sir.

Q. But you sell to those who do specialty work?

A. Yes.

Q. Millwork?

A. Well, manufacturers; yes.

402 Q. Do you sell any stock for pattern purposes?

A. Some; yes.

Q. What do you use for that?

A. Sugar pine.

Q. Exclusively?

A. Yes.

Q. Have you tried any other variety of pine for pattern work?

A. Soft Idaho; yes.

Q. But you prefer the sugar pine, do you?

A. I do in widths; yes.

Q. Is that a big branch of your work in point of bulk or return financially?

A. No; I should say not.

Q. Is it the small end of it?

A. Small.

Q. You say you have never dealt in Idaho white pine?

A. We do in Idaho white pine.

Mr. MATTHEW. I think he has already testified to that several times.

Examiner SHEPPARD. You want the witness to admit that they don't know anything about California white pine?

Mr. BURR. If that is the case; yes.

Mr. MATTHEW. He has already testified to that.

By Mr. BURR:

Q. When people ask for white pine what do you supply them?

403 A. Idaho white pine or sugar pine.

Q. You feel free to meet those orders with either one?

A. Yes, sir.

Q. And you regard that as compliance with specifications without special permission, do you?

A. Yes, sir.

Q. Do you have competition on the part of retailers furnishing California white pine?

A. We do in common grades; yes.

Q. Do you handle any pondosa pine, so called?

A. No, sir.

Q. Do you understand that to be different or the same species as California white pine?

A. The same as California white pine.

Q. Do you find that you are able to sell your white pine in competition with California white pine sold by your competitors, readily?

A. No, sir.

Q. I wish you would state your experience without any further questions on my part in connection with that.

A. We only cater to the better trade that insists on using soft white pine instead of pondosa.

Q. In place of pondosa or what?

A. California white.

Q. What kind of trade is that which draws that discrimination?

404 A. Why, the pondosa is what I would say, a species of yellow pine; not a true pine.

Q. A true white pine, you mean? It is a true pine, is it not? I don't think that answer is responsive to the question. Read the question.

(The question was thereupon repeated by the reporter as above recorded.)

By Mr. BURR:

Q. What kind of trade is it that draws the distinction between white pine and the California white pine or ponderosa?

A. Pattern making, exterior work, door fronts, and the refrigerator trade.

Q. Would it be possible for you to sell California white pine to that trade?

A. I imagine so.
Q. You think it would be?
A. When they specify white pine, we give them true pine.
Q. True pine? What do you mean by true pine?
A. Real Pinus strobus.
Q. You sometimes sell as white pine the Idaho white pine, don't you?
A. That is a true pine.
Q. Is that a true strobus, in your judgment?
A. Yes, sir.
Q. You have competitors who are selling California white
405 pine; is that true?
A. Yes, sir.
Q. Will you state whether that is sold at a lower price than either northern pine or sugar pine?
A. It is.
Q. Is it a lower priced lumber than Idaho white pine?
A. Yes, sir.
Q. How are you able to sell your trade those varieties of pine in competition with California white pine, at a cheaper price?
A. We do not enter into competition.
Q. I thought you said you had competitors?
A. We have.
Q. I wish you would explain your answer a little more fully.
A. We have steady accounts on our books and have had for a great many years that buy all requirements from us. Occasionally they tell us that we are high priced on pine, which is due to the fact that others are offering pondosa in place of Idaho or sugar.
Q. How about those that are offering California white pine; are there such?
A. Also cheaper, and when I explain the difference between pondosa and Idaho, they preferably buy the Idaho for their work, for its lasting qualities, and so forth.
Q. Do you ever lose any customers because of their being offered California white pine——
A. We do for a while.
406 Q. But they come back?
A. As a rule, they do.
Q. Have you lost customers to retailers who were selling California white pine?
A. Not that I can remember.
Q. Have you lost trade to those who were selling pondosa pine?
A. Occasionally; yes.
Mr. BURR. That is all.

Cross-examination by Mr. MATTHEW:
Q. You said you regarded Idaho white pine as Pinus strobus?
A. Yes.

Q. How do you classify California white pine; do you call that Pinus strobus, too?

A. No; it is not Pinus strobus according to the laboratory tests; it is a species of yellow.

Q. It is not a true white pine, you mean?

A. Yes.

Q. But Idaho you consider Pinus strobus?

A. Yes.

Q. You say you occasionally lose customers to retailers who are selling pondosa pine?

A. Yes—I do not say we lose customers; we might lose an occasional order.

Q. All right; put it that way. You do lose occasional
407 orders to retailers who deal in pondosa pine?

A. Yes.

Q. You do not recall losing any customers to retailers who deal in California white pine; that is what you said, isn't it?

A. Yes, sir.

Mr. MATTHEW. That is all.

(Witness excused.)

JOHN BOSSERT was thereupon called as a witness and, having been duly sworn, testified as follows:

Direct examination by Mr. BURR:

Q. You are president of Louis Bossert & Sons, Inc., are you?

A. Yes, sir.

Q. How long has that concern been in existence?

A. About fifty years.

Q. You are located at 1301 Grand Street, Brooklyn, are you?

A. Yes, sir.

Q. You are engaged in the manufacture of sash, doors, blinds, moldings, and things of that kind?

A. Yes, sir.

Q. Where do you buy your supplies for that work?

A. Mostly through wholesalers.

Q. Do you buy direct from the manufacturer at all?

A. In some cases.

408 Q. What types of pine do you handle?

A. California white, sugar, pondosa, and Idaho.

Q. You are also a retailer, are you?

A. No.

Q. No retail work at all?

A. No.

Q. In your millwork, you use all of those varieties of lumber, I suppose, that you have mentioned?

A. Yes.

Q. Do your customers generally specify the variety of pine that they desire?

A. No.
Q. Do you have customers who ask for white pine?
A. Very little.
Q. What do they ask for?
A. Pine.
Q. Has the term "pine" any significance in this town, as distinguished between white pine and other varieties of pine?
A. I do not know. I would not be able to answer that.
Q. When they ask for pine, what do you furnish; are you free to specify any of the types of wood you say you handle?
A. Yes.
Q. You have no specifications asking for white pine at all?
A. Very little.
Q. You do have it then occasionally?
409 A. Yes.
Q. What do you supply, then?
A. We tell them what we give them.
Q. You tell them what you give them?
A. Yes.
Q. When they order pine you tell them what you are giving them?
A. Yes.
Q. You always say what variety of pine you are furnishing, no matter what they order; is that right?
A. In most cases the pondosa.
Q. In most cases you supply pondosa?
A. Yes.
Q. The bulk of your purchasers call for pondosa, you mean?
A. Yes.
Q. When they ask for white pine they get pondosa, on those rare occasions that they ask for white pine?
A. In most cases we show them the lumber we are going to give them.
Q. That is so, whether they ask for white pine or pine?
A. Yes.
Q. Do you sell to the general trade or do you have some specialty?
A. No.
Q. No specialty?
A. Mostly builders and contractors.
410 Q. When you get your pondosa pine and your California white pine in do you put them in the same bin or the same stacks, or whatever you call them?
A. No, sir.
Q. You keep them separate, do you?
A. Yes.
Q. That is true of the Idaho white pine also, is it?
A. Yes.
Q. Do you regard pondosa pine and California pine as different types of lumber, or the same, or what?

A. Practically the same.

Q. Is the Idaho white pine a different type of lumber from the other?

A. Yes, sir.

Q. Did you say you dealt in sugar pine?

A. Yes, sir.

Q. Do you regard that as a different type from Idaho pine, or practically the same?

A. Practically the same.

Q. Which of those varieties of wood do you regard as genuine white pine, if any?

A. Idaho, I think.

Q. Idaho?

A. Yes.

Q. Is the California white pine a genuine white pine, in
411 your judgment?

A. I do not know. I could not answer that.

Q. Do people ever ask you whether these varieties, or which of these varieties are genuine white pine; are you ever asked that question by your customers?

A. No, sir.

Mr. BURR: That is all.

Cross-examination by Mr. MATTHEW:

Q. Mr. Bossert, are the terms "California white pine", "sugar pine", "pondosa pine", and "Idaho white pine" well known to the trade?

A. Not to our trade.

Q. Are they known to all these manufacturers of sash, doors, and blinds, moldings, and so forth?

A. Yes, sir.

Q. And they are thoroughly understood in the trade, generally, I mean, the manufacturing trade?

A. Yes, sir.

Q. I take it, Mr. Bossert, it is your effort in every instance to supply your customers with the material which you understand they desire?

A. Yes, sir.

Q. And which is best adapted to their purposes?

A. Yes, sir.

412 Q. And if you are furnishing them with California white pine, you explain that to them?

A. Yes.

Q. So there is no deception practiced on your part on your customers?

A. No, sir.

Mr. BURR. I object to that question. That is one of the issues in this case, and he is asked for a conclusion.

By Mr. MATTHEW:

Q. I will put it this way: You state, in response to occasional requests which you receive for white pine, that you will confer with your customers and not infrequently supply pondosa pine?

A. Yes, sir.

Q. The customer understands that?

A. Yes, sir.

Q. Suppose if there were any change made in the trade name of California white pine, would that make any change in your practice?

A. No, sir.

Mr. MATTHEW. That is all.

Redirect examination by Mr. BURR:

Q. Have you customers who are willing to pay a little higher price to get the Idaho or the sugar pine?

A. No, sir.

413 Q. Do you buy the Idaho and sugar pine at the same rate that you buy California white pine?

A. No, sir.

Q. But you do dispose of the Idaho white pine; you do sell it, do you not?

A. Yes, sir; in some cases where I can buy it as cheap as pondosa; there are sometimes occasions where I can buy Idaho as cheap as pondosa.

Q. You do not deal in Idaho unless you can buy it as cheap?

A. It is a matter of price only.

Q. That is, you deal in it on a price basis?

A. Yes.

Q. You regard those various woods as of the same quality?

A. Practically, yes; whichever one is the cheapest, I buy.

Q. And you do not buy sugar pine unless the salesman meets the same price?

A. On the same dimensions and in grade.

Q. As compared with California white; is that true?

A. Yes.

Q. That is your uniform policy, is it?

A. Absolutely.

Q. They have to get right down to brass tacks on price?

A. Yes.

Q. The bulk of your lumber, I believe you said, was California white pine and pondosa?

414 A. No, sir; mostly pondosa, very little California white or sugar or Idaho.

Q. You say these various terms of sugar pine and Idaho white pine and pondosa pine are understood in the trade generally, I think you so testified on your cross-examination?

A. Not amongst the speculative builders.

Q. By that you mean that they are familiar with those terms and that they know each variety is a genuine white pine, or what do you mean?

A. I mean that they will accept most anything that is cheap.

Q. Most anything that is cheap?

A. Yes, sir.

Q. They are familiar with those names; is that it?

A. No; they are not.

Q. They are not familiar with the names at all?

A. No.

Q. What did you mean when you testified on cross-examination that these terms, "Idaho white pine" and "sugar pine" and "California white pine" and "pondosa" were well understood with the manufacturing trade with whom you dealt?

A. That means people like my competitors. I do not mean the man that buys the stock from us. I do not refer to the builder who buys the material.

Q. Your are referring to your competitors rather than your customers?

415 A. Yes.

Q. They understand those terms?

A. Yes.

Q. You mean they understand them better than the customer who buys the material; that is your understanding?

A. Yes.

Re-cross-examination by Mr. MATTHEW:

Q. If there were to be any change in the practice of naming the lumber—if there were any change in the names of this lumber, you would continue to sell it as you do now?

A. Yes, sir.

By Examiner SHEPPARD:

Q. If you had a cube of pondosa here and a cube of California white pine here, could you tell me the difference in them?

A. Sometimes.

Q. What is the difference?

A. The California might be a little softer than the pondosa.

Q. Which is the cheapest?

A. In some cases pondosa is cheaper and in some cases the California white is cheaper; it depends on the man selling it.

Q. They are both cheaper than the Idaho white pine?

A. Yes, sir.

416 Redirect examination by Mr. BURR:

Q. I would like to return to the direct examination for a moment, if the examiner will permit.

Examiner SHEPPARD. Very well.

Q. Mr. Bossert, some years ago there was a lawsuit, was there not, with regard to the name "California white pine", in which you were somewhat involved; is that not so?

A. No, sir.

Q. In which you were a party—was not your concern a party to the lawsuit?

A. No, sir.

Q. Over a consignment of California white pine or western white pine?

A. Not that I remember.

Q. Was it Idaho white pine?

A. No, sir.

Q. Were you ever involved in a lawsuit as to the character or identity of wood furnished?

A. No, sir.

Q. By you or anyone else?

A. Not that I know of—not by me.

Q. You have never been in a lawsuit concerning lumber?

A. No, sir.

(Witness excused.)

417 EDWARD ALPERT was thereupon called as a witness and, having been duly sworn, testified as follows:

Direct examination by Mr. BURR:

Q. What is your line of business, Mr. Alpert?

A. Manufacturer of sash, doors, and trim.

Q. You are located at 410 Snedeker Avenue, Brooklyn?

A. Yes, sir.

Q. You are connected with the Alpert Woodworking Company?

A. Yes.

Q. You are the manager, are you?

A. President of it.

Q. How long have you been engaged in business there, Mr. Alpert?

A. Twenty years.

Q. Just what line of woodwork do you do, if you please, sir?

A. We manufacture mostly moldings, closets, special doors, and sash.

Q. Where do you get your lumber from?

A. From the coast.

Q. A good deal from Klamath Falls?

A. Mostly from Klamath Falls.

Q. That is California white pine?

A. California white pine.

Q. Do you also deal in Idaho white pine?

A. No, sir.

418 Q. None at all?

A. None at all.

Q. Do you get any northern white pine?

A. No, sir.

Q. Do you buy any pondosa pine?
A. In shelving grade—only common grades.
Q. Do you carry any sugar pine?
A. Yes, sir.
Q. Is that a small item in your business?
A. A small item; it is mostly California white.
Q. For what purpose do you carry sugar pine?
A. For special doors that people want sugar pine for.
Q. They call for sugar pine and you furnish it when you have a call for it?
A. Yes.
Q. Do you have calls for white pine from your customers?
A. Most of them just specify pine.
Q. Is pine used by many customers interchangeably with white pine, in this town?
A. It all depends on what kind of work. If it is speculative work, they use the cheaper product, which is California pine or pondosa. For special work or special contracts, which call for a better grade of pine, they specify sugar pine and Idaho.
Q. They sometimes specify white pine, do they not?
A. Yes; occasionally.
419 Q. You then furnish which?
A. If they specify white pine, we supply sugar pine.
Q. Do you ever supply California white pine on a specification of white pine?
A. No, sir.
Q. You are sure you have never done that?
A. No, sir. Most of our jobs do not specify; they just ask for pine—speculative work.
Q. What do you mean by speculative work, putting up houses to sell?
A. Yes; apartment houses—mostly apartment houses.
Q. How long has that been the case? Has there ever been a time when you supplied western white pine or western soft pine?
A. Years ago they used to use a lot of this western pine, but now they call it pondosa. In those days they used a lot of western pine.
Q. Western white pine, you mean?
A. Western pine. Now, California white pine is coming into vogue, and most of them use California white.
Q. Do you regard California white pine as equal to the Idaho white pine in its quality?
A. No, sir.
Q. You do not. What difference is there between the two?
A. Idaho is softer and it will stand up better; it won't warp and twist, such as California white will.
420 Q. But your speculative trade asks for pine merely?
A. They want the cheapest you can give them.
Mr. BURR. That is all.

Cross-examination by Mr. MATTHEW:

Q. Then you also furnish this cheap stuff for sash, doors, and trim, only in response to orders for pine; and if white pine, you furnish sugar pine?

A. Yes.

Mr. MATTHEW. That is all.

(Witness excused.)

W. E. MURCHIE was thereupon called as a witness and, having been duly sworn, testified as follows:

Direct examination by Mr. BURR:

Q. Mr. Murchie, what is your business, sir?

A. I am in the retail lumber business.

Q. How long have you been in that business?

A. Personally?

Q. Yes.

A. Since 1909.

Q. What is the name of your firm?

A. Cross, Austin & Ireland Lumber Company.

Q. Are you a member of the firm?

421 A. Yes; vice president.

Q. How long have you personally been engaged in the lumber business?

A. Since 1909.

Q. Do you have any specialty in your trade, or is it a general trade?

A. Ours is a general retail lumberyard, but we run a mill in conjunction with our trade that makes up doors and trim to architects' specifications largely—not stock. We do not run stock and patterns, but work to architects' specifications.

Q. Do architects specify pine on occasion?

A. Very often.

Q. Do they specify white pine on occasion?

A. Very often.

Q. Does the term "pine" here have any significance as regards the type of pine?

A. We do not run into that, so I do not know whether you want me to answer that question or not.

Q. No; I do not want you to speculate on this thing. Whenever they specify white pine—by the way, do they specify it that way?

A. Some of them say white pine. Once in a while we run into specifications which say, "Must be Pinus strobus."

Q. Must be Pinus strobus. Do they specify northern white pine on occasion?

A. Yes.

422 Q. What type of lumber do you carry?

A. We carry a little of the northern white pine, quite a quantity of the sugar, some of the Idaho, and some pondosa in inch boards.

Q. And some California white?
A. No California white at all.
Q. No California white?
A. Unless pondosa can be termed that.
Q. Do you understand California white and pondosa to be the same variety of lumber?
A. That is my understanding.
Q. Do you distinguish any difference between grade and quality in these two?
A. We do not carry California white, but I understand it is the same variety but grown under different climatic conditions. They say the California white makes bigger widths; that I understand to be the difference.
Q. Those men who come in and specify strobus, you give them the old-fashioned white pine?
A. If we possibly can.
Q. If you cannot, what do you give them then?
A. If we cannot, we submit samples of what we can furnish to the architect, and they will take it in some cases; sometimes we have a little Pinus strobus over there, but usually not much.
Q. Where do you buy that from?
A. That Pinus strobus was cut from the William Rocke-
423 feller's estate, just the other side of Utica in New York; they are cutting Pinus strobus on his estate.
Q. Do you ever handle the Canadian strobus?
A. In boards; we have some coming down from Canada now.
Q. From whom do you get that?
A. From Guy Robinson.
Q. Is that virgin timber, do you understand?
A. I haven't any knowledge of that.
Q. Is it large stuff?
A. No; ten-inch boards.
Q. Your specifications call for ten inch?
A. I beg your pardon; this was a car of eight-inch boards, this particular car.
Q. Is that largely heartwood strobus, do you know?
A. It would be from small trees; yes, it would be.
Q. When they specify white pine, without mentioning strobus, what do you furnish them?
A. We give them strobus, Idaho, or sugar.
Q. Do you ever give them pondosa under those circumstances?
A. Only after taking it up with them is for our mill—the pondosa we have is largely used for shelving boards; we haven't it for millwork.
Q. Shelving boards would be for inside work?
A. Yes; for regular shelving work, for industrials, store fixtures, indoor work.

424 Q. Do you regard pondosa pine and California white pine as having a different character or quality in its value as lumber from the other species that you mentioned, the sugar pine and the northern white pine?

A. We do; yes.

Q. In what respect?

A. For the higher grade work.

By Examiner SHEPPARD:

Q. Which?

A. I figure the pondosa and the California white pine are of less value for the making of doors, and so forth.

Q. Of less value?

A. Yes.

Q. Why?

A. I think they stain more easily and pull out of shape more easily, and they are of harder texture.

By Mr. BURR:

Q. Which type of work do you prefer for exterior use, if either?

A. Between what?

Q. Between white pines and the pondosa, or California white pine?

Mr. MATTHEW. He does not deal in California at all, he said.

The WITNESS. I do not deal in California.

Mr. BURR. I still think he can express an opinion as to it, whether he deals in it or not.

425 Mr. MATTHEW. So long as he does not handle California white pine, I submit he should not be asked as to that particular lumber.

Examiner SHEPPARD. I think he testified that he regarded them as the same thing. Did you ask him whether the two would give the same result precisely?

Mr. BURR. Read the question.

(The question was repeated by the reporter as above recorded.)

The WITNESS. The white pines.

Mr. BURR. That is all.

Mr. MATTHEW. No questions.

(Witness excused.)

(Whereupon, at 1.00 o'clock p.m. an adjournment was taken to reconvene at 2.00 o'clock p.m.)

426 AFTER RECESS

2.00 P.M.

ISAAC BAER, was thereupon called as a witness and, having been duly sworn, testified as follows:

Direct examination by Mr. BURR:

Q. Mr. Baer, you are engaged in what line of business, sir?

A. Sash and doors.

Q. You make them, do you?
A. Yes.
Q. How long have you been engaged in the millworking business?
A. Twenty-five years.
Q. And you are with the Weisberg-Baer Company, are you?
A. Yes.
Q. Located in Long Island City?
A. Right.
Q. How long has that firm been in business?
A. They have been in business since 1903 or 1904, something like that. They have been in business under a different style; they have only been called Weisberg-Baer since 1912. Before that it was Weisberg-Mark, but the same company.
Q. Have you been connected with the firm for that length of time, since they began?
A. Yes.
Q. In that millwork business, your customers are contractors and builders?

427 A. Yes.
Q. And owners?
A. Yes.
Q. Who need this millwork material?
A. Right.
Q. Where do you get your material from?
A. All over the country.
Q. Do you buy northern white pine?
A. Some of it.
Q. From whom do you buy that?
A. We have been getting some from Canada. We have been getting some recently from the pulp company—I forget what they call themselves—it is a big lumber company making pulp; I have forgotten the name. It is the International something.
Q. The International Pulp & Paper Company; is that it?
A. Right.
Q. Have you also bought northern white pine from Minnesota recently?
A. No; I used to buy some years ago from an Albany concern—northern pine, but lately we cut out a lot of it on account of price.
Q. It is higher priced?
A. Yes.
Q. But you still can get it, but it is at a higher rate?
A. Yes, sir.

428 Q. How about the Idaho white pine; do you carry a species known as Idaho white-pine lumber?
A. Yes.
Q. From whom do you buy that?
A. From local dealers.
Q. Wholesalers?

A. Wholesalers. Some of them we have an account with somewheres in Idaho, a party by the name of White Lumber Company, A. C. White, if I remember.

Q. That is shipped direct to you from the West, rather than to the wholesalers and then to you—shipped direct?

A. Shipped direct.

Q. That comes from what part of the West; do you know where your shipments actually come from?

A. Somewheres in Idaho. I haven't got the memorandum with me, and I could not recall.

Q. Do you also buy what is called pondosa pine?

A. Yes.

Q. And California white pine?

A. Yes.

Q. When your orders come in for this class of work that you have described, do the orders ask for California white pine sometimes, or how are they asked for?

A. White pine.

Q. Then what do you supply on that request?

429 A. Why, mostly pondosa.

Q. Mostly pondosa pine?

A. If they do not specify northern, I give them pondosa.

Q. What do you do if they ask for California white pine? I understand you sell that, too.

A. The customer is not educated to that extent that he specifies what State it should come from. He usually calls it white pine, except where they are very particular, such as the State of New York or in Government work, I dare say they specify strobus, which means northern pine; otherwise it is a very rare case.

Q. They actually put the word "strobus" in the specification?

A. Only once in my experience. I then did not know what it was myself.

Q. Then you found out that it meant northern white pine?

A. Yes; and I want to tell you, I had a run for my money.

Q. When they ask for white pine, do you ever give them Idaho white pine?

A. Either Idaho or California or any of those States; Oregon——

Q. You give them California white pine and sometimes Idaho white pine, do you?

A. It all depends what we have in stock or are able to get.

Q. And sometimes pondosa?

A. Yes.

Q. How long have you been buying what is known as pondosa pine?

A. Many years; I dare say about fifteen years, anyway.

430 Q. Do you recall a time when that material was known as western soft pine, or do you not remember that?

A. No. To be honest about it, originally we would rather have the northern pine that we were buying at the early stages; we were

buying northern pine from Kibbe & Son in Albany, and we used to get northern pine. After awhile, the Pacific coast people come around and they showed us inducements, so we naturally switched to the Pacific coast people.

Q. What were their inducements?

A. Price.

Q. A lower price?

A. Yes.

Q. Is that true of each of the products from the Pacific coast?

A. All this pondosa belt—I do not know particularly what States.

Q. All right; go ahead.

A. I do not specify any particular State, but, of course, we have distinctions. The Oregon is softer, and California is supposed to be a softer pine, but some of it is harder.

Q. By "California" what do you mean—California white pine or sugar pine?

A. California white pine.

Q. Do you deal in sugar pine also?

A. Not so much.

Q. Is the California white pine, in your experience, quoted
431 to you as cheap or cheaper than the Idaho white pine?

A. I believe it is.

Q. Which?

A. California is a little cheaper than the Idaho.

Q. Do you find that the Idaho is cheaper than the northern, on the whole?

A. Yes.

Q. Quite markedly so?

A. No question about it.

Q. When the California white pine was represented to you as cheaper than the northern, therefore you were solicited as a customer for the California white pine; did they represent that that was a true white pine, do you recall?

A. They did not use the term "true", but they called it white pine; you were supposed to find out the difference, and——

Q. Did you yourself regard it as white pine?

Mr. ANDREWS. Let him finish; I do not think he finished his answer.

The WITNESS. We tried it out, and found in some cases that we did not fare so well; it did not stand up so good. The doors which were made, particularly in exposed work, did not stand up so well. Some of it has the characteristic grain that looks like yellow pine, and for a time we stood by it. We found some concerns that pro-
duced good, soft-textured pine, also from the same neighbor-
432 hood in California, and we are getting along pretty well.

Q. Where are you getting it from now?

A. We are getting some sizes here.

Q. Do you know where from the West you are getting it?

A. I could not say, because I do not follow it up. I presume California or Idaho. We are buying better grades, that more particularly protect you, and we are also buying lower stock cars in no. 3 common grades. That stock we are not so particular as to the texture, and that we are not getting from the Long Bell Lumber Company. I heard one of the gentlemen mention something about it. We are getting direct, quite a little from them.

Q. California white pine you are buying from the Long Bell Company?

A. Pondosa they call it, but we like it all right; we haven't any trouble with it.

By Examiner SHEPPARD:

Q. Who calls it pondosa?

A. I do not suppose, to be honest with you, whether their bills and invoices specify the name. They call it white pine. We know what it is; we have been using it right along; we tested it out, and we get along all right.

Q. The Long Bell people do not call it pondosa, do they?

A. Well, in the first place, I could not say that, because I was not getting it direct. I was getting it from some local dealers.

Q. I understood you to say that you bought some direct from
433 the Long Bell?

A. I know it came from the Long Bell, because the salesman followed it up and wanted to know how it was, and I told him that I was satisfied.

By Mr. ANDREWS:

Q. Mr. Baer, you said the Long Bell Company invoiced it as white pine?

A. Not to us.

Q. You did not see the invoices?

A. No; I recall getting some from Long Bell direct, some years ago, but I would not recall the nature of it.

By Mr. BURR:

Q. The strobus or the northern white pine that you got, why did you regard that as preferable?

A. On account of the texture; it does not twist or warp as bad as the others.

Q. Which others do you refer to?

A. The Pacific coast products.

Q. Including which varieties?

A. Mostly the western white pine, I would say.

Q. Western white pine?

A. They give it titles as California——

Q. Are you referring to pondosa or California white pine?

A. It is all pondosa, in my estimation—it comes from Wash-

434 ington, California, Idaho—in fact, they all call it pondosa, as I understand it.

Q. Do you regard the California white pine and Idaho white pine as all belonging to the ponderosa species?

A. That I am not a good judge of.

Q. Do you regard them as the same type of lumber?

A. In a general way I would, but they also differ in texture.

Q. In what respect does Idaho white pine and California white pine differe in texture?

A. I find Idaho is softer, and so is some of the Oregon. We have had some very good Oregon white pine in the Pelican Bay section, where we are very well satisfied with the texture.

Q. That is in the Klamath Falls section?

A. Klamath Falls section; right.

Q. Do you recognize a distinction between pondosa pine and California white pine, such as you have described, between Idaho white pine and California white pine?

A. You see, pondosa is the general name for it. You cannot say from what particular State it comes—I would not know how to distinguish between the two. Pondosa, as I take it, is all of these—in fact, to be honest about it, it was explained to me since I had a little trouble with this strobus, which don't belong to this action—but I had a run-in with the State of New York, and after a six months' fight. I took it that Pinus strobus means white pine.

Q. Yes; go on.

435 A. In fact, it was a little comical. I had a young fellow, a student from college, a college graduate, and I showed him the specifications from the State of New York, which calls for Pinus strobus, and he said, "What do you call this?" So I said to him, "You ask me? You are a college graduate; you ought to know better than me what these Latin names mean." So he said, "I will tell you what you do, you better look it up in the dictionary." So we looked it up, and it was white pine; that is all there is to it.

I sent an order to Hotchkiss Brothers in Connecticut asking for a certain amount of sash white pine, and of course Hotchkiss naturally gave me the pondosa, since I did not ask for anything else.

The architect of New York State turned it down and would not accept it. I argued my head off, telling him that I understood it was white pine, the same as the others, but they argued that it wasn't. It took me several months; I wrote to different colleges and many lumber men—I inquired of American people raised in the lumber business, and they did not know the distinction about what strobus meant at the time, so finally I went to the librarian in this city to look through their definitions, and they found that it described the strobus as a kind of pine growing this side of the Rocky Mountains and called northern white pine; west of that they called it pondosa or ponderosa.

Q. Did you have any lawsuit about that?

436 A. Why, no, we patched it up; we had to make an allowance after this sash was delivered, and that ended it. The State allowed us to deliver it and they made it up by taking an allowance from us.

Q. In other words, you did not get quite the contract price?

A. At one time it looked as if I would have to make new sash, and that they were going to reject it entirely. I had to go on my knees begging them and telling them that it would stand up; 90 percent of the people of the country are using it, but they argued that they ordered strobus, and they wanted it.

They were nice enough later on and put it through by an allowance.

Q. Is this the mix-up that you referred to a minute ago?

A. That is it; and I learned the meaning of the word "strobus."

Q. You never had strobus specified again by any of your customers; is that right?

A. Except only today, I was estimating a job. I cannot tell what it is; it was some hospital; whether it was Government or State, I could not say; but they called for northern pine.

Q. Did they say strobus?

A. They didn't have to this time.

Q. You do not distinguish at all, then, between Idaho white pine and California white pine as to their characteristics and quality, do you; or do you make a distinction?

A. I do.

437 Q. That, you testified to, was a matter of stability or of staying in place; in that respect it is preferable to California white?

A. Correct. We are mostly interested in seeing that it should stand up, not warp or twist.

Q. When people ask for some variety of white pine that is good for outside, exterior purposes, to be placed where it is going to be exposed to the weather, do you make any distinction between these varieties of western wood?

A. No.

Q. You don't?

A. Except widths. They nail us down and we have to guarantee the quality of the workmanship to stand up for a certain period, then we have to watch our step and buy such pine as we think will stand up better than the other.

Q. Is that often done?

A. In every case. When I buy some lumber I am very particular to find out where the lumber comes from, and the shipper must write on his order slip, "soft texture."

Q. Would the matter of texture make any difference regarding the durability of the wood?

A. No; it would not have to do with the durability, but it would have to do with twisting and warping.

Q. What is the reputation of northern white pine as to its ability to stand up under weather conditions, if you know?

438 A. They claim that it is a very long-lived wood. These northern men who used to sell me this wood used to make statements——

Q. Never mind their statements.

A. But they represented that it lived 150 years, and one salesman told me that he knows some tombstone made of this white pine which lasted for such a long time, but I was not there, of course, to see.

Mr. BURR. You may cross-examine, sir.

Cross-examination by Mr. MATTHEW:

Q. You stated, Mr. Baer, that frequently when you have orders for white pine you furnish pondosa?

A. Yes.

Q. Why do you feel free to furnish pondosa, in response to orders for white pine?

A. Because since they do not specify strobus, then I am legally on my rights to furnish pondosa.

Q. And your customers are ordinarily satisfied with what you furnish to them?

A. They are.

Q. You have had no complaints?

A. No, sir.

Q. You said that you have obtained very satisfactory qualities of lumber from the Pelican Bay Lumber Company?

A. Yes, sir.

439 Q. You use that largely in your sash and millwork?

A. Right.

Q. Is the term "California white pine" quite well established in the trade here?

A. I believe it is.

Q. You have known it during the entire period of your business experience?

A. Yes.

Q. The trade generally knows what that lumber is?

A. Well, the trade in New York in particular, but when you are dealing with laymen they are not judges of lumber.

Q. Then, they really depend on you to furnish lumber of the quality and character——

A. To stand up. If it does not, they will come back on me.

Q. You undertake to satisfy the requirements of your trade?

A. That is right.

Q. And you find that your product stands up quite satisfactorily?

A. We have to.

Q. You find that to be the fact?

A. Yes. We had some very slight cases where we have to replace a few doors occasionally, but they are so rare that it does not pay

to use higher priced lumber like the northern for that particular purpose. I would replace a half a dozen or a dozen doors every once in a while than to spend a lot more money for the lumber.

440 Q. You think that is the interest of your customers, as well?

A. Of course.

Q. I take it, that as a practical manufacturer, you are not interested in the botanical names of trees, but rather in the quality and the usefulness of the lumber?

A. That is right.

Q. That is your test?

A. But we are also counting yield, how much percentage we can get out of the lumber, compared to one that has more knots and has to go to the boiler room to burn up; if it is a poor grade of lumber, we don't want it; if it is clearer, we like it better, and that is what we are watching out for.

Q. You find that you get a quite satisfactory grade of shop lumber from the Pelican Bay Lumber Company?

A. Oh, yes. We buy a little grade in the shop. We buy C selects—D selects and C selects.

Q. If any change were made in the trade name of California white pine, would that bring about any change in your practice, as a business man?

A. No change at all.

Mr. BURR. If the examiner please, that question is objectionable as calling for a conclusion.

Mr. MATTHEW. I think not.

Mr. BURR. Under varying circumstances, what change he would make in his practice, without specifying what change

441 in the trade name resulted, I think a question of that kind is very theoretical and highly speculative.

Mr. MATTHEW. I submit to the examiner that I am not asking for a conclusion. I am asking if it would bring about any change in his practice if there were any change in trade name.

Examiner SHEPPARD. I heard the questions this morning, Mr. Matthew, and I did not exactly get the significance of it at that time. I do not know whether there is any objection to it or not, but I do not see that there is very much purport to it. The individual witness to whom such a question is directed, for instance, Mr. Baer here, I do not know whether his answer one way or the other would help. However, I will let it stay in.

Mr. BURR. If the examiner please, I should have objected two or three times when it was asked heretofore. Now, it looks as though he is making a strong point of it. I think it is seriously objectionable along this line. I do not think that it is appropriate unless the change in the trade name was specified, and, furthermore, he does not build up any foundation which might possibly call for such a speculative trip as that; he should state in his question what the change might be; what the lumber was called for when it reached him, or

what change might result, and what effect such a change might have on buyers if they came and asked for strobus, if they called for strobus, and whether he would immediately change is practice and carry strobus.

442 If they came and asked for Idaho white pine, it would change his practice, or if they only asked for California white pine, that might change his practice. All those considerations are appropriate as preliminary before such a question ought properly to be put.

It is a generally a leading question and calling for a conclusion and a speculation on the part of this witness under circumstances of a change in the trade, as to which he is not invited to consider the various elements.

It seems to me it is wildly speculative and quite objectionable and misleading to the Commission if they rely on this kind of question and answer. I do not think it is worth much as evidence, but it is objectionable and calls for a conclusion, and it is a speculative situation, which is not explained to him, nor can it be in the nature of things.

Mr. MATTHEW. It is quite obvious that this question does not call for a conclusion at all. I can simplify my question a little, which will obviate, if possible, any objection counsel might urge.

The witness has described what his practice is. He said when he received orders for white pine he ordinarily furnishes pondosa. He says he is familiar with the term "California white pine", and that term has been well established as a trade name in the territory, according to his experience.

The WITNESS. That is right.

443 By Mr. MATTHEW:

Q. Now, I will ask you this question: Let us assume that the name "California white pine" were replaced by the name "California pine", that is, merely by eliminating the word "white"; would that change make any difference in your practice?

A. No; it would not make any change in my practice. I would furnish it to the customer who called for white pine, relying on the lumber as being the same, and I would supply it as white pine.

Mr. MATTHEW. That is all.

Redirect examination by Mr. BURR:

Q. Let me ask you this, Mr. Baer: Suppose the Federal Trade Commission, which is taking this testimony here, and the courts were to hold that the so-called California white pine was misnamed, and that it had resulted in deception of the public and deceiving of the public into the belief that California white pine was a white pine, when the Federal Trade Commission and the courts held that it was not a white pine; would you still, on occasion, furnish that to your trade, if the Commission so held, and the name "white" had dropped out of the trade name for that product?

A. It would not affect me at all.

Q. Would you still continue to furnish that to them?

A. I would, because the trade relied on me to furnish a
444 lumber that would stand up, and would expect that the product would up.

If the shippers shipped it to me without the word "white" it would not mean a thing to me.

Q. If it was required that the word "white" was to be cut out, would you still do so?

A. I would, because they do not know the difference and would not understand the difference; it is a technical name, and they don't know what the species of lumber is now. There are so many different States where this lumber comes from, if I have to specify California or Idaho or Washington, or wherever it is that it is shipped from, I would have quite a job on my hands.

Q. Suppose they began to say to you not to furnish California pine, as a result of this?

A. That is another issue.

Q. Then you would not furnish it?

A. Then I would have to watch my step. If they nail me down to certain technical names, to jump on me at a certain time for technical reasons, but if in good faith the customer wants a door or sash, or whatever it is, we understand that our plant is responsible to supply that, and we have to give him another door, if it does not stand up.

Q. If it does not stand up, you give them another door?

A. If it does not stand up, we have to give him another door.

Mr. BURR. That is all.

(Witness excused.)

445 ALFRED BUSSELLE was thereupon called as a witness and, having been duly sworn, testified as follows:

Direct examination by Mr. BURR:

Q. Mr. Busselle, you are in what line of business?

A. Practicing architecture independently for twenty-five years.

Q. You have been in New York City all that time?

A. Yes.

Q. What line of architecture do you go in for most, or have you no specialty particularly?

A. Mostly residential work.

Q. Is it in the city of New York or outside?

A. Mostly outside.

Q. Do you have occasion to order lumber for exterior building purposes?

A. Yes, sir.

Q. And do you have occasion to order pine for that purpose?

A. I do. I beg your pardon, would you like me briefly to state my experience?

Q. Yes; I would very much like to have you do that.

A. All right. In my experience, there is a great deal of confusion in the pine market, due to the terminology, and some of the confusion is quite honest. An architect, in getting the result he wants in his building, with regard to the character of the wood, has
446 three dealers to rely on—the lumber producer, the lumber merchant or millman, and the contractor.

Now, whatever the producer may know, the millman and contractor are often quite honestly confused as to supplying white pine, because they say, especially those in smaller lines of business, that "This was sold to me as white pine."

Now, I endeavor to safeguard my outside millwork by the use of the words "Pinus strobus" in the specification, but occasionally, either through honest ignorance or otherwise, I do not get it.

California white pine looks a good deal like Pinus strobus in parts, and in parts it does not. It is likely to run off into yellow strips, which have the characteristics of yellow pine, and upon one such occasion where I found a lot of apparently yellow pine sold as California white pine, I had it analyzed—I believe by the Federal Forestry Bureau or the State bureau of forestry; I cannot say for the moment which—and the record was that it was botanically yellow pine.

Q. Do you remember which yellow pine it was?

A. It was sold to me as California white.

Q. Which yellow pine did it turn out to be, do you remember?

A. The report was "yellow pine." They did not give the botanical name, and I was not interested in that. It was not Pinus strobus.

Q. All right, go ahead.

A. Yellow pine will not hold paint outside, and I have had a job of outside work, which was painted several times, the
447 paint coming off. It was sold as California white pine, and afterwards had to be rejected because I could not get paint to stick on. Substitutions are more apt to occur for inside work than they are for outside work, because the California white pine is better for inside; at least, it is less objectionable for inside—I will put it that—than it is for outside, where it is not exposed to the weather.

However, it exhibits in parts, in any lot of California white pine which you get, you will see among it characteristics of yellow pine in the larger pieces, as in panels of doors or panels of rooms, and if you are attempting to make a white pine panel room, you will get pieces that exhibit the coarse grain of yellow pine.

Q. That is, pieces of what?

A. California white.

Q. All right, sir; go ahead.

A. That, briefly, is my general experience. In every job I endeavor to discuss with those concerned, that is, the contractor and the millman, if I can get back to him, the wood which is to be supplied, and I sometimes feel—I sometimes find an honest ignorance,

which is due to the use of the words " white pine ", when western or California or wherever else it might be, to apparently cover the ground of what is wanted, which particularly or usually it does not do.

Q. Do you occasionally employ Idaho white pine?

448 A. Yes; Idaho white pine.

Q. Do you accept that?

A. Yes; Idaho white pine is a larger tree than the Michigan tree, and is the same kind of wood; it is coarser in grain and not so wide apart, and if you want clear material, you get a greater proportion of it.

Q. Did you accept that when you asked for strobus? Would you accept that in place of it, if you know what is furnished?

A. Yes; if you mean by your question what is known as Idaho pine, within the designation of Pinus strobus. I understand that all the forests of Idaho are not Idaho pine.

Q. Yes; I understand that to be the case. Not all the forests in Idaho are Idaho white pine, but when you get Idaho white pine, are you willing to accept that as a substitute for northern white pine, or strobus?

A. It is strobus.

Q. The record shows there is an Idaho white pine that belongs strictly to the white pine family, but carries the botanical name, not of strobus, but of monticola; that is what the record shows that you are buying when you get Idaho white pine.

Mr. MATTHEW. The witness apparently does not understand that.

By Mr. BURR:

Q. You do not understand that to be the case?

A. It is not within my experience. I define it as Pinus strobus.

449 Q. And you would accept it as such?

A. I would accept it as Idaho strobus.

Q. Do you ever have any contact with sugar pine?

A. Yes.

Q. Do you accept that as complying with a specification for strobus, or do you regard that as a variety of strobus; or how do you handle that?

A. I do not know whether sugar pine is strobus or not. It is a good pine for interior work, and I allow it.

Q. What you have been testifying about, does that relate to outside work, as well as inside work, in part?

A. I distinguish by saying that the pine which has the characteristics of yellow pine would not stand paint while used outside, but it will stand paint while used inside, but its defect then is in the coarseness of the grain, the flatness of the grain and inferiority for stained work, if you want to produce a stained room.

Q. Do you recognize any difference in your experience between the strobus and the California white pine as regards durability where used outside, where it is exposed to the weather?

A. Did you say strobus and the California?
Q. Yes.
A. Yes.
Q. Which do you regard as more durable?
A. Strobus is the only one that will hold paint, as far as I know.

450 Q. That is what you think of in connection with durability, is it?

A. Within my experience; yes. The rest is hearsay, the California pine going to pieces outside.

Q. You need not go into that further, that is all right, sir. Then you testified that there were certain parts of the lumber that you received of the California white pine, that resembled white pine, and other parts that did not resemble white pine, or did not resemble it so closely; is that true? I think that is your testimony.

A. Yes, sir.

Q. Did you ever notice whether there was any distinction between heartwood and sapwood, as to the degree of resemblance afforded to strobus in appearance, or did not that particular distinction come to your mind?

A. I have never seen any sample of what I knew to be Pinus strobus which exhibited the characteristic hard grain of the yellow pine which the white, which has been represented to me to be California white pine, did.

Q. Is there not some very soft California white pine, too?

A. Sure; the ends of the same stick are soft; they are very white and soft, and very dry in appearance.

Q. You never ascertained whether one end of the stick was sapwood and the other end heartwood, or the contrary, did you; has that come within your experience?

451 A. No.

Q. Do you mean the edge of the same stick or end of the same stick?

A. The end of the same stick.

Mr. BURR. You may cross-examine.

Cross-examination by Mr. MATTHEW:

Q. You have stated, as I understand you testimony, that you ordinarily accept Idaho white pine upon specifications calling for strobus pine?

A. Idaho white pine within the classification of strobus.

Q. In other words, you understand there is some strobus pine produced in Idaho?

A. Yes.

By Examiner SHEPPARD:

Q. And some pine there that was not strobus?

A. That is as I understand.

By Mr. MATTHEW:

Q. If you were told that there is no strobus pine whatever produced in Idaho, would you still be disposed to accept Idaho pine upon specifications calling for strobus pine?

A. Not if I knew it to be a fact that there was no strobus pine in Idaho.

Mr. MATTHEW. Counsel for the Government will tell you that there is no strobus in Idaho.

452 Mr. BURR. That is true; there is no strobus in Idaho. There is genuine white pine there, known as monticola, but no strobus. There is a botanical distinction.

By Mr. MATTHEW:

Q. Were you under the impression that there was some strobus pine produced in Idaho?

A. I was under this impression, that the term "strobus" designated the kind of pine with the characteristics I wanted to get. But I am not interested in anything except the means to the end, and that is to get the kind of pine which I understood was covered by the term "strobus", and the kind of white pine which I understood is a true white pine; that is the kind I am talking about; when I make a distinction between strobus and otherwise.

Q. Then you are not interested in its botanical name, but you are interested in the quality and utility of the wood?

A. That is all.

Q. Did you state whether or not you would accept sugar pine in response to specifications calling for strobus pine?

A. Yes; I did. I would accept sugar pine, particularly for interior work.

Q. It does not make any difference, then, to you, whether sugar pine happened to be strobus pine botanically or not?

A. Not a bit.

Q. Again it is the quality and utility of the wood that you are interested in?

453 A. Exactly.

Cross-examination by Mr. ANDREWS:

Q. Mr. Busselle, strobus to your mind represents a distinct type of wood; is that not true?

A. It represents a distinct quality of wood; a quality which is durable, which will take and hold paint, and which will produce a satisfactory job in interior work when stained as well as when painted.

Q. And your efforts are directed to get that kind of pine furnished for your work?

A. Yes.

Q. Have you ever had an opportunity to form an opinion as to whether heart California white pine would hold paint or not, as distinguished from sap California white pine?

A. This one job I spoke of, where it seemed all to come off, I do not know which came off last, but I say the paint came off.

Q. Do you know whether it was heart or sap?

A. It was both, I should say, in different parts of it.

Q. You do know then that it was partly heart and partly sap?

A. Yes; I think it was both.

Q. You think it was both?

A. In places.

Q. Let me repeat my question——

A. I am not sure. I cannot testify positively on that point.

454 All I was interested in was the fact that it did not hold paint; then I found that it was described to be California white pine by the man who sold it.

Q. But it might have been the sap; that is true?

A. Yes; I won't say that it might not have been.

Q. Do you know where sugar pine grows?

A. It is commonly called California sugar pine; that is all I know about it.

Q. Do you know whether or not it is grown in any other State?

A. I do not know.

Q. Do you know in what part of California it is grown?

A. No; I do not.

Q. Do you know anything about the size or characteristics of the tree known as sugar pine?

A. It comes in pretty good-sized sticks; that is all I know about it.

Q. Have you ever been in the forest where it grows?

A. No, sir.

Q. Have you ever seen a picture of forests where sugar pine grows?

A. Not that I know of.

Q. Your interest never carried you to the extent of making a study of the wood, in that way?

A. No; only the characteristics that affect my work.

Q. To repeat, you had in mind a definite kind of wood that you wanted and you attempt to use a word in your specification

455 that will assure you that that kind of wood will be furnished?

A. That is it.

Q. Do you know where California white pine is grown?

A. No.

Q. You would assume it was, or some of it at least, was grown in California?

A. I should, but I should not care anything as to whether it was or not.

Q. I am interested in finding out whether you are or not and to what extent you made a study of these woods; I will ask you this question: If you know that California white pine is grown in any other State than California?

A. I do not.

Q. You do not know in what State or in what area this wood, giving it its other name, Pinus ponderosa, is produced?

A. No, except in general; I know that Pinus ponderosa occupies a large place in the lumber market. What it occupies geographically I do not know.

Q. You do not know that. Do you know whether it is grown in Minnesota?

A. I do not.

Q. Do you know whether it is grown in the South?

A. No.

Mr. BURR. I object to all this. It seems to me that we have
456 gone too far already. This witness has not pretended to that kind of knowledge. If it is for the purpose of testing his credibility, it seems to me to be out of place.

Examiner SHEPPARD. Mr. Andrews is simply testing the witness's knowledge of the various woods. I will let it go in.

Mr. BURR. He has not laid claim to any knowledge of the trees.

By Mr. ANDREWS:

Q. Mr. Busselle, one more question along that line: Do you know the relation between the amount of California white pine that is produced and the amount of Idaho white pine that is produced?

A. I do not.

Q. Do you know the extent to which the name "California white pine" has become generally established as a trade name and as connoting a distinct type of board of wood?

A. I know something of that. In this day I know that California white pine connotes to some people a distinct type of wood, but it connotes to other people white pine in general, and therein lies the confusion.

Q. Who, generally speaking, are those who are confused?

A. The millmen and the lumber dealers, as well as the architects.

Q. You can tell California white pine, referred to as Pinus ponderosa, can you?

A. When I look at it?

Q. Yes.

A. Not always.

457 Q. How, then, do you determine when lumber is furnished for a building that it is what you specified or not?

A. If I have a chance, I go to the mill, and if I see the whole run of stock that is intended for that job, and see that it looks to me like white pine—I think it pretty well is; if I see some that does not, I may decline it, because when I see what I should call yellow pine in with some material which looks like white pine, and when I know that yellow pine and white pine in appearance run along the same lines with so-called "white pine" in appearance, I am suspicious of the whole lot, although as to some pieces themselves I could not tell the white pine from the other.

Q. You rely on visual test?

A. Well, in part, I try to deal with those who know and who will furnish me with what I want and who intend to do what is right

along the line, and intend to do what is right and give me what I want.

Q. If you were to specify white pine and were furnished California white pine, would you say that it was not white pine?

A. Yes. When I specify genuine white pine——

Q. I did not say "genuine"; I said if you specify white pine?

A. If I specify Pinus strobus——

Q. I did not say that; I said if you specify white pine?

A. If I specify white pine, I would follow up the matter by making sure that I was going to get what I understand to be white pine.

458 Q. Do you specify white pine simply?

A. No.

Q. Why not?

A. Because I want to be sure that I get the kind I want instead of having to worry about it afterward.

Q. Is it not true that to some, and perhaps to a great many, California white pine means white pine?

A. Yes; that is the trouble.

Q. Are those persons in the majority or minority; do you know?

A. Do you mean who are thus confused?

Q. No. Who will accept California white pine as white pine?

A. Oh, I don't know about that; I don't know whether the majority or minority would.

Mr. ANDREWS. That is all.

Redirect examination by Mr. BURR:

Q. You say that when you ask for genuine white pine you regard it as a compliance if you find they are getting ready to furnish you with California white pine; did I understand you correctly?

A. Yes.

Q. Do you regard California white pine as genuine white pine?

A. No; I don't. The reason I don't is I think one name ought to mean one thing and not to describe several qualities.

Q. Is there a lack of uniformity in California white pine as between various portions of the same shipment or the same

459 delivery of lumber at the job?

A. Yes.

Mr. MATTHEW. If the witness knows. I should gather from his answers to Mr. Andrews that he does not know much about it.

Examiner SHEPPARD. I will sustain the objection to that former question.

The WITNESS. What is the question?

Mr. BURR. You have answered it already, thank you, sir.

By Mr. BURR:

Q. Have you been a member of the National Council on lumber matters at one time?

A. I am not exactly sure. I became interested in this white-pine matter some years ago and did some corresponding with the National Research Council, giving them such information and experience as I had. If you mean, if it was a formal body that I was invited to sit down with, I was not.

Mr. BURR. I think that is all.

By Examiner SHEPPARD:

Q. I have only one question, Mr. Busselle: Did you ever come in contact with pondosa pine?

A. No; not to specify it.

Q. Do you know what it is or where it comes from; did you ever hear about it?

A. Oh, yes.

Q. You have heard of it?

460 A. I have heard about it a lot.

Q. You never used it?

A. Not unless it was—not knowingly under that name. I mean to say by this, I am making two distinctions between white pine that I want and the white pine which exhibits or which are to me objectionable characteristics, and which I have called white pine, that might be pondosa or ponderosa pine, as coming under what I have designated as California pine—California white pine, I mean.

Q. If you have not used that particular pine I do not care anything about it.

(Witness excused.)

W. F. YOUNGS was thereupon called as a witness and, having been duly sworn, testified as follows:

Direct examination by Mr. BURR:

Q. Mr. Youngs, you are vice president of the William F. Youngs & Brothers Company?

A. William P. Youngs & Brothers, Incorporated.

Q. 355 Vernon Avenue, Long Island City?

A. Yes.

Q. You are engaged in what line of business?

A. We are principally lumber dealers, and besides we run a mill in which we turn out lumber products; you might say trim

461 and anything that is not put together.

Q. Anything that is not put together, what do you mean?

A. For instance, we would not make a door or window, but we make trim and moldings material for industrial plants.

Q. One-piece stuff, is that it?

A. Yes, sir; and we furnish a lot of material to the trim concerns, that put it together for cabinetmakers.

Q. For doors?

A. Yes.

Q. You purchase what types of pine?

A. We purchase and carry, by trade name, pondosa pine, California white pine, Idaho pine, California sugar pine, eastern Canadian pine, and at times a little Minnesota pine—odd lots perhaps from western British Colombia.

By Examiner SHEPPARD:

Q. Any northern pine?

A. When I say eastern Canadian pine, I mean northern pine in that case, as distinguished from anything grown on the west coast.

By Mr. BURR:

Q. Did you say that you bought any northern pine from Minnesota?

A. Very seldom, occasionally.

Q. In connection with these purchases, have you any line of lumber that is preponderant in your supplies, larger than any other?

A. Well, in different grades, we carry different kinds of
462 pine. For instance, our so-called better grades of pine are carried in the California sugar pine and in the California white pine—not so much in the California white pine as in the California sugar pine. In the California sugar pine we carry grades of 1 and 2 and C selects and D selects.

California white pine, we carry only in D selects.

Q. California white pine, you carry only D selects. Is that all you have orders for, for that?

A. That is all we ever carry.

Q. If customers come in and ask for white pine—you have such customers, do you? Asking for white pine, you carry either California white pine or sugar pine, according to the grade they ask for; is that true?

A. No; the way that works out in the retail lumber business is this—or in the lumber yard—you have your new customers and you have your old steady customers. You know what your old steady customers want. Some use California white pine, some use sugar pine, and you give them what they have been in the habit of getting before.

If it is a new customer, you ask him if he wants California sugar pine or whether he wants California white pine, or whether perhaps he is looking for something particularly soft in northern pine or eastern Canadian pine, and he can take his choice. If he wants good pine, we would only give him the sugar pine, or the eastern or northern Canadian pine.

463 Q. If he wants good pine?

A. Yes.

Q. What in the world might you mean by good pine?

A. If a man wants good pine, if he asks for good pine, he does not want California white pine, because it does not work up and it is not as soft a pine, and it does not answer the purposes for a good

job. It is apt to twist, warp, and it has this heavy grain which is apt to show through paint.

Q. Now you regard it as a reasonably satisfactory wood for inside work, or not even for that, for good work?

A. I do not.

Q. Do you have competitors who are carrying California white pine?

A. Certainly.

Q. Do you know whether you lose orders to those who carry that type of lumber, at times?

A. That is hard to tell just how you lose an order. If we think they are figuring on California white pine and the customer would take it and be satisfied with it, we would figure on it.

Q. That is irrespective of whether he asks for white pine or whether he asks for pine; is that so?

A. In the retail trade, I think, around New York City here, anyway, it is with us, there is a so-called common designation of soft pine and hard pine when speaking of the western pines. When a customer asks for soft pine, he gets the sugar pine, or perhaps some of the California white pine that grows in southern
464 Oregon or around the Klamath Falls section, which is very hard to distinguish at times, especially in the sapwood, from sugar pine, except that it does not show the small sugar streaks.

Q. In that particular case, would California white pine be supplied by you interchangeably with sugar pine, if white pine were asked for?

A. No; I do not think so. We are not in the habit of doing business that way. We try to find out what the customer wants and give him what he wants.

Q. Suppose he does not know exactly what he wants, except that he wants white pine, would you supply that interchangeably with sugar pine and California white pine?

A. We try to tell him something about pine. There are five or six different kinds of pine, and he can have what he wants. I certainly would not supply California white pine to a man who wanted to build a colonial house or antique pattern room, or something like that.

Q. Do you differentiate between California white pine and genuine white pine as regards durability?

A. I do not know much about the durability. After a thing once gets on the job we do not go into that.

Q. You do not get any information on that afterwards; is that true?

A. No; I understand as far as durability goes that any pine belonging to the yellow-pine class or family will not last as
465 genuine white pine. I also understand from people that furnish pine that California white pine will stand and hold paint better than sugar pine on the outside.

Q. You say it will stand paint better?

A. The sugar pine, when subjected to the sun, blisters the paint more than the California white pine, and, therefore, that the California white pine, for outside use, is perhaps better than the sugar pine.

Q. You think it is better than the sugar pine?

A. Simply because the paint will last better in the case of California white pine than it does on the sugar pine. That is not my knowledge; that is hearsay only.

By Examiner SHEPPARD:

Q. What do you mean by "genuine pine"?

A. We think of genuine white pine as the northern or eastern Canadian white pine, Minnesota pine, and Idaho pine. Well, I am not sure about California sugar pine, but I believe that is a genuine white pine.

Q. Do you know the technical name of that pine?

A. We do not go into the technical name. I heard it called Pinus strobus, but that doesn't mean anything to me.

Q. Mr. Youngs, there is one question I want to ask you: I presume that you are more or less familiar with the practices of lumber dealers in your community here, are you not?

A. I think so.

466 Q. Are they in the habit of or do they have the trade practice, trade custom of delivering to customers California white pine when the said customer has ordered white pine?

A. In a great many cases; yes.

Examiner SHEPPARD. All right.

Cross-examination by Mr. MATTHEW:

Q. Mr. Youngs, are the trade names California white pine, pondosa pine, Idaho white pine, California sugar pine, well established and well understood in the New York lumber trade?

A. They are in the wholesale market; that is, where the retailer is buying from, and commission men, or the mill.

Q. You are a retailer, as I understand it?

A. Yes.

Q. And you would say that the retailers generally thoroughly understand those terms?

A. I believe they do.

Q. And know what lumber is being furnished under those trade names?

A. Yes; I am practically sure that every lumber dealer must know that.

Q. Do you happen to know whether you carry a larger stock of pondosa pine than California white pine?

A. We only carry the pondosa pine in the common grades, practically no. 2 and 3 common, shelving lumber and box lumber—

467 lumber of that kind. That is not because the pondosa pine would not do in a great many cases just as well as the California white pine, but it is due to the fact that the pondosa pine is cut scant in thickness, and a great many people want, for instance, a lumber that we would be able to dress 7/8ths, and they cannot dress the pondosa pine 7/8ths, where they can the California white pine.

Q. You carry California white pine, I think you said, only in D selects?

A. Yes.

Q. But you carry the sugar pine in somewhat higher grades, as I understand you?

A. In the D, C, 1 and 2; in the three higher grades.

Q. Is pondosa pine never furnished in response to orders for white pine?

A. We would not take pondosa pine if we ordered California white pine.

Q. Suppose one of your customers should ask for white pine, as the examiner just suggested to you; is pondosa pine ever furnished in response to such an order?

A. In our case, we only carry California white pine in the lower grades. For instance, in the retail business, a man might ask for shelving, for pine shelving, and we would ask him whether he wanted hard shelving or soft shelving; if he wanted soft shelving, he would get Idaho shelving; if he wanted hard shelving,

468 he would get the pondosa shelving.

Q. Does he ever ask for white-pine shelving?

A. Yes.

Q. In which event, you may supply him with pondosa pine shelving, if he wanted the hard shelving or rather a hard white pine?

A. In other words, in dealing with customers, pondosa pine is considered a hard white pine.

Q. Even though it does not bear the trade name of California white pine or any name carrying the name "white"?

A. In other words, any pine in retail dealing with the customer, any pine is considered a white pine except the southeastern yellow pine.

Q. That is the trade custom or trade practice?

A. That is the trade custom or practice. I have at certain times been told by customers where California white pine was furnished that it will run very much more yellow in color than the northern, that we were trying to put something over on him in furnishing yellow pine in place of white pine, which he ordered, understanding that he would get a harder pine than sugar pine.

Q. When you furnish lumber from the Klamath Basin, I take it that you have very little complaint?

A. We have no complaint.

Q. I understand from your testimony, Mr. Youngs, that your purpose throughout is to furnish your customers with the

469 type of lumber which is particularly suited to their needs, as you understand them to be?

A. Certainly.

Q. You are not interested in the botanical names of this pine at all, or in any of their botanical names?

A. No; we are not.

Q. You are interested in the quality and utility of the lumber?

A. Yes, sir.

Q. How long did you say that you had been in this lumber business, Mr. Youngs?

A. I have been in it personally seventeen years.

Q. Has that trade name, California white pine, been known during all that period?

A. Not to me.

Q. How long have you been familiar with the term?

A. Not over five years.

Q. Under what name were you purchasing this lumber prior to five years ago, or do you know?

A. We did not handle this lumber previous to five years ago. That lumber has only been handled by us because of economic necessity of getting the price down.

Q. Is the supply of northern white pine lumber constantly getting shorter?

A. In the good grades it is practically useless for the retailer to try to carry it any more.

470 Q. There is so little available?

A. So little available, and the size of it is so much smaller, and the customers have gotten used to the western pine; first, the sugar pine, then California white pine, getting large-sized diameter of boards, and they have gradually gotten to feel that it is good enough for their work as far as the texture goes, and now we have some stocks of northern pine or eastern Canadian pine, that we cannot sell.

Q. Although it is known——

A. That is, for the good lumber, except in some special grades where they want sound red-knot lumber, something of that kind.

Q. But there is comparatively little demand for it?

A. Yes, practically none.

By Examiner SHEPPARD:

Q. I gather, Mr. Youngs, then, that the California products of white pine, California white pine and sugar pine, these lumbers that have come on in the past ten or fifteen years, have been used as substitutes for the northern pine that have been diminishing in volume and quality during the past decade; is that correct?

A. To meet an economic situation, yes.

By Mr. MATTHEW:

Q. These woods are sold on their respective merits, are they not, Mr. Youngs?

A. They are.

471 Q. And the qualities of the various woods respectively sold best reflect the economic conditions?

A. They do.

Mr. BURR. I object to these questions.

Mr. MATTHEW. That is what he said in his previous testimony, practically.

Mr. BURR. I submit he is not qualified as an economist.

Mr. MATTHEW. But that is his business.

Mr. BURR. No; it is not.

Examiner SHEPPARD. I am going to let the answer stand. I think Mr. Youngs is a man sufficiently versed in the lumber trade to know, and I will let it stay in the record.

Mr. BURR. It is all a matter of conclusion, as well.

Examiner SHEPPARD. Yes; I think that.

Mr. Youngs, there is another question I want to ask you.

By Examiner SHEPPARD:

Q. Do you know anything about pondosa pine?

A. Well, I only know what I see of it by looking at it as it goes through the yard.

Q. Do you observe any similarity to the California pine in that?

A. Well, I would say that as far as looks go, if anything, it will show just a trifle more color to it than the California white pine, and perhaps just a shade more of brownish tinge to it. As far as the commoner grades are concerned, pondosa pine bears a

472 smaller knot than California white pine—perhaps a sounder knot. The trees I do not think grow as big, and the board or plank would not be as big as the California white pine.

Q. Otherwise it is about the same lumber, is it?

A. It is more or less the same. Some pine comes into this market called Westmont pine, from the western part of Montana, that is hardly distinguishable and is about the same as pondosa pine; it more or less runs into the same kind of pine, the same species of tree.

By Mr. MATTHEW:

Q. You have made some reference to the yellow pine of the South, Mr. Youngs, as I understood it?

A. Yes.

Q. And said that they were quite indistinguishable from these other woods?

A. I did not say they were.

Mr. BURR. Mr. Examiner, I wish to object to all of these questions about southern pine. The complaint itself concedes that the southern pines are distinguishable by their comparatively greater density and hardness, and that kind of thing, from Pinus ponderosa. It seems to me that we don't want to try all of the pines in the United States and bring in all of the unfavorable things and all the favorable things with regard to every species of pine and every variety of pine lumber. So why should we encumber the record with it, and, furthermore, it is not fair to the people who are not repre-

473 sented here, and who ought to be given an opportunity to come here and defend their lumber, if it is going to be brought into question—I do not believe we want to get into it.

Examiner SHEPPARD. I called the attention of both of you gentlemen to it yesterday, but I allowed the examination to go on, believing that Mr. Matthew was not going to continue the matter to any great extent. I will say now, that I do not care to go into the pine situation with reference to the yellow pine at all.

Mr. MATTHEW. I have no desire to. You recall that the witness did speak of the yellow pines of the South on his direct examination, and I am very sorry that he did. It was brought out from the evidence that you elicited upon your direct examination. I had only one question to ask about it, but I shall refrain from asking it, because I would rather not spend too much time in more argument about it here. That will save some time on that score, but I want to make this suggestion, if I may, with deference to the Examiner:

I find upon reading the complaint that an effort is very definitely made to assimilate this California white pine lumber, in many respects, to the yellow pines generally.

It is our intention, Mr. Examiner, and it will be our purpose to show that the California white pine lumber in all its essential characteristics is more nearly to be assimilated to the northern
474 white pine and Idaho white pine than to the southern yellow pines. I think that to be a material issue in the case.

Examiner SHEPPARD. As I told you yesterday, Mr. Matthew, for purposes of comparison, I am going to allow you to go into that to that extent.

Mr. BURR. That is admitted in the complaint, if the Examiner please, and I think that that ought to suffice to make it unnecessary to prove, what we have alleged.

Mr. MATTHEW. It is not properly either admitted nor alleged in the complaint, because the complaint definitely charges us with trying to trade on white pine lumber that is yielded by a tree that is a yellow pine species, which causes deception, and so forth; those things are in the complaint.

Examiner SHEPPARD. For purposes of comparison, I am going to allow some of that testimony to go in.

By Mr. MATTHEW:

Q. Mr. Youngs, you have stated that it is your effort throughout to give your customers the lumber which you believe they desire and need?

A. I did.

Q. So far as you know, are your customers misled in any respect by the practice which you follow in furnishing them with these several varieties of pine lumber?

Mr. BURR. I object to that question. The question, whether anybody is misled or anything of that kind is a question of fact to

475 be developed as a conclusion from the facts that are introduced by the Commission itself.

Examiner SHEPPARD. That is the question we have to decide.

Mr. MATTHEW. I withdraw the question.

By Mr. MATTHEW:

Q. Have you had any complaints from your customers, due to the fact that they are being misled by virtue of the lumber which you are supplying in response to requests for pine?

A. No, we have not, because we don't take any chances on that; we tell them what it is going to be.

Q. And accordingly you receive no complaints?

A. No; we do not.

Mr. MATTHEW. That is all.

Redirect examination by Mr. BURR:

Q. I believe you testified, Mr. Youngs, that the retailers in New York and in your territory are familiar with the various trade names for pine, did you?

A. I did; yes.

Q. In saying that did you mean that they are familiar with the distinctions in the botanical names or with the distinctions as to the durability and character of the various lines of lumber that are given these various trade names?

A. No; the lumber dealer is not particularly interested in the durability of the lumber. His customers are supposed to know what they want, and all that he is in business for is to give

476 them what they want.

Q. I will say "name", leaving out the word "trade."

A. Certainly.

Q. All right, sir, when the trade terms "California white pine" and "Idaho white pine" are used by manufacturers and wholesalers, and elsewhere, would you say that the trade is familiar with each of those or whether either of those is a genuine white pine?

A. I do not think that they are particularly interested as to whether it is genuine white pine or not.

Q. Do you think that the retail trade generally know which one of those is a genuine white pine in respect to the characteristic of durability?

A. No; I think that perhaps, take the retail trade throughout, they consider California white pine as a white pine. It has been generally sold as white pine; it has not been sold as a yellow pine; and when you come right down to it, basically speaking, there are only two kinds of pine, white pine and yellow pine, that are known in the lumber business, and that is not yellow pine; it is considered a white pine in the trade.

Q. It is considered——

A. It is considered as a hard white pine in reference to the other softer pines.

Q. That is, belong to the white pine group, but a little harder than some of the others; is that the idea?

A. Yes.

477 Q. Do you think they distinguish between Idaho white pine and California white pine, as regards their white pine character?

A. No; I do not think they will, in that particular way.

Q. Do you yourself distinguish between Idaho white pine and California white pine as to say durability features that belong to white pines?

A. When you say "durability", just what do you mean?

Q. I mean being able to stand up against the weather, if exposed to weather conditions in the outside of the building.

A. I believe most dealers would say it would stand weather better—as between Idaho white pine and California white pine, they would say Idaho white pine would.

Q. Do you yourself say that?

A. I think it would.

Q. In selling to the trade, do you think retailers take into consideration the fact that one of these so-called white pines is more durable than the other so-called white pine?

A. No; that is not his business.

Q. His business is to sell white pine, is that the idea?

A. His business is to sell the customer what the customer contracts for. If he asks for white pine, he gets what he asks for—in other words, a customer is not considered a child, he is supposed to know what he wants, and ask for it, and he will get it.

Q. Your retailer does not consider himself a guardian of

478 the general public?

A. He does not, no more than to deal fairly with him.

Q. If they ask for white pine and you are able to furnish something that is called white pine, will that or not suffice to conform to what you regard as fairness to the trade?

A. If a man asks for white pine, if he wants real good soft white pine, we try to find out whether he is particular, or wants to get something cheap—in other words, we try to find out what he wants it for and we then either submit a sample of the pines, but if he is not familiar with them, we tell him that he can buy this for that price or that for this price.

Q. That is, you would quote Idaho white pine and California white pine?

A. Perhaps sugar pine rather than California.

Q. You do carry more California white pine than sugar pine, do you not?

A. No; we carry more sugar than California white.

Q. Are you familiar with the California white pine that comes from southern California?

A. I believe if I saw a good-sized piece from southern California and a good-sized piece from northern California, I could tell which was which.

Q. Do you think you could tell California white-pine say from Madeira County, from white pine below San Francisco?

A. Yes; the southern would have a yellowish tinge to it,
479 while the northern Klamath Falls would have a brownish tinge in the heart and the sap would be white.

Q. Which would be harder, on the average?

A. The further south you go, the harder it is.

Q. I believe you said that you cannot carry northern white pine anymore—in your cross-examination. Will you state whether that is because it is a question of considerably higher price?

A. Yes; it is a question considerably of price, but I noticed this year, that even the price being the same, most of the customers will take western pine, especially the sugar pine, in place of the other, because of size and lack of shake, and they will prefer to take the best grade, that being sugar pine, as being more perfect.

Q. Have you seen anything of the Canadian white pine in recent years?

A. Yes, some—we have some of it.

Q. Is that virgin forest pine, from virgin forest, or is that small stock?

A. It must be virgin timber, we have it as wide as twelve inches wide and sixteen feet long. I would not say that was second-growth stuff.

Q. Is that still obtainable at prices which compete with California white pine?

A. No. I do not think it is, but what we carry mostly is the lower grades.

480 Q. Of the northern pine?

A. Yes.

Q. Did you understand that they are still cutting virgin northern pines in Minnesota?

A. I think there is a little of it there in Minnesota, yes.

Mr. BURR. That is all.

Recross-examination by Mr. MATTHEW:

Q. You spoke of "shake" in discussion of your northern or Canadian white pine.

A. I did.

Q. Will you explain what "shake" is, please?

A. That is a kind of a hard thing to explain. It is not the same as split, yet it is an internal shredding of the tissue of the pine; you see on the ends of a plank what you call a broom shake, at times—the whole thing would be kind of torn apart. Then running through you see what you might call a split or shake that long [indicating] now and then, which is different from so-called checking; it does

not always go through the board; it is on one side and the grain kind of lifts up sometimes on the flat grain.

Q. Is that quite frequently encountered in the northern and eastern Canadian pine?

A. Yes.

Q. Is it more frequently encountered during recent years
481 than it was a number of years ago.

A. I do not go back too many years.

Q. I don't want to carry you back too far.

A. I don't know as they encountered it any more in cutting the timber; it occurs more in the timber we get now, because they haven't so much timber to pick from.

Q. The northern pine is not much of a factor now in the New York market, is it?

A. No, sir.

Mr. MATTHEW. That is all.

(Witness excused.)

Mr. BURR. I desire to make this statement at this stage of the hearing:

The record already shows that this practice of calling the ponderosa pine as white pine, California white pine, or western white pine, or Arizona or New Mexico white pine has been a matter of a number of years' standing.

I believe respondents claim it has been of forty years' standing. Now, it is being used by a large number of important manufacturing concerns, who are entitled not to have their business interfered with any more than is necessary.

We allege here that there is deception of the ultimate public—
I should rather say that the ultimate public are misled into
482 believing that this type of lumber is a genuine white pine, as a result of the color.

Now, then, I do not believe that the Commission will desire to curtail too far the calling of cumulative evidence which is intended, if it is important enough and numerous enough and strong enough, to overturn—I do not believe they will be willing to curtail this evidence or consider the issuance of an order to cease and desist the practice of such long standing on the part of so large an industry unless they have overwhelming evidence of someone being misled.

I do not believe that three or four witnesses will make a case of this thing any more than one swallow will make a summer; I believe you have to show the Commission by strong evidence, which the courts will regard as strong, that not only a few witnesses have been misled, because, for all we know, they may think that these witnesses might have been hand picked by the examiner or counsel, who desire to see a trade name changed, or someone benefitted by a trade name change.

Therefore the Commission does not want the witnesses to be so few that they may be held to be hand picked, and it is for that reason

I want to prove confusion exists here; and for that reason I am proving that confusion does exist, and for that reason I am asking the examiner not to curtail me too much in my endeavor to prove confusion, because I do not think a little will do the trick.

Examiner SHEPPARD. I think you are right, Mr. Burr, but
483 do not have so many at one time and in one place. You might desire witnesses in different sections of the country; that is all right. We can put on five or six in each town and pass up twenty that we have here; I think that will be sufficient.

J. O. STEWART was thereupon called as a witness and having been duly sworn testified as follows:

Direct examination by Mr. BURR:

Q. Mr. Stewart, you are president of the Stewart Lumber Company, Metropolitan Avenue and Woodward Street, Brooklyn, New York, are you not?

A. Yes, sir.

Q. You have been in the lumber business for some time, have you?

A. Yes, sir.

Q. How long?

A. Twenty-one years.

Q. Always in Brooklyn?

A. In New York and Brooklyn.

Q. In the retail business?

A. Yes, sir.

Q. What varieties of pine do you carry?

A. Northern white pine, Idaho white pine, pondosa pine, California sugar pine, and long- and short-leaf yellow pine.

Q. Do you carry California white pine?

484 A. No.

Q. Do you use that at all?

A. No.

Q. Did you ever carry it?

A. Yes.

Q. Up till what time or over what period?

A. Date to date, do you mean?

Q. Approximately speaking, how long a period and during what period did you carry it?

A. Some years ago. I can only answer that question generally. Some years ago over a short period.

Q. Why did you cease using California white pine?

A. We experimented with it to find out if it met the requirements we had in lumber in the grade that we tried it out in.

Q. What grade was that?

A. No. 3 common entirely—possibly some no. 2 common.

Q. What happened or what resulted?

A. We found that in the common grades pondosa from the Bend district contains a smaller character of defect than the California white pine. It being coarser in the low grades, therefore we dis-

continued using it in pondosa or in Pinus ponderosa, if that is the proper term. We used pondosa exclusively——

Q. For what purposes do you recommend pondosa?

A. May I change that? Pine from the Bend district.

Q. For what purposes do you recommend Pinus ponderosa
485 from the Bend or pondosa pine from the Bend district?

A. In one word, shelving.

Q. Inside work?

A. Inside work exclusively.

Q. Would you recommend it for outside work?

A. It might be; but we furnish very little lumber for outside work.

Q. You do not furnish any lumber for outside work?

A. No.

Q. Do you know the practice in the retail lumber trade in Brooklyn, in a general sort of way?

A. Yes.

Q. Does the trade, in general, distinguish between California white pine and Idaho white pine?

A. What do you mean by the trade?

Q. As to the type of lumber, I mean competitors of yours?

A. Is your question, Do my competitor generally distinguish?

Q. Between those two types of lumber?

A. Do you mean, do they know the difference between them?

Q. Yes.

A. Yes.

Q. Would you describe the differences between those two types of lumber, California white pine and Idaho?

A. It is different in color, different in texture; as to whether it is hard or soft texture; there is a very distinct difference
486 in what I would term winter and summer wood—there are grain differences.

Q. Which has the greater difference between the summer and spring wood?

A. California white pine.

Q. More than the Idaho white pine; is that true?

A. Oh, yes.

Q. How is the California white pine as to uniformity?

A. I don't know that; I am not experienced in that.

Q. How is pondosa compared with Idaho white pine, as regards uniformity in the shipments received; is it pretty uniform; are they both pretty uniform in type?

A. Do you mean contrasted?

Q. No; is ponderosa pine that you get from the Bend district as uniform by itself as Idaho white pine is by itself?

A. Yes.

Q. Do you have a distinction in mind between the Idaho white pine and the northern white pine?

A. Oh, yes.

Q. Do you have calls from white-pine purchasers who come in and request white pine?

A. Yes.

Q. What do you furnish them?

A. What they ask for.

Q. What is that?

487 A. White pine.

Q. Do you furnish Idaho white pine?

A. Yes.

Q. Do you ever furnish pondosa on that order?

A. Never.

Q. Do you furnish them northern white pine on occasion?

A. Yes.

Q. Or sugar pine?

A. Yes. May I add something there: That we furnish Idaho where thickness is not a question; where thickness is involved, we then go to California sugar or northern white pine, especially in one-inch lumber.

By Examiner SHEPPARD:

Q. Did I understand you to say that you would deliver California white pine under those specifications requesting white pine?

Mr. BURR. No; he did not say that.

The WITNESS. I did not.

By Mr. BURR:

Q. You do not carry it even, do you?

A. We do not carry it; we carry California sugar pine.

Mr. BURR. That is all.

Cross-examination by Mr. MATTHEW:

Q. Mr. Stewart, I was interested in your statement that you carried the pondosa pine in no. 3 common and possible no. 2

488 common and the lumber is used principally for shelving; you also stated that you found that it is superior to the California white pine for that particular purpose. I take it that then you purchase lumber on its merits, irrespective of its particular trade name and the fact that this is called pondosa lumber or given any other trade name, is immaterial to you, because you are purchasing it on its merits?

A. That is not a yes-or-no answer. If I may go into a little detail, I have something I might add in answer to that.

Q. Perhaps I will reframe the question a little bit. California white and sugar pine come in no. 3 common and no. 2 common, just as pondosa pine does?

A. Yes.

Q. The grading rules are substantially the same?

A. I don't know.

Q. You are not familiar with them?

A. No.

Q. You testified, as I recall your direct testimony, that you found that the pondosa pine in these common grades has a smaller knot than the California white pine in the same grades; that is true, is it not?

A. That has been my experience.

Q. And it was for that reason, among others, that you decided to carry the pondosa pine for these particular purposes?

A. Not entirely; that was the reason brought out here.

489 Q. I understood that to be your statement on direct examination.

A. I believe on a direct question I made reply to that, without any explanation. I am not sure that I did give that. I remember saying the difference in defects made it more desirable.

Q. Possibly I misunderstood you. You carried California white pine for a short period several years back, you so stated, as I recall it?

A. Yes.

Q. Since that time you have been carrying pondosa pine for shelving purposes?

Answer. Yes.

Q. I take it from that, because the pondosa pine was found to be more suitable for your purposes than the California white pine; am I right in so understanding?

A. No; it was not more superior.

Q. Let us put it this way, you found it to be a superior lumber in those grades than the California white pine in the corresponding grades?

A. Yes; particularly on the point of uniformity.

Q. You found the pondosa pine more uniform with itself than California white pine with itself?

Answer. Yes.

Q. You carry the Idaho white as well as pondosa pine?

A. Yes.

Q. Through whom do you purchase your lumber; is it obtained through wholesalers here in this vicinity?

490 A. Not entirely.

Q. It is purchased to some extent from producers in the west coast?

A. Yes.

Q. You buy some from the Bend district, you say?

A. Yes.

Q. Do you mind letting us know the names of some of the companies from whom you purchase, if it is not a private business matter?

A. You spoke of the Bend District; we never buy direct from manufacturers in the Bend District on the coast. I will give you the names of the wholesale dealers: Brooks-Scanlan Lumber Company, Shevlin-Hickson Lumber Company; that covers pondosa.

Q. From what companies do you buy the Idaho white pine?

A. The Weyerhaeuser Sales Company, W. M. Crombie & Company, and J. A. Rice Lumber Company; that is all.

Q. Is the J. A. Rice Lumber Company a producing company in Idaho?

A. No.

Q. That is a wholesaler?

A. Yes.

Q. What is W. M. Crombie?

A. The same, a wholesaler.

Q. The only producing company from which you buy white pine lumber is the Weyerhaeuser Sales Company?

A. My understanding is that they are not producers any more than Crombie; they are a sales organization, marketing for several
491 mills.

Mr. MATTHEW. That is all.

(Witness excused.)

JOHN L. MAND was thereupon called as a witness and, having been duly sworn, testified as follows:

Direct examination by Mr. BURR:

Q. You are secretary of the Tisdale Lumber Company?

A. Yes, sir.

Q. 1000 Boulevard, Astoria?

A. Yes, sir.

Q. You are in the retail lumber business?

A. Yes.

Q. How long a time have you been in it?

A. Personally I have been in it for twenty years.

Q. How long has the Tisdale Company been in business?

A. About seventy-five years.

Q. Entirely in that neighborhood?

A. Yes, sir. The name changed several times; it was started by my great grandfather.

Q. What varieties of lumber do you buy, Mr. Mund?

A. My work is particularly in the millwork division; white pine, cypress, hardwoods, and a little spruce.

Q. What variety of pine do you buy?

492 A. I buy California white, a very little sugar, pondosa pine, Idaho pine, Minnesota, Michigan; that is about all.

Q. What varieties of millwork are you making?

A. Sash and doors, general exterior and interior millwork for residences.

Q. Do your specifications call for white pine, on occasion?

A. They simply say white pine, as a rule. Occasionally they specify the type of white pine that they desire.

Q. Do they occasionally specify California white pine?

A. I do not recall a single instance where they specified it.

Q. Do they occasionally specify northern white pine?

A. Yes; occasionally.

Q. What other specifications do they make with regard to the classification of the words "white pine"?

A. Once or twice I have run across specifications calling for Idaho white pine, with particular reference to the finish in their room.

Q. When they ask for northern white pine, you furnish it from States, what localities?

A. We furnish Michigan white pine or Minnesota white pine.

Q. Do you carry any Canadian?

A. Only what little we buy occasionally, locally.

Q. In that northern variety of white pine, do you deal in that fairly extensively, or is that exceptionally used?

A. It is just an exception use.

493 Q. Do you supply northern white pine under any other circumstances other than direct specification of it?

A. Yes; occasionally, mostly Idaho white pine in that case. If we happen to buy it cheap enough, we buy the Idaho in preference to any other.

Q. What do you mean when you buy it cheap enough?

A. Sometimes mills have a job lot that they dispose of at a very reasonable price, and our preference in that case is for Idaho pine.

Q. Is Idaho pine, in your judgment, preferable to California white pine; or do you not differentiate?

A. We don't differentiate.

Q. If anybody comes in and asks for white pine, he may receive Idaho white pine or California white pine, as the case may be?

A. Yes; indiscriminately.

Q. The Idaho white pine is sometimes specifically and by name requested; is that so?

A. Yes; on occasion.

Q. Under those circumstances, would you ever use California white pine as a substitute?

A. No; we would not substitute; we would sell Idaho white pine.

Q. That is only when it is specified white pine?

A. Then we feel at liberty to give California white, Idaho, or pondosa, whatever the job is intended for.

494 Q. Do you distinguish in your own case, speaking of you personally, do you distinguish as to durability between Idaho white pine and California white pine, where the product is to be exposed to outside weather conditions?

A. Personally, I believe that Idaho would last a little bit longer; its weather-resisting qualities are a little higher rated than California white pine.

Q. Is that the general reputation it has, or would you say that most people do not hold to that distinction?

A. I believe the average builder does not know the difference. I do not think he appreciates that at all.

Q. Do you draw any distinction, in your experience, between pondosa and California white pine?

A. In our specifications they go out as either California or pondosa.

Q. How do you mean, go out for purchasing?

A. For purchasing purposes.

Q. When you send out specifications you send out to various manufacturers, do you, and to producers?

A. To wholesalers and manufacturers.

Q. And you ask them interchangeably what their bid would be on California white pine and pondosa; is that so?

A. We give them the option of quoting on California white or pondosa.

Q. Do you ever send them out interchangeably between either of those two and Idaho white pine?

495 A. No.

Q. Do you regard pondosa and California white pine as satisfactory for interior work?

A. We do.

Q. Do you regard Idaho white pine as preferable to California white pine for interior purposes?

A. Not necessarily.

Mr. BURR. I believe that is all.

Cross-examination by Mr. MATTHEW:

Q. Mr. Mand, you stated that when you received orders for white pine, you feel free to furnish either Idaho white pine or California white pine or pondosa pine indiscriminately; you so testified?

A. Yes.

Q. Why do you feel free to furnish pondosa pine in response to an order for white pine?

A. Because it seems to be the general, accepted practice of the builder; he accepts it as white pine; seems to be resigned to the fact that northern white pine is not obtainable for the average speculative use.

Q. Northern pine is diminishing in importance in this market, is it?

A. Yes; it is diminishing and the price for the ordinary speculative use is prohibitive, in his opinion.

496 Q. For that reason he resorts very largely to Idaho white or California or pondosa?

A. Yes; he goes to Idaho white, California, or pondosa. He accepts them.

Q. Has the term "white pine" in this market come to include California and pondosa pines?

A. It has amongst the builders.

Q. Has it in the trade generally?

A. Not amongst lumber dealers, although there are a class of lumber dealers who do not seem to know the difference and don't care.

Q. You personally do distinguish between Idaho white pine and California white pine?

A. Yes, sir.

Q. When you order California white pine, don't you know exactly what you are getting?

A. We do, when we buy it as California white pine.

Q. And you know what it is?

A. We know what it is.

Cross-examination by Mr. ANDREWS:

Q. Do you know what pondosa and California white pines are? Do you know that they are not genuine white pines?

A. Yes; we know that. That is, we know that it is not the botanical species of Pinus strobus—it is Pinus ponderosa.

497 Q. You are not interested in the botany of the tree?

A. We do not, as lumbermen, regard that so much——

Q. From a practical or commercial view, your primary interest as a lumberman is in the quality and use of the lumber?

A. Exactly.

Redirect examination by Mr. BURR:

Q. You do recognize that the genuine so-called white pines have certain qualities of softness and durability that California white pine does not possess; you individually, I mean?

A. Yes.

Mr. BURR. That is all.

(Witness excused.)

JACOB WEBER was thereupon called as a witness and, having been duly sworn, testified as follows:

Direct examination by Mr. BURR:

Q. You are the president of the Weber-Zuck Lumber Company, are you?

A. Yes, sir.

Q. Your place of business is on Eckford Street, Brooklyn?

A. Yes, sir.

Q. How long has your concern been in the lumber business?

A. Since 1919.

498 Q. You are in the retail trade, or do you also do some wholesale business?

A. Only in the retail trade.

Q. How long have you personally been in that business?

A. Close to thirty years.

Q. What varieties of commercial lumber do you deal in?

A. Hardwoods, such as oak——

Q. Never mind the hardwoods; we will make it a little briefer; what kind of softwoods do you handle?

A. Pines of various sorts.

Q. What varieties?

A. California, Idaho, ponderosa; those three.

Q. In the specification for lumber, do you find that your customers on occasion ask for white pine?

A. Yes.

Q. Do you furnish them California white pine or Idaho white pine on those specifications, or both?

A. We furnish what they ask for. Some will ask for California pine; some will ask for California sugar pine; others will ask for the ponderosa pine.

Q. Suppose they call for white pine merely and do not say California white pine or Idaho white pine; which do you furnish?

A. We furnish the pine at the price that their offer indicates.

Q. In other words, the man tells you how much he is willing to pay, and you furnish him the pine that corresponds to that?

499 A. We make a contract in price between ponderosa pine and Idaho pine; that is, in the no. 3 grade, which is usually used for shelving purposes, and California sugar, which we carry only in the better grades of D selects.

Q. That would be three that you would furnish them on specifications calling for white pine, is it?

A. Yes.

Q. It might be either California white pine, California sugar pine, or Idaho white pine; is that true?

A. Or the ponderosa.

Q. Or the pondosa.

By Examiner SHEPPARD:

Q. All go under the name of white pine?

A. All white pine; that is, quite a considerable of our customers will only use the term of pine, others will use the term "white pine"; we have others that will say, "I want Idaho white pine or California sugar pine."

By Mr. BURR:

Q. I was referring to those who did not designate. Of course, when they designate you give them what they ask for; is that true?

A. That's the idea.

Q. If they do not designate, but simply ask for pine or white pine, you give any of those varieties you named?

A. Only in accordance with the price that they pay.

500 Q. What they are willing to pay?

A. Not what they are willing to pay; what I ask for. I have various prices for the various kinds.

Q. How long has that been the case with your company?

A. Oh, ever since we are in business.

Q. You are familiar with trade conditions in the retail business, generally?

A. I am.

Q. Is that true in most of the firms with which you compete?

A. Yes, sir.

Mr. BURR. That is all, sir.

Cross-examination by Mr. MATTHEW:

Q. Mr. Weber, are these terms, "California white pine", "pondosa pine", "Idaho white pine", "California sugar pine", well known to the retail lumber trade?

A. To the larger body; by that I mean the larger manufacturers, they are, but to the small trade like the carpenter and the like they do not know the distinction. With them it is a matter of price, which is the cheapest.

Q. As to them, I take it, that you undertake to satisfy their needs and desires as you understand them to be?

A. Yes, sir.

Q. When I speak of the trade, I mean the lumber retailers themselves, are those trade names for those various lumbers well
501 known to retail lumber dealers?

A. Yes, sir.

Q. And they understand perfectly what lumber is meant by those terms?

A. Yes, sir.

Q. You said that customers sometimes ask for white pine?

A. Yes.

Q. Without any qualifying term?

A. Yes, sir.

Q. Is it more common for them to ask for pine only or just for white pine, or how does the inquiry come to you?

A. They ask for pine in the majority of cases.

Q. When they ask for pine you undertake to determine what kind of pine is desired?

A. In accordance with the prices the are paying.

Q. In other words, you quote prices?

A. Yes, sir; we make a distinction through prices.

Q. You feel entirely free to furnish pondosa pine, for example, upon an order for white pine, at a price which is agreed upon between you?

A. Yes, sir.

Q. How do you determine the particular kind of lumber which your customers desire, apart from this question of price?

A. Just what do you mean by that?

Q. Does the customer indicate in any other way whether
502 he desires Idaho white or California white or pondosa or sugar pine?

A. We ask him usually does he want a harder pine or does he want a softer pine. In a harder pine we can give them a pine at a certain price, but for the white pine, or Idaho pine, as you might call it, we ask them a higher price.

Q. And that is clearly understood by your customers?

A. Yes, sir.

Q. I take it that these woods are selling on their respective merits and their individual prices?

A. Yes.

Q. Have you any complaints from your customers as to your practice in that respect?

A. No, sir.

Redirect examination by Mr. BURR:

Q. You state that the retail trade, as you understand it, know what lumber is, that is named under each of these designations; do you think the retail trade understands whether or not there are important distinctions in the quality of these types of lumber that you have been testifying to?

A. Just what do you mean?

Q. Does the retail trade distinguish, for example, between California white pine and Idaho white pine as regards durability for outside use or anything of that kind?

A. The retailer himself?

503 Q. Yes.

A. What does he care as to the durability? All he knows is he pays more for his Idaho pine than he will pay for his California pine, and, incidentally, he makes his price on the lumber which he claims is better pine; that is, for instance, for Idaho he is getting a better price for it due to the fact that he has paid more for the Idaho pine than he has paid for the California pine.

Q. He does not care particularly about qualities; it is simply a question of being able to get it at a certain price?

A. When you say quality there are two distinctions; quality also means the quality of the lumber.

Q. Texture, you mean?

A. No; no; grades. Quality means grades also in lumber.

Q. I am not referring to the grade.

A. You are not referring to the grade?

Q. No; does the retail trade understand that there are certain characteristics of lumber, setting the entire selection of grades, such as C select and D and better and common—setting those all aside—I see my question was a little ambiguous there—that there are qualities and characteristics in the lumber itself, aside from the grade and distinction between Idaho white pine and California white pine, or does not the retail trade pay much attention to that feature?

A. Oh, yes, sir; they know the distinction; it is easily visible to anyone who knows and has had experience.

Q. You cannot tell by looking at a wood which type is

504 durable, can you?

A. No.

Q. Durability they do not take into account, you think?

A. No; they don't.

Q. It is the sales quality from the appearance of the lumber that they are interested in, together with the price?

A. Together with the price.

Q. The trade understands, then, that there is a difference in appearance and in visible texture of the various classes of western lumber; is that true?

A. Yes, sir.

Q. Will you state whether or not, in your understanding, the California white pine and the pondosa is the same variety of lumber or a different variety?

A. Different variety.

Q. They are a different variety of lumber?

A. Yes, sir.

Q. Different quality and appearance, and so forth?

A. When you say quality, are you getting back to grades?

Q. No.

A. In quality, one is harder; the pondosa is of harder texture than California white pine.

Q. How about pondosa as compared with Idaho white pine?

A. The difference as between day and night.

Q. Which is harder?

505 A. Both on appearance and weight.

Q. Which is the harder and which is the heavier?

A. Ponderosa is the heavier weight.

Q. Which is the harder wood?

A. Ponderosa is the harder one.

Q. How about California white pine and Idaho white pine; which is the harder?

A. Well, the California is somewhat harder, depending upon the grade or quality. When it gets down to the lowef grades in the California, you get it much harder and get more pitch.

Q. There is more difference in the lower grades between Idaho and California white pines than there is in the better grades?

A. That is the idea, although the Idaho is softer somewhat.

Mr. BURR. That is all.

(Witness excused.)

CHARLES H. BLITMAN was thereupon called as a witness and, having been duly sworn, testified as follows:

Direct examination by Mr. BURR:

Q. You are president of the Brooklyn Consolidated Lumber Corporation?

A. Yes, sir.

Q. You are located at the foot of 19th Street, Brooklyn, New York?

506 A. That is right.

Q. How long have you been in the lumber business here in town?

A. About eleven years.

Q. How long has that concern been in existence—the same length of time?

A. No; that concern has only been in business about a little over a year.

Q. The company deals in what varieties of pine lumber?

A. Pondosa, California sugar pine, and Idaho.

Q. Do you handle California white pine?

A. Yes; we do now; we use it in the mill.

Q. You have a mill?

A. Yes.

Q. For sash, door, and blinds, and that sort of similar work?

A. Yes.

Q. Is that your main business, the retail business?

A. We do both retail business and factory work.

Q. Do you sell pattern stock?

A. Not very much.

Q. In the milling business, do you use all of those various varieties of lumber that you referred to, or only which of them?

A. We use all of them.

Q. In the millwork?

A. Yes, sir.

Q. Your orders for millwork come from what class of
507 people? Do you sell to wholesalers or regular builders?

A. We sell to builders, contractors, carpenters sometimes, and also to small yards.

Q. Sometimes you sell to wholesalers and retailers from stock?

A. Yes.

Q. When these gentlemen come to you, these builders, contractors, and the like, do they on occasion ask for white pine?

A. That is about all they know about it; they know it is white pine; that is, the average builder.

Q. They do not specify northern white pine or California white pine or Idaho white pine?

A. You only get that specification from the higher class contractors who work on specifications supplied by an architect.

Q. When these people ask for white pine, do you furnish them Idaho white pine or California white pine, or what do you give them?

A. It all depends on the purpose they want it for. If the builder comes and asks for white pine, he wants a white pine for a certain thing, and we know about what grade he wants and what price pine he wants. As a rule we sell pondosa, unless he wants it for cabinet work or interior finish, something like that.

Q. When he asks for white pine that is what you give him?

A. Naturally, we give him pondosa.

Q. Do you also give California white pine sometimes?

508 A. If he wants soft-textured white pine, and if he asks for soft-texture white pine, we usually give the Idaho or California. We class the Idaho a good deal softer than any of the other white pines.

Q. Is it softer than sugar pine, in your judgment?

A. I think it is slightly so; they seem to like it better.

Q. If he wants a softer white pine, you give him Idaho?

A. That is right.

Q. If you find that there is a question of price, what do you give him?

A. Then it becomes a matter of grade as to what he wants. If a man wants a piece of clear, two-inch, 16 or 18 inches wide, we can't give it in pondosa, because we do not carry it in pondosa.

Q. You do not carry pondosa in that grade and width?

A. No; because a wider and thicker stock, as a rule, is required for a better grade of work and they want a softer texture of white pine.

Q. I am not sure that I get that quite. Here is a man that comes in and asks for white pine, it then becomes a question of what he wants it for?

A. Yes.

Q. And he may get California white pine if the specifications in other respects call for what you have in that grade?

A. Let me make myself clear. If a builder comes in, he wants white pine for outside trim, 6-inch, 8-inch, 10-inch, 12-inch,
509 in 4/4 stock, that is one-inch stock, it is practically an established custom that what he wants is pondosa pine, and that is what he gets unless he asks for softer-textured white pine. In the shop where we manufacture inside trim we add Idaho or sugar pine, depending upon the dimension stock, depending on the class of work we do and what the specifications call for.

Q. Where do you classify in each of those two groups, just where do you classify——

A. Between Idaho and sugar pine?

Q. No, between California now; you say you use the pondosa for the outside?

A. Yes.

Q. Now then, where would you classify the California white pine; would you use that interchangeably with the pondosa or the Idaho?

A. We would use it interchangeably with the Idaho.

Q. Suppose he is interested in the question of price, but still wants a white pine, what do you furnish him under such a specification?

A. If the fellow comes in and wants to buy a no. 2 or no. 1 white pine, why, he will ask what the price of white pine is. We have pondosa pine, which is a little harder in texture; we have an Idaho, which is a little softer in texture; and a sugar pine, which is also a little softer in texture; and so on.

Q. You classify all those for filling an order for white pine?

A. Yes, sir.

510 Q. Pondosa, California white, and Idaho white, and California sugar pine; is that right?

A. That is right.

Q. Is that the practice of millworkers generally in your experience?

A. It has been the practice here for the last five years, when the demand was so great, to pretty near interchange between Idaho and sugar pine and pondosa on lower grades. We do not carry pondosa in higher grade, because when we get into the higher grade class they usually want a softer texture of white pine.

Q. Is it common practice in the trade to interchange those as white pine?

A. Yes.

Q. Various varieties of white pine?

A. Yes.

Mr. BURR. That is all.

Cross-examination by Mr. MATTHEW:

Q. Why do you feel free to furnish the pondosa pine upon order calling for white pine?

A. Well, because that is what the average builder, that is, the speculative builder, wants, and that is what he expects to pay for, and you could not give the same grade of white pine in that texture as you can in pondosa. If he does not know enough
511 about white pine he will probably be shown what it is, but speculators don't care what it is as long as it is a wood that has small knots, tight knots. They want something that will do the work, and they know that while pondosa pine is not strictly a good, soft-textured white pine, it has been used extensively in all outside facia work, and so forth, window frames, sash stock, a good deal, throughout the entire metropolitan district, on account of price.

Q. So you feel free to furnish pondosa pine under those circumstances?

A. Yes.

Q. Even though the pondosa pine does not carry the word "white" in its trade name?

A. Yes, sir.

Mr. MATTHEW. That is all.

The WITNESS. The man who knows his business, like some of these contractors like Starett and Fuller and those fellows, when they buy merchandise, they know what they are buying, and they specify what they want and get what they want. They don't interchange Idaho for sugar or sugar for Idaho, but the builder who comes in looking for price along, and the best and the cheapest he can get for his money, I think in that case it has been the custom in 90 percent of the yards that they will interchange, without even telling him about sugar pine, because he doesn't know anything about it anyhow.

512 Q. They give the California white pine, too?

A. If he wants to pay for it.

By Mr. BURR:

Q. That is at the same price as pondosa?

A. It is a little higher in price.

Q. You think it averages a little higher than pondosa?

A. Yes. I think a great deal of trouble is due to the fact that a lot of those mills that manufacture both pondosa and California, I mean the ordinary white pine and sugar pine, have been in the habit of selling these yards throughout the metropolitan district the low-grade northern. I don't believe you can walk into twenty yards out of forty and be able to get anything in white pine other than pondosa.

Q. Can you get California white pine?

A. I don't think you could go to a dozen places within a radius of two miles here and buy a piece of California white pine.

Q. Can you buy Idaho white pine?

A. I don't think so. A man who does millwork will go to the average yard that has pondosa, and sell it for white pine. That has been my experience.

By Examiner SHEPPARD:

Q. That they buy it for pondosa and sell it for white pine?

A. That is right.

MR. MATTHEW. I hope Your Honor notices that pondosa pine is being used for that purpose.

(Whereupon, at 5:00 o'clock p.m., an adjournment was taken to October 10th, 1929, at 10:00 o'clock a.m.)

513 Docket Nos. 1620–1669, inc.

NEW YORK *October 10th, 1929.*

Met pursuant to adjournment, 10:30 o'clock a.m.

Before: William W. Sheppard, Examiner.

Appearances:

Eugene W. Burr and J. G. Birks, attorneys for the Commission.

McCutcheon, Olney, Mannon & Greene, by Allan P. Matthew and Carl I. Wheat, attorneys for the respondents, Clover Valley Lumber Company, et al.; Davies-Johnson Lumber Co., et al.; Diamond Match Company, et al.; California Fruit Exchange, et al.; Penman Peak Lumber Co., et al.; Feather River Lumber Company, et al.; Kesterson Lumber Company, et al.; Hobart Estate Company, et al.; Fruit Growers Supply Company, et al.; Quincy Lumber Company, et al.; Spanish Peak Lumber Company, et al.; Lassen Lumber and Box Company, et al.; Red River Lumber Company, et al.; Owen-Oregon Lumber Company, et al.; Big Lakes Box Company, et al.; Ewauana Box Company, et al.; Klamath Lumber & Box Company, et al.; Lamm Lumber Company, et al.; Pelican Bay Lumber Company, et al.; Algoma Lumber Company, et al.; Shaw Bertram Lumber Company, et al.

Mr. BURR. I would like to say, if the examiner please,
514 in accordance with the suggest which the examiner made yesterday, I believe twice and at least once upon the record, I have this morning arranged to excuse some ten witnesses who were subpenaed for today and have refrained from calling other witnesses whom I expected to call during the afternoon and tomorrow morning, partly in deference to the plan of having some defense testimony taken Friday and partly in deference to the examiner's suggestion.

The understanding I had as to what these men would have testified to, is that it would have been corroborative of one or another of the various witnesses, largely retailers some of whom I just had on the stand in the last two or three days.

Examiner SHEPPARD. The examiner takes this occasion to commend Mr. Burr for this action, believing that any further witnesses such as architects, retail dealers, lumbermen, and millmen, who gave about the same testimony that was had on yesterday would be cumulative, and the examiner wishes to state to counsel on both sides that the preponderance of testimony does not always mean the number of witnesses on the stand; it means the weight of the evidence, not necessarily the number of witnesses produced.

Mr. MATTHEW. May I say, Mr. Examiner, that on our part, we shall defer to Your Honor and shall attempt to exhibit the same restraint as Mr. Burr.

515 Examiner SHEPPARD. That is very fine, and if that policy is continued, we will have an up-to-date and a moderate sized record full of facts, without burdening the record with a great deal of unessential matters.

You may call your first witness, Mr. Burr.

RUSSELL F. WHITEHEAD was thereupon called as a witness, and having been first duly sworn, testified as follows:

Direct examination by Mr. BURR:

Q. Mr. Whitehead, will you state what your business is, please, sir?

A. I am an architect first of all, and an architectural publisher.

Q. As a publisher, will you be kind enough to give me your various publications with which you have been and are connected and your relations to them?

A. Starting in 1910, I was made editor in chief of the Architectural Record.

In 1912 I was promoted to editor of the Brick Builder, now called the Architectural Forum.

In 1915 I became editor of "White Pine", a series of architectural monographs and now called "The Monograph Series."

516 By Mr. MATTHEW:

Q. What year was that?

A. 1915. Simultaneously with the editing of "The Monograph Series" I was made editor in chief of "Pencil Points" in 1925.

By Mr. BURR:

Q. "Pencil Points" is devoted to architecture?

A. "Pencil Points" has the largest circulation among architects in the United States; some twenty thousand circulation.

Q. That completes the list, does it not?

A. Yes, sir.

By Examiner SHEPPARD:

Q. All published here in this city?

A. The Brick Builder was published in Boston by Rogers and Manson.

Q. You are practising to some extent, at least, as an architect?

A. In my small way, I do not like to turn down clients who present themselves, but I do not make an effort to solicit clients, because that is not regarded as professional.

Q. The work that you have done as an editor on these various publications, has that brought you into contact so that you know what the practise of architects is as regards their checking up in a
517 strict way the various types of lumber which they have specified for construction purposes?

A. Yes.

Q. Will you state how far the architect is supposed, by the rules of the architects association or code of ethics, and how far, in practise, he is able to ascertain whether the type of lumber specified is actually delivered on the job—is that a clear question?

A. That is a clear question, and it is one of the great faults of the architect profession that the architect heretofore, up to very recently, has not been able to check his lumber deliveries as he has any other material delivered to the job.

For instance, in the case of the delivery of portland cement, he sees on the bag that what he specifies as portland cement is printed on the bag. He may specify it by the manufacturer's name, and when it is delivered on the job he sees the word, for instance, "Atlas", if he specifies that, or in the case of paint that it shall be of white lead, and he may go so far as to specify the name of the manufacturer of the white lead.

He sees the receptacle on the job with the manufacturer's name on it, but when he goes on the job, so far as lumber is concerned he sees a pile of lumber for the millwork; his specifications have been very definite to start with as to species and grade, but from
518 that time on he simply has his idea of what has been furnished because his technical knowledge of it is very small, and it is very difficult to ascertain what that particular pile of lumber is according to specifications.

In other words, when the mill has made the trim and the moldings and the facia, and so forth, his specifications may have read that it should be white pine, California pine, but, unfortunately, they never, so far as I know, specify California pine, they specify white pine.

Knowing the difference between California pine and the real and the true species——

Q. Just a moment; will you give us first a statement as to California pine; what are you referring to, California white pine or sugar pine?

A. I am referring to the product known as California pine.

Q. To white pine?

A. Yes.

Q. You used the words "California pine" in your answer; you mean California white pine?

A. Yes. The reason I say that is because the California white pine manufacturers have advertised, and they have for a long time used the words "California white pine" and recently they have added the words "trade-name" or "trade-mark", which means nothing to the architect if he has occasion to question the
519 material as delivered on the job.

He simply asks his contractor, "Did you furnish white pine?"

And the contractor says, "I did."

"I don't believe it; show me your invoices", and the dealer through him or the subcontractor in this particular case—not every case—so far as the architect is concerned, produces invoices, and it will not say California white pine, or it will not even say that C.W.P. or W.P., without any adjective defining it.

Q. Did you ever see those?

A. I have seen those.

Q. Does the term "white pine" mean anything to the architect or has that term lost its significance?

A. It means everything to the architect who has had any experience in building.

Q. Will you just describe that, if you please, sir?

A. Of course, when lumber was lumber and during the early days of the lumber industry, the older men in the profession did not have any such substitute words, they simply specified that the material should be white pine and they knew very well they would get it because of the proximity of the lumber, and that is all there was to it.

Recently, however, other woods have come on the market
519 and have been sold by the contractor with whom the architect has dealings—he does not usually have dealings with subcontractors—for a period probably of 16 or 17 years ago, the subcontractors in my own experience, when white pine was specified, would come to your office and say, "We cannot get white pine; it is very scarce; it is very expensive, but we can get cypress. Cypress is just as good a wood, can we substitute cypress?"

"We want white pine. White pine is the only thing we want."

We are then told that it will take from six to eight to ten weeks to get it. The architect, faced with that problem, would say, "Then I guess we will have to take cypress, because the job must go ahead."

Over a period of from five to six years, that was the tale of woe told by the general contractor through his dealings with the architect. The dealer would have to come back and say "we cannot get white pine."

Q. Can they really get white pine?

A. I discovered, after making several investigations of my own, that the dealers would have price preferentials for cypress; they stock their yards with cypress. They had a limited amount of yard room, therefore they did not stock both cypress and white pine—I refer to genuine white pine—and the result was that it served to build up the myth that there was no more white pine.

521 Q. What is your experience; do you know whether there is genuine northern white pine in the market still?

A. I have every reason to believe that there is.

Q. Is that hearsay with you?

A. No; when it is specified and insisted upon it is furnished.

Q. That is, to your knowledge, is it?

A. Yes, sir.

Q. You said a few minutes ago that there was a statement or a myth that there was no more white pine——

A. I amend that to say northern white pine; true white pine can be furnished from Idaho or the Lake States. I had an experience of my own the summer before last when I specified white pine for a country club.

Q. Where was that?

A. In Westford, on Lake Champlain.

Q. Do you know whether you got northern white pine?

A. I know I got local white pine, of which there is plenty in the Adirondacks.

Q. Is that second growth or virgin timber?

A. That is virgin timber.

Q. Is virgin white pine, if you know, coming down from Canada at the present time?

A. It is.

Q. Is it coming down from Minnesota?

522 A. Yes, sir.

Q. That is good-sized growth, is it?

A. I cannot answer that.

Q. You do not know whether that is comparable with the original?

A. I know in the case of New York pine it is the method of small dealers to buy up a tract and carry a travelling saw mill there; they cut over the tract and sell the lumber within easy shipping radius, and that was the white pine that was used in my own job, where I insisted upon white pine, and I got it, notwithstanding the fact that the local dealer in Plattsburg was very insistent upon my taking something else that was all nicely dressed and surfaced four sides, which you can get elsewhere at cheaper prices.

Q. Do you know what that was?

A. California white pine.

Q. California white pine or sugar pine?

A. California white pine, so called.

Q. You said a few moments ago during a part of your testimony, in a rough and general sort of way, "when lumber was lumber"; lumber is still lumber, is it not?

A. It is.

Q. Then what did you mean by that statement? Can you be more specific and tell us what you meant by that phrase?

523 A. I meant when the architect or builder—the builder perhaps was the architect in the very early days; there was no other wood in the market, and when they built a frame house with frame studding and siding and with wood moldings, and so forth, it was all of white pine.

Q. You mean when no other wood was on the market; what do you mean by that—no other wood than what?

A. Than white pine. I mean as a softwood; that is what I am speaking of now.

Q. There was no other softwood on the market?

A. There was no other softwood, except North Carolina pine, which I always specify as N.C. pine, which was used for sheathing and under floorings, and so on, and thereby saving money for the client.

Q. How long ago was it that northern white pine was the paramount softwood in this market?

A. It still is the paramount softwood.

Q. I mean paramount in public consumption.

A. Probably 25 years ago.

Q. Was it as recently as 25 years ago paramount in point of consumption?

A. Yes; to the best of my knowledge.

Q. Do you know of any instances, of your own personal knowledge, where California white pine or western white pine or ponderosa lumber under any other term, including the words

524 "white pine", has been substituted or attempted to be substituted in place of so-called genuine white pine?

A. Yes. When I was publishing the White Pine Series of Monographs as editor, not as a seller of white pine, but as editor of a magazine purporting to show the longevity of the wood, it was brought to my attention once or twice or three times a week by fellow architects that they had reason to believe that the material delivered on the job was not according to their specifications.

Mr. MATTHEW. I object to that, if the examiner please, as pure hearsay.

Examiner SHEPPARD. Yes; that is hearsay.

Mr. MATTHEW. I have no objection to the witness testifying to matters within his own knowledge.

The WITNESS. This was in a direct telephone conversation with the architect; is that hearsay?

Examiner SHEPPARD. Yes; that would be hearsay.

The WITNESS. I can go on, however?

By Examiner SHEPPARD:

Q. Do you know any incidents of that kind, Mr. Whitehead, of your own knowledge?

A. It came to my own knowledge after the conversation over the telephone where I suggested to the architect that he take samples of the material as delivered on the job and send them
525 to the forest products laboratory in Madison, Wisconsin, to ascertain whether this wood that they were getting in each case was the wood that was specified.

Q. Do you know of your own knowledge what answer was made at Madison?

A. Only through conversation with the architect afterwards, as it was not my business to check up.

Mr. MATTHEW. I object to this testimony, if the examiner please.

Examiner SHEPPARD. Yes; that testimony can be obtained from the original source. You better obtain it from the architect himself, than have this witness testify to it as hearsay.

Mr. BURR. Does the examiner think it advisable for us to continue in the Government's case until the rest of the week, until we can get these witnesses down here?

By Mr. BURR:

Q. Let me ask you, can you give me the names of any of those architects, Mr. Whitehead?

A. No; I cannot under sworn testimony because I made no record of it. They were telephoning in and out and in and out all the time.

Mr. MATTHEW. I submit that there is a double objection to the testimony along these lines, Your Honor, and I stand upon my objection.

526 Q. Mr. Whitehead, do you regard California white pine—first, let me ask—from what species of trees is California white pine derived?

Mr. MATTHEW. We will stipulate that it is Pinus ponderosa, Mr. Burr.

Q. Is California white pine or other lumber made from ponderosa, in your judgment, a satisfactory substitute for genuine white pine, and if so, to what extent?

A. No; it is not a satisfactory substitute for genuine white pine to use in exterior of a building, in any way, shape, or form.

Q. Do you regard it as reasonably satisfactory for interior purposes?

A. I do, but not if exposed to the weather.

By Examiner SHEPPARD:

Q. You say it is all right for the interior?

A. For the interior but not exposed to the weather.

By Mr. BURR:

Q. What is the fault of ponderosa wood where exposed to the weather as contrasted with genuine white pine?

A. The fault is that it disintegrates and has a life of from three to five to seven years whereas the life of a white pine is still to be noted. It is still alive in all cases that I have examined.

527 As a matter of fact, it is very difficult to testify as to the life of the California pine because in many cases it is so recent—its use has been so recent, that some of the failures have not been brought to the attention of the profession as yet. It only remains to be seen in how many cases in the near future it will be developed——

Mr. MATTHEW. Just a moment; I suggest that this is all speculative.

Mr. BURR. Yes; I think that is rather speculative.

Mr. MATTHEW. I have no objection to the witness stating facts, but I do object to this sort of testimony.

Examiner SHEPPARD. Yes; that is true.

Mr. BURR. I have no objection to striking out the last speculative remark.

By Mr. BURR:

Q. Of your own knowledge, do you know the result of any ruling or report made by the Madison Laboratory or the United States Forest Laboratory?

Mr. MATTHEW. Of course, I shall object to that as hearsay.

Mr. BURR. I asked of his own knowledge of it. That would be his information, not hearsay.

Mr. MATTHEW. It is hearsay knowledge, and it cannot be anything else.

A. I can think of one that probably is not hearsay.

528 Mr. MATTHEW. I shall object to the witness undertaking to testify to any ruling or report made by the Madison Laboratory upon the ground that it is not the best evidence but is merely hearsay.

Examiner SHEPPARD. The best evidence of it, of course, is the report itself.

Mr. BURR. I was asking for the result rather than the report itself; not what they reported.

Mr. MATTHEW. The result of the report is hearsay as much as the record itself.

Examiner SHEPPARD. Let us see what the witness has to say on that subject.

The WITNESS. Having read a letter, is that bad evidence?

I have read a letter from the Forest Products Laboratory analyzing the specimens. Is that hearsay?

Mr. MATTHEW. It is hearsay, and I object to it on that ground.

Examiner SHEPPARD. If the objection is made, I shall have to sustain it, holding that the report is the best evidence.

Mr. BURR. I am not asking for the substance of the report; I am asking for what followed that.

Examiner SHEPPARD. I understand. That would be hearsay again, Mr. Burr.

529 By Mr. BURR:

Q. Do you know of your own knowledge any specific instance where California white pine, as used in exterior finish, has disintegrated within a comparatively short period?

A. I can testify to my own knowledge where Pinus ponderosa has deteriorated in a short period of time.

Q. Will you relate that experience?

Mr. MATTHEW. Is that California white pine?

Mr. BURR. I changed the question because I do not know whether it was California white pine; it was Pinus ponderosa.

Mr. MATTHEW. I object to his testimony unless it was California white pine.

Mr. BURR. If the examiner please, the question here is as to the durability of California white pine. Now, then, when we show that identically the same species, which is sold as California white pine, is also sold as pondosa, as western white pine, as New Mexico white pine, it seems to me that evidence as regards the character of that species is admissible here, as showing that the species, howsoever it may be named, lacks the ability to stand up under weather conditions.

Therefore I desire to press that question.

Examiner SHEPPARD. I think I will allow the testimony to go in.

530 By Examiner SHEPPARD:

Q. Mr. Whitehead, prior to your answering the question I want to ask you if your knowledge of woods leads you to know that the so-called wood known, manufactured, and sold in interstate commerce called the pondosa pine is of the same species as the wood under investigation in this case, known as California white pine?

A. I do know that it is the same.

Q. You do?

A. I do.

Examiner SHEPPARD. All right.

It has just been stipulated by counsel that it is the same, if I remember correctly, but I just wanted to know if the witness knew it.

By Mr. BURR:

Q. All right; state the specific instance that comes within your knowledge?

A. That specific instance was a job in which white pine, without any adjective was specified; the wood was furnished and milled and put in place, when a rainstorm about six years later blew a shutter off of the building.

The shutter was picked up and broke in the hand, and it was found that the wood was punk and had been held together merely by the pigments of paint.

531 Further investigation showed that the column and bases, cornice, window sills, and siding were in similar condition, but from one of the less exposed surfaces a piece of wood was obtained and sent to the Forest Products Laboratory at Madison, Wisconsin—again comes the report——

Mr. MATTHEW. I object to the report.

A. (Continuing.) The only authority we have—I am not a wood technician and I do not go around with a microscope to see if it is three-inch or five-inch or ten-inch pine, therefore I have to depend on the Government's authority, whether it is according to my specifications, and that is the only redress architects have.

You get no information from the retail dealer, because the retail dealer has no intention of giving any information.

Mr. MATTHEW. I object to the witness making a speech. I made the proper objection, on the ground that I have no way of checking up on mere hearsay, and I object to the witness undertaking to deliver a lecture.

Examiner SHEPPARD. Yes; that is true.

By Mr. BURR:

Q. How long ago was that, Mr. Whitehead?

A. It was five years ago.

Q. What was the name of the architect?

A. The name of the architect was Amar Embury.

Q. The building was what building?

A. The building was the residence of Charles Towne.

532 Q. At Litchfield, Connecticut?

A. At Litchfield, Connecticut. That is the one that I had first-hand information of, because I was interested in it in person.

Q. You went out to look at it?

A. Yes.

Q. That is exactly the same incident that the witness Embury testified to.

Mr. BURR. I have the carbon copy of the letter which was marked for identification and the incident that the witness has just testified to is the same incident which was referred to in the testimony of Mr. Embury.

Mr. MATTHEW. I will stipulate that that is the case.

A. My reason for bringing that in that it is the only one that I have first-hand knowledge of.

Mr. MATTHEW. I am not complaining, Mr. Whitehead, at all. I am simply stipulating that we have the same instances being made the subject of testimony by two witnesses.

The WITNESS. I will try to get the original letter from Mr. Kahler, of Madison.

By Mr. BURR:

Q. What is the reputation among architects of northern white pine for durability and general utility for exterior finish?

533 A. It is the wood preeminent.

Q. What, if you know, is the reputation of Idaho white pine among architects for exterior finish?

A. It enjoys the same reputation.

Q. Over a lesser period of time?

A. Over a lesser period, because it has been a lesser time on the market.

Q. What sort of wood for exterior finish is sugar pine?

A. I never had occasion to use sugar pine, but I understand—again it is hearsay.

Mr. MATTHEW. And I object to hearsay.

By Mr. BURR:

Q. Has sugar pine obtained, would you say, among architects in this section, a reputation for outside finish or is that still got to be won?

A. To my knowledge I have seen sugar pine used for exterior of buildings, and it is still in use.

Mr. MATTHEW. Pardon me; I think that answer is not fully responsive.

Mr. BURR. No; it is not quite responsive.

Examiner SHEPPARD. Mr. Whitehead said, I believe, that he did not know much about sugar pine.

Mr. MATTHEW. I have no objection to his answering that specific question as to the reputation of sugar pine; I think perhaps the question ought to be read to the witness.

534 Mr. BURR. Suppose you read the question, Mr. Reporter.

(The question was thereupon repeated by the reporter as above recorded.)

By Mr. BURR:

Q. Has sugar pine a reputation, and if so, what is it?

A. I think in the minds of the architects sugar pine is known to be a true white pine, and as such, if it is specified and it is used, and it can be checked and the specifications have been fulfilled, there are no condemnation proceedings started on the job.

Mr. MATTHEW. May I ask to have the original question read?

(The question was thereupon repeated by the reporter as above recorded.)

Q. Before you say what the reputation is, will you state whether it has a reputation, that is what I want to get at first.

Has it made a reputation here, or is it too new a wood to have a reputation established here?

A. I think there is confusion in the minds of architects as to whether sugar pine is a true white pine. In fact, I know a great many people have asked me the question, "Is sugar pine a true white pine?"

Q. Architects have asked you that question?

535 A. Architects have asked me that question many times, and I have told them that to the best of my knowledge it is a true white pine and they will make no mistake in accepting it as such.

Mr. MATTHEW. Now may we have an answer to the question?

The WITNESS. I gave you an answer to it right now.

Q. Would you say that sugar pine has a reputation—a general reputation among architects at the present time or not?

A. Not as sugar pine.

Q. Not as sugar pine?

A. No; not as sugar pine, as a true white pine; it would come under the category of a wood to be used for the exterior of a building.

Q. Has it the general character and standing in this community among architects as a true white pine?

A. Yes; so far as an architect has taken the trouble to investigate.

Examiner SHEPPARD. Now, let us get this straight. I do not think he has yet answered the question as to whether sugar pine has a reputation among architects as a wood suitable for exterior finish. I think he ought to answer that.

The WITNESS. I cannot answer that; no.

Q. Will you state whether or not the architects distinguish clearly between various woods known as northern white pine,

536 California white pine, and Idaho white pine, respectively?

A. There is confusion in the minds of the architect as regards those three named woods.

Q. Will you explain that situation, please?

A. The confusion results in the fact that the architect thinks that California white pine is a true white pine, and until he is informed of his mistake he is still in ignorance of that.

By Examiner SHEPPARD:

Q. How about the contractors, Mr. Whitehead; do you know anything about the contractors' knowledge on the same question?

A. I think the contractors' knowledge comes about—a contractor is, in a general way, a middleman. The architect specifies what he wants; the contractors figure on his specifications and plans; the contractor takes sub-bids for mill work and rough lumber, and so on, and theoretically, at least, the subcontractor figures from the same set of plans and specifications that the architect has furnished to the general contractor.

The bids are turned in and assembled, and the general contractor makes his offer based on the sub-bids.

The general contractor looks to the subcontractor to furnish the material as specified. Therefore, if the architect has failed on the contract, and the contractor has failed with the subcontractor,

537 and the subcontractor happens to be a retail lumber dealer, it follows that the architect does not know whether what he has specified is what he is getting—I mean he does not know how

to identify what he has specified on the job, and the subcontractor is very apt to take advantage of that fact in the supply of material.

By Mr. BURR:

Q. When a substitute material is placed upon the ground, is it often used and incorporated in the building, on account of the difficulty and delay which would be incident to changing the material?

A. Very often.

A pile of lumber is delivered on the job; the architect inspects it, condemns it; the subcontractor goes to his office and says he knows that it is not just what is specified, but that is all that he could get and it would take six to eight weeks or whatever length of time, depending on the story that the subcontractor would tell the architect; the architect is the agent of the owner and, knowing that the owner wants his building, takes it up perhaps with the owner and says, "We are not getting what we specified, but I think perhaps, under the conditions, it will have to do because it will be six or eight weeks' delay if we don't", whereupon the owner says to the architect, "Well, is there a price differential?"

538 The architect then takes up with the contractor the matter of price adjustment. He might get $2, $5, or $10 a thousand allowance as a credit on the contract and the owner say, "If there will be such a delay, we will take the credit and let it go at that."

Of course, they do not realize the great harm in taking the cash allowance where they should insist upon the material.

Q. Where it is a question of durability, will a cash allowance take care of the owner's interest?

A. No; it would not take care of the owner's interest. The architect therefore would put it up to the owner before he would accept such an allowance, having given him a fair warning that he would regret it in the long run.

Q. Have you a membership in any architects' organization, Mr. Whitehead?

A. I am a member of the Architects League of New York.

Q. How long have you been connected with the Architects League?

A. Eighteen years.

Q. Have you ever had any official position with the organization?

A. I was secretary two and a half years.

Q. Does any architectural association that you know of have rules that they promulgate?

A. Bylaws and constitution.

Q. I mean rules of conduct to delineate what the duties of
539 architects are to their clients?

A. There is a code of ethics promulgated by the American Institute of Architects setting forth what constitutes professional conduct.

Q. Are there any definitions indicating what the scope of the architect's duties are in the entire picture?

A. Yes.

Q. Do those specifications require that the architect be a judge of the species of lumber that has been delivered on the job, or is that outside of his requirements?

A. He is the judge and arbiter after the contract is let, and he acts in the interest of both owner and the contractor.

Q. Because the code of ethics or rules so provides?

A. There are no such rules; there are no rules prescribing by the American Institute of Architects as to whether architects have to know species of woods.

Mr. MATTHEW. I think the prior answer should go out. The question was whether the rules did so promulgate.

The WITNESS. There are no such rules. Only an organization of that sort would set-up a rule of conduct as regards professional ethics.

By Mr. BURR:

Q. Is such the custom?

A. Yes.

Q. As you described the function of architects in the ques-
540 tion before last, is that the custom, rather than the rule, Mr. Whitehead?

A. The function of the architect is to design, specify, and superintend the erection of the building, and having specified—which is under the head of supervision—it is his privilege to accept or condemn any material that is delivered on the job that is not according to specifications.

Q. The question as to whether or not a given body of lumber delivered on the job is or is not California white pine or is or is not northern white pine, is that up to the architect?

A. It is up to the architect to decide that and to condemn or accept as he sees fit, according to his findings.

Q. Are architects able to judge lumber so as to ascertain whether a species of lumber that resemble one another closely is one thing or another? Are they sufficiently capable wood technologists to be able to know?

A. Not one out of a thousand.

Q. Are you yourself?

A. I am not as an expert, but in special cases in seeing what the market afforded——

Q. Can you tell a delivery of lumber on the job well enough to know whether it is California white pine or whether it is northern white pine?

A. I could not.

541 Q. You could not tell?

A. No, sir.

Q. What protection then has an architect in performing his duty to his client, to tell whether or not the lumber delivered is ponderosa pine or whether it is strobus or monticola?

A. Unfortunately he has none.

Q. Is it in the reliance of the architect on reputable contractors and to endeavor to place the job with reputable contractors?

A. That is his first duty to his client, to ascertain the reputation of the contractor, before the contract is let.

Q. Will you say whether or not his selection of contractors is the method of fulfilling his duty to his client as regards the selection of lumber material?

A. No; his duty goes on beyond that point to the place where and the time when the material is delivered on the job; he also superintends the workmanship in putting it in place. His duty is not over until the job is delivered to the owner.

Q. And it is his business to size up grades of lumber on the job?

A. He has not that technical knowledge. He might question the grade. He might look at the pile of moldings, for instance, and find it full of knots, and so on. He may have specified that
542 the surfaces should be clear, so he condemns that immediately. He wants to know how it was prepared, and he might ask some questions, but his dealings would be through the general contractor and the general contractor's dealings are with the subcontractor; the subcontractor would report to the general contractor, and the general contractor back to the architect.

Q. Do you know of any architectural organization in this city which has given instructions and advice to its members and others as to how the ordering of woods should be specified or recognize them?

A. That information has been given to the architects' profession through the printed word and not through any organization.

Mr. MATTHEW. The answer then should have been "no" to that question.

The WITNESS. No.

Q. Has it been given to the profession in any other fashion?

A. It has been given to the profession through the printed word and mailed to them for their information, if they cared to read it.

Q. Mailed to them by whom?

A. Mailed to them through the publication of the "White Pine Series Monographs", through publication of grading rules and specification data published by the old White Pine Bureau, and
543 through bimonthly advertisements contained in the monograph series.

Q. Is there any uniformity in New York among architects as to how to specify the wood known as Pinus strobus?

A. There is no uniformity of specification.

Q. Have you seen specifications by architects calling for Pinus strobus in any fashion?

A. I have.

Q. In what varieties do they call for it?

A. For the exterior use of the building?

Q. Yes; make it for the exterior use. In what language do they specify it and in what terms?

A. In as many fashions as there are architects.

There is no standard set of specifications. Each architect is the author of his own specifications. He may have help from various sources, but he is the author of the specifications.

Q. Do any of them call for that type of wood under the botanical name of strobus?

A. Occasionally, having been warned many times——

Mr. MATTHEW. Cannot the witness say yes or no to that instead of going into an argument on each question that is put to him?

Mr. BURR. It seems to me he is entitled to explain his answers.

544 Mr. MATTHEW. I do not think that that requires any explanation. He has been asked a very simple question, whether that wood is specified under its botanical name of Pinus strobus. That does not require an extended argumentative answer. Yes or no is all that is asked for.

Examiner SHEPPARD. Just answer the questions as briefly as you can.

Read the question to him.

(The question was thereupon repeated by the reporter as above recorded.)

A. As Pinus strobus occasionally.

Q. Under what other names is the genuine white pine of the northeastern part of the country and the Lake States called for by architects within your knowledge?

A. As white pine.

Q. Any other ways?

A. No.

Q. Do they ever ask for northern white pine?

A. No.

Q. How do you yourself specify white pine for exterior finish when you desire it?

A. I have just copied from one of my specifications just that type which refers to this.

Q. Is this your normal specification?

A. This is my usual specification. I might explain that the
545 architect as a rule, spends a great deal of time and thought in writing what he calls a model specification.

Mr. MATTHEW. There is no objection to your reading the specification.

The WITNESS. He writes and examines it over and over again, because if one mistake gets in the specification it is likely to be perpetuated over a long period of time.

Q. Now, in your particular case what do you specify?

A. "All lumber for any purpose mentioned in these specifications" (that is the general class and refers to lumber for the whole build-

ing) "shall be thoroughly seasoned, carefully milled, and graded in accordance with the Standard Lumber Association grading rules of the producing district from which the particular species of lumber specified has its origin."

That is the general class, referring to workmanship and the species and the grading rules.

Q. I was referring to the way in which you tried to specify that strobus shall be furnished rather than any other type of white pine where you are calling for white pine?

A. According to the specifications I read, under the heading of "Framing, sheathing, window frames, and sash", itemizing the various items——

Q. I do not care for that so much.

A. Window frame and sash?

Q. Yes.

546 A. "All window frames and sash shall be manufactured from genuine white pine of suitable grade, free from sap, and with clear faces wherever exposed, made to sizes as per detail shown on drawing."

Q. You do not say strobus, then, do you?

A. No.

Q. Under that specification would you regard the furnishing of Idaho white pine as compliance with your specification?

A. Yes; the specification says, "genuine white pine."

Q. What do you include under the term "genuine white pine"?

A. I personally include the white pine from the Lake States and from Idaho and sugar pine.

Q. Would you or would you not regard California white pine or pondosa pine as compliance with those specifications?

A. No, sir.

Mr. BURR. That is all. You may cross-examine.

Cross-examination by Mr. MATTHEW:

Q. Mr. Whitehead, you stated that commencing in 1915 you were the editor of a series of monographs known as the "White Pine Series"?

A. The White Pine Series of Architectural Monographs.

Q. Over what period were they published?

A. They were published for ten years, from 1915 to 1924.

547 Q. These publications were sponsored by the White Pine Bureau, and I take it that you were in the employ of the White Pine Bureau for that purpose?

A. For that purpose.

Q. What was the membership exactly of the White Pine Bureau?

A. The White Pine Bureau is made up of manufacturers of white pine. The membership changes from year to year, depending on the attitude of the manufacturers. The McGoldrick Lumber Company, the Edward Hines Lumber Company of Chicago——

Q. I do not care for the names particularly—in general, the membership comprised what?

A. The mills manufacturing genuine white pine.

Q. Were the Weyerhaeuser interests represented?

A. The Weyerhaeuser interests were not represented except one or two of the mills manufacturing white pines.

Q. Then one or two of the mills were members, and I suppose the members of this organization took care of its financial support?

A. It did.

Q. Did the membership comprise manufacturers both of the strobus pine, Idaho white pine, and Califoria sugar pine?

A. I do not think there were any sugar-pine manufacturers represented in the association.

Q. It was limited, then, to the manufacturers of what you should term the true white pines?

548 A. Idaho and Lake States pine.

Q. And the old White Pine Bureau to which you likewise referred in the latter part of your testimony is an organization which printed advice to architects and was likewise made up of white-pine manufacturers?

A. That was likewise made up of white-pine manufacturers.

Q. There again manufacturers of northern white pine and Idaho white pine?

A. Yes.

Q. At the time when you first engaged in your practise as an architect what did the term white pine mean?

A. White pine meant that species of wood which was white pine; in other words——

Q. Never mind; I will reframe my question. Did it denote specifically the northern white pine or Pinus strobus?

A. It denoted Pinus strobus in my own mind.

Q. Gradually did it become enlarged to include the Idaho white pine?

A. Yes.

Q. And more recently did it become enlarged to include the California sugar pine?

A. In those cases where there was a question as to—I mean delivery of lumber—there was a doubt because of its peculiar markings as to whether it was or was not a true white pine—the question

549 came up, as the sugar pine came into the eastern market, was it a true white pine, and the authority of the Government was asked for, and it was found to be a true white pine.

Q. I am not asking for the authority of the Government. I am asking now as to the meaning of the term in your profession. Your answer is that initially it referred to the true white pine or Pinus strobus; that is, northern pine?

A. Yes.

Q. Later on it came to include the Idaho white pine as well, which we recognize to be a true white pine botanically; now I ask you whether it has likewise come in your profession to comprehend the California sugar pine as well?

A. I do not think that sugar pine is generally considered to be a true white pine. In the minds of the profession, I am speaking of now.

Q. That is what I am asking, as to the meaning of white pine in the profession.

A. You mean of architects?

Q. I am talking about architects.

I am talking within the scope of your direct examination. You said, Mr. Whitehead, as far as you are personally concerned, when you prepare specifications calling for white pine, I think your exact term, as you have stated it, is, "genuine white pine free from sap"; were you prepared to accept there northern white pine or

550 Pinus strobus, Idaho white pine, or California sugar pine?

A. The California sugar pine would be accepted in places where the wood was to be painted only.

Q. But you would accept California sugar pine as being in compliance with a specification for genuine white pine?

A. For genuine white pine.

Mr. BURR. May I interrupt just a moment?

If the examiner please, I would move the examiner to excuse all witnesses who may be present here, except those that I shall name: Mr. Andersen, Mr. Baum, Mr. Welsh, and Mr. Danaher.

Any other witnesses who are here may be excused.

Examiner SHEPPARD. Very well, those witnesses that Mr. Burr has named will remain; the rest are excused.

By Mr. MATTHEW:

Q. I take it further, from answers that you gave on direct examination, that some architects would not be willing to accept sugar pine in response to specifications calling for genuine white pine?

A. They would not—can I elaborate that?

Q. I think I understand. If you want to elaborate, you may.

A. Depending on the finish required.

Q. Also, I think you explained in your direct testimony that sugar pine has found its way in this market on an extensive scale rather recently, and is not well known to architects?

551 A. Not very well known.

Q. And is not known as well as Idaho or northern white pine?

A. No, sir.

Q. Does this white pine organization still exist?

A. No.

Q. When was it disbanded?

A. In December 1924 it was disbanded.

Q. Were you associated with it——

A. Up to that time.

Q. What was your relation to it?

A. I was editor of the house organ published by them, but I was not connected with the Bureau as such.

Q. What was the house organ?

A. The White Pine Series and the Architectural Monographs.

Q. Those were the publications of the old White Pine Bureau?

A. Yes.

Q. And you were employed as editor?

A. I was employed in a professional capacity, but not as a member of the Bureau.

Q. How long has Idaho white pine been known in this market, Mr. Whitehead?

A. Fifteen to sixteen years.

Q. How long has California sugar pine been known to this market?

A. That I am not prepared to answer; I do not know.

552 By Examiner SHEPPARD:

Q. More recently, though?

A. More recently.

By Mr. MATTHEW:

Q. You recognize the fact, Mr. Whitehead, that heartwood ordinarily resists decay much more satisfactorily than sapwood?

A. I do.

Q. Do you happen to know whether the ponderosa pine lumber in the Towne house job, which, as you have stated, had decayed badly, was sapwood or heartwood?

A. Sapwood.

Q. You said, Mr. Whitehead, that it was your understanding that lumber which is marketed under the trade name of pondosa pine is yielded by the same species of tree which yields the lumber which is marketed under the trade name of California white pine?

A. Yes.

Q. And we agree that that is the fact.

Is it possible for a contractor or for a retailer to make an effort to substitute lumber which he has purchased under the trade name of pondosa upon pine specifications calling for white pine?

A. It is.

Q. You said architects are not ordinarily wood technolo-
553 gists and they would find it quite difficult to identify a particular lot of lumber as being either northern Idaho or California white pine?

A. It is very difficult for them.

Q. Even expert lumbermen, Mr. Whitehead, sometimes find it difficult to distinguished, say, between California sugar pine and California white pine, do they not?

A. I would not say they would. A lumberman would know the difference right away between California white pine and California sugar pine or Idaho white pine.

Q. Have you not seen some California white-pine boards which closely resemble California sugar-pine boards?

A. I never have.

Q. You think the distinction quite marked?
A. Yes.
Mr. MATTHEW. That is all, thank you.

Redirect examination by Mr. BURR:

Q. Mr. Whitehead, you testified that you would accept sugar pine on a specification such as you wrote, calling for genuine white pine?
A. I do.
Q. That is your personal view as to what you would do, or is that the position that architects generally in this vicinity
554 would take?
A. It is my personal view. I do not think the architects would know the difference.

By Examiner SHEPPARD:

Q. You are not speaking for the contractors?
A. No, sir.

By Mr. BURR:

Q. In your testimony, you are speaking for the architects generally?
A. Yes, sir.
Q. In your work as a writer, I think you testified that you got out a house organ or something that you designated as a house organ?
A. I did.
Q. In that work you were speaking more particularly for a group of genuine white-pine manufacturers, were you not?
A. I was.
Q. In your other editorial work where you were editor of Pencil Points and other magazines that you mentioned in the architectural line, will you state whether you regard your editorial work other than that for the White Pine Association as propaganda work, or it it judicial in character or what?
Mr. MATTHEW. I do not think that is proper redirect. I asked the witness nothing about these other publications.
555 Mr. BURR. If the examiner please, I think counsel's cross-examination was designed to show, and I think in part it was successful in showing that part of the writing that witness had done in connection with this whole matter was that of a protagonist or propagandist for white pine.
Mr. MATTHEW. I did not say that.
Mr. BURR. You did not say it in so many words, but you brought it out, and I want to bring out that he has been entirely impartial in the whole matter and that his views were not colored and his work was not that of a protagonist or propagandist for a species of white pine.
Examiner SHEPPARD. Go ahead and answer the question.
Mr. MATTHEW. There is nothing in any word that I used that was designed to give that impression.
Examiner SHEPPARD. I did not get that impression.

Mr. MATTHEW. It is perfectly legitimate for him to do so if he desired.

Mr. BURR. I submit counsel has brought out facts from which that inference might well be drawn.

A. What is the question?

Examiner SHEPPARD. Read the question.

(The question was thereupon repeated by the reporter as above recorded.)

The WITNESS. It is judicial in character.

Mr. MATTHEW. Will the examiner give that question and
556 answer probative value? It seems to me that is rather a conclusion of the Commission to be drawn from the testimony. I should gather from the witness's testimony it was not altogether judicial.

The WITNESS. I referred to my work in the Architectural Record and Pencil Points, and that has nothing to do with propaganda.

Mr. MATTHEW. Nobody has intimated otherwise.

By Mr. BURR:

Q. As regards those works which you have mentioned, will you state whether you regard yourself as stating fairly on their merits the qualifications and utility of all classes of lumber that came for your attention?

Mr. MATTHEW. I object to the question. There is nothing in the record as to what was said in these other publications at all, and it is not for the witness to say how he regards himself.

Examiner SHEPPARD. It is not essential to the case, anyhow.

I have no interest in it whatsoever. I have regarded Mr. Whitehead's testimony from a technical viewpoint and his knowledge of lumber, and so forth, but as to the various periodicals, I am not interested in them at all.

Q. Are the members of the American Institute of Architects paid subscribers to the Monograph at the present time?

A. About 91 percent of the members of the American Insti-
557 tute of Architects are paid subscribers to the Monograph Series.

Q. Is that a house organ at the present time?

A. It is not.

Recross-examination by Mr. MATTHEW:

Q. What is the Monograph Series?

A. It is a continuation of the previous publication, conducted as a personal enterprise.

Q. In other words, the status of these publications has changed?

A. Absolutely.

Q. From 1915 to 1924 they represented the house organ of this old White Pine Bureau?

A. They did.

Q. Since that time you have continued it as an independent publication?

A. As a personal enterprise without the subsidy or anything of the kind.

(Witness excused.)

FRED C. ANDERSEN was thereupon called as a witness, and, having been first duly sworn, testified as follows:

Direct examination by Mr. BURR:

558 Q. Mr. Anderson, what line of business are you engaged in, please, sir?

A. Manufacturer of window frames.

Q. Located where?

A. Bay Port, Minnesota.

Q. How long have you been engaged in that line of business?

A. Twenty-five years.

Q. Are you at the head of the concern at the present time?

A. Yes.

Q. How long have you been so?

A. Fifteen years, just about.

Q. What line of business particularly—only frames; is that right?

A. Yes; frames, just a few moldings, but practically all window and door frames.

Q. How long has that been practically your sole specialty?

A. All the time, during the entire twenty-five years.

Q. How wide a territory does your trade cover?

A. At the present time it is the Rocky Mountain States and all east.

Q. That is to say, you have customers over that area?

A. Yes; when I say all east, there is a State here and there that we do not get into, but as general thing it is the eastern part of the United States.

Q. What type of lumber do you buy for making into your
559 products, Mr. Andersen?

A. Genuine white pine and ponderosa pine.

Q. Where do you buy your genuine white pine?

A. From Lake State mills, Idaho mills, and California sugar pine mills.

Q. What Lake State concerns do you buy from?

A. Our purchases from Lake State mills have been decreasing in quantity, but I get a little still from the Cloquet Mills and Virginia, Minnesota, and the Rainy Lake Lumber Company.

Q. Is that virgin pine, first-growth timber?

A. I suppose part of it is, but that is something that does not come up in our dealings, that is, the wood as to what tree they cut it out of we do not pay much attention to, but I would be of the opinion that they are cut to a considerable extent in smaller diameter, not mature.

Q. How about your Idaho white pine, that is virgin timber, I suppose, is it, or do you not know as to that?

A. I would not naturally know. I do know it is somewhat larger timber than the northern white pine because the plank comes to us wider and we do not find plank with sap on both edges, which is a sign it is cut out of small timber.

Q. The second growth would be quite largely sapwood, would it not?

A. It would have more sap.

Q. Do you have specifications calling for frames of genuine
560 white pine or white pine, or how do specifications read?

A. We make our own specifications.

Q. I mean in selling rather than purchasing.

A. We make our own specifications what we sell. We manufacture stock frames and sell the frames we make according to our ideas of what a frame should be.

Q. What do your customers ask for? You have these varieties of white pines you named, you also have California white pine; did you testify so?

A. No; I did not say that.

Q. I thought you said California white pine, in part.

A. No, sir; ponderosa—I see the point. We use in every frame, some pondosa and some genuine white pine, using the genuine white pine in the exposed part of the frame that goes outside of the building, and is exposed to the weather, but for the unexposed part we use pondosa pine.

Q. When you use the genuine white pine for the exposed parts, are you able to get rid of that sap, I mean, so that the sap is not exposed to the weather in the portions that you have testified to?

A. To a very large extent; yes.

Q. You do send out some frames in which some sap is exposed to the weather, of white pine?

A. They may be.

Q. But to a large extent, you are able to put it on the inside,
561 or how do you dispose of it?

A. We buy genuine white pine because there is less sap in it; we do not want sap in the exposed parts of our frames. In the grades we buy genuine white pine particularly from the mills that are cutting in matured timber, large timber, and in those certain grades there would be no sap except on account of mismanufacture at the mill, yet we occasionally get a plank that was not produced in just according to their rules of practice in turning the log, so we may have a little sap on it.

Q. What do you do with that little sap that there is there?

A. We endeavor, if other conditions are such, that we can turn that sap edge, so that there is just a little streak of sap into the inside of the building.

Q. Are you successful, in general, in doing that?

A. Yes, sir.

Q. But is that impossible to do, as a rule?

A. With the small amount we have in genuine white pine, it is largely possible to do that.

Q. Has white pine lost its significance to the trade to whom you sell, or does it still have a meaning?

A. That is a hard question to answer yes or no.

Q. Answer it the best you can.

562 A. Because it is not the same in all cases. There are customers of ours that are appreciative of the difference between genuine white pine and other pines, but I am sorry to say that quite a large part of the trade does not know or perhaps does not want to know or does not care.

Q. Have you competitors in the frame business who are using California white pine for their frames?

A. Ponderosa pine sold under the name of California white pine? It just happens to be very little used for frames.

Q. There is very little used for frames?

A. Very little used for stock frames, and I think that is because the stock-frame factories happen to be located in the ponderosa region, where they changed the name to pondosa pine.

Q. Are there competitors of yours who are using pondosa pine for frames?

A. Yes, sir.

Q. Do you have to pay more for white pine than you do for——

A. You might make this point, I think it should be made to clarify this, that I am talking of stock-frame manufacturers who make stock frames in carloads.

The small mills that make frames to order for distribution in the localities in which they are situated, I am not in a position to say. I think they do use more California white pine for frames than my previous answer would have indicated.

Mr. MATTHEW. I think the witness should confine his testimony to facts within his knowledge.

563 Q. Now, Mr. Andersen, is the white pine that you buy higher in price or lower in price than the pondosa that you buy?

A. Higher.

Q. In the manufacture of California white pine or pondosa pine into frames without the use of exterior genuine white pine, is the construction cheaper than to make it part of white pine and part of ponderosa?

A. The materials that go into the frame would be cheaper; yes, sir.

Q. Would the cost of construction be cheaper where you make it entirely of the one wood?

A. I do not think so, but I never had the experience.

Q. Throughout your experience as a manufacturer of frames have you always made the frames of the three species of lumber, or did you use at one time but the one species for the frame?

A. We have not always used those same two species; we have always used genuine white pine for the outside parts of the frame in the entire history of our company, but where we now use pondosa, we have used other pines than pondosa—we have used genuine white pine in choice pieces; we have used yellow pine from the South; we have used Norway pine from the North, and it is merely in recent years that we have adopted pondosa pine for the unexposed parts of the frame; I would say ten or twelve years.

564 Q. Why do you regard white pine as better for exposed portions of the frames?

A. The genuine white pine is less prone to split and warp, which are points in its favor for exposed work. However, the big reason we prefer it, the more important reason than those is that it is obtainable practically free from sap.

Q. Is is feasible to make frames from the ponderosa tree, confining yourself to heartwood?

A. I would not consider it so.

Q. The part of the frame that is made out of the ponderosa tree, as you testified, where not exposed to the weather, is that heart or sapwood of the ponderosa?

A. Just as it comes.

By Mr. MATTHEW:

Q. It may be either?

A. Yes.

By Mr. BURR:

Q. It is usually a mixture of the two?

A. Yes, sir.

Mr. BURR. That is all.

Cross-examination by Mr. MATTHEW:

Q. Mr. Andersen, what circumstances led you to resort to pondosa pine for use in making unexposed portions of your frames,

565 that is, why did you change from other woods rather than to pondosa?

A. It is the best pine from a working standpoint, and the factory grades of lumber are best adaptable in pondosa pine, considering the pines in a group, that we might choose from.

Q. That is, the pondosa pine lumber which you use for those purposes more nearly resembles the northern white pine than such woods as yellow pines, for instance, from the South?

A. That happens to be the case; but that is not the reason for our choice.

Q. I am not suggesting that that is the reason.

A. If you were, I should say that it was in spite of the fact that you suggest.

Q. All right; put it this way: At one time you did use some southern pine?

A. Yes.

Q. Was it long leaf?
A. No, sir.
Q. Short leaf?
A. Yes, sir.
Q. At times you have used the Norway pine for the unexposed portions, have you?
A. Yes, sir.
Q. And you decided that pondosa pine was more suitable for the purposes that you required than southern or northern
566 white pine?
A. Strictly from an operating factory standpoint; yes—that it was more acceptable to the trade; I will put it that way.
Q. It is more suitable from a factory standpoint—just what do you mean by that?
A. I mean, as I said before, that the factory grades of lumber can be better secured in pondosa pine. It is a softer wood and nicer wood to work in, a nicer wood to cut and to manufacture into the unexposed parts of frames. I would like to be able to finish that and make the point clear.

By Examiner SHEPPARD:

Q. All right; go on.
A. The reason that I say that is it is not a question of more ready acceptance on the part of the trade——

By Mr. MATTHEW:

Q. I did not suggest that.
A. As that many architects prefer a hard pine for the parts of the frame where the window slides in contact with the jamb of the frame, and the specifications are often written "yellow pine" in architects' work. The idea obtains through the territory that yellow pine is pretty good lumber for what is called the pulley style, or that part of the frame where the sash slides.
We have had in some instances to rather sell the idea of pon-
567 dosa pine being suitable. We ourselves consider it as fully suitable and entirely suitable, and it is so much nicer stuff for us to make, so much better lumber from the manufacturer's standpoint, that we prefer to use it, not because it has a resemblance to white pine, but we are permitted to use it because it bears a faint resemblance to the other pine.
Q. I did not suggest any superficial resemblance. You find it more suitable to the pines that you used ten or fifteen years ago?
A. Yes.
Q. You purchase most of your pine from the inland empire section?
A. I do not know just where the pondosa line is; southern Oregon, Klamath Falls, and the inland empire are our source of supply of pondosa pine.
Q. Do you buy it under the trade name of pondosa pine?

A. Just in the lower edge of that territory that I mentioned some invoice it as California white pine. I do not see the invoices and I do not pay much attention to what they call it.

Q. Then you buy some under the trade name of California white pine and some under the name of pondosa?

A. Yes.

Q. You use it indiscriminately in the factory, irrespective of the trade name?

A. Yes, sir.

568 Q. The trade name has nothing to do with it?

A. Yes; I understand some of the pine is cut from the adjacent timber and if it is sawed north of these mills it is called pondosa, but if it is sawed south it is called California white pine.

Q. You are not interested in the trade name?

A. No, sir.

Q. You are interested in the quality and utility of the lumber itself, regardless of the trade name?

A. So far as our purchases are concerned, yes.

Q. That is what I am talking about.

A. Yes, sir.

Q. So far as you are concerned, in your purchase of lumber, it does not make any difference whether we have a trade name of pondosa pine or a trade name of California white pine or some other trade name as long as you get the lumber of the quality and character which you require for your manufacturing purposes?

A. Because we have the name pines and we advise ourselves of the real facts of the case, that is true; yes, sir.

Q. The answer is yes. Then it is immaterial to you what the trade name is; you are interested in the quality and utility of the lumber.

A. That is true in our case; yes.

Q. That is what I am asking.

569 A. Yes, sir.

Q. Under what name do you sell your frames or offer them to the trade; how do you describe them in your catalogs or advertisements?

A. Andersen window and door frames, outside casings and sills, genuine white pine.

Q. Is that all?

A. Well, we have a lot more to say. Our trade mark was formerly "Anderson White Pine Frames", but we had a call from the Federal Trade Commission, and they questioned whether we could call our frames white pine frames, and after that time we became very specific and adopted the practice of calling our frames "Andersen window and door frames, outside casings and sills, genuine white pine."

Q. And they are offered under that designation today?

A. Yes.

Q. You said, I think, in response to a question on direct examination, that there is very little California white pine used for frames?

A. By stock-frame manufacturers. I should like to add to that, as I did before.

Q. I think you did add that before.

A. Yes, sir.

Q. When you further stated that it happened that most of the firms—that is, these stock-frame manufacturers using this
570 particular lumber—manufacture it in the northern territory, where the lumber is commonly called pondosa pine; is that correct?

A. Yes, sir.

Q. Do you know whether those frames are made entirely of pondosa pine or whether they are in part made of white pine?

A. It has been my observation that until recently they have been made entirely of pondosa pine. Quite recently some of the factories in the Spokane district have offered as an alternative and at a higher price frames of Idaho white pine, outside casings and sills.

Q. I think you made some statement in the early part of your testimony to the effect that your purchasers of the northern white pine lumber have diminished in recent years?

A. Yes, sir.

Q. To what circumstances is that due?

A. I am not a lumber manufacturer; I only know what they have to offer us. There has been a decreasing quantity of the factory grades of lumber, which means grades of lumber that will produce clear cuts offered to us by the northern mills. I am advised that this is because they are cutting in smaller timber than formerly, and consequently what white pine may produce is largely of the common grades and less of the factory grades. There has also been some preference on our part for the factory grades produced
571 out of more matured and larger timber, because such factory grades as are offered to us and are furnished to us by the lake district mills have more sapwood in them than similar factory grades furnished us by the other two groups of mills.

Q. By the other two groups, you mean what?

A. Monticola and lambertiana.

Q. I did not quite finish my question. You mean Idaho pine manufacturers and manufacturers of California sugar pine?

A. Yes, sir.

Q. You purchase some of your white pine lumber from the Weyerhaeusers, did you say?

A. I did not use the Weyerhaeuser name.

Q. You purchased at Cloquet?

A. Very little.

Q. Is that a Weyerhaeuser operation? I think it is stated that it is.

A. I think the Weyerhaeusers own all the mills in Cloquet.

Q. And in the Virginia and Rainy Lake?
A. Very little.
Q. Do you purchase any Idaho white pine from Weyerhaeuser?
A. A small percent.
Q. Can you state what proportion of your purchases of white pine are represented by Pinus strobus?
A. I imagine a fairly accurate guess—and this would only be a guess—not over two percent.
572 Q. What proportion is represented by Idaho white pine?
A. Another guess. I would say 35 percent.
Q. The remainder then is represented by California sugar pine?
A. Yes, sir.
Q. Just one other point. You were asked by counsel for the Federal Trade Commission whether the term white pine has lost its significance and I am not sure whether you completely answered that question, so I shall ask you this question: First, in the early part of your manufacturing experience, what was meant by the term white pine?
A. Strobus.
Q. Later on, was it broadened so as to include the Idaho white pine?
A. Yes.
Q. And still later, so as to include California sugar pine?
A. Yes, sir.
Mr. MATTHEW: That is all, thank you.

Redirect examination by Mr. BURR:

Q. Mr. Andersen, I think you said on your cross-examination that what you were interested in was the quality and character of the wood rather than the trade name; let me ask you this: To the extent that your competitors use California white pine and market their goods as California white pine, will you state how that affects,
573 if at all, your ability to compete with your frames which are also called white pine?

Mr. MATTHEW. Just a moment, if the examiner please, there has not been a word in either direct or cross-examination about competitors of this witness selling any material as California white pine in frames, and my question to the witness had to do with his purchases of lumber, and he specifically repeated that in his answer, and said that was as far as he was concerned, as a purchaser, and that was the import of my question.

Examiner SHEPPARD. I think that is so, Mr. Burr.

Mr. MATTHEW. He said nothing about competition with California white pine.

Mr. BURR. If I recall correctly, the witness testified in general terms that he did not care anything about trade names, so far as he was concerned, as long as he was able to get the lumber which had certain qualities and characteristics that he needed.

Mr. MATTHEW. So far as his purchases of lumber are, concerned, and my question was confined to that. There has not been a word of testimony about competitors selling frames, as California white-pine frames, not a word.

Mr. BURR. Will you stipulate such is the meaning of the testimony, irrespective of the text of the record?

Mr. MATTHEW. Certainly; and I think the witness will testify that that was his understanding of my question.

574 The WITNESS. Yes, sir; I tried, as far as I could, in answering your question, to make it plain that it was only as a purchaser that I would answer that way, but if you were going to discuss with me the matter of selling my product my answer might be quite different.

Mr. BURR. Very good; I must have been a little inattentive and I withdraw the question.

Q. When you testified in regard to the quality of lumber from the Pinus ponderosa tree, under the trade name pondosa, will you state whether you were referring to the qualities of that tree equally, whether sold under the name "California white pine" or whether under the name "pondosa"?

A. There is just a shade of preference, we don't care what the name is, but there is just a shade of preference for the pondosa pine, which happens to grow further south and is sold generally under the name of "California white pine"; it is a little larger lumber, a little softer, a little wider plank, but practically we have no preference between the two.

Q. Where have you bought ponderosa lumber under the name "California white pine" that you most prefer?

A. I would rather not answer that question.

Q. All right, I will withdraw the question.

A. They may raise our price.

Q. I believe you stated that the ponderosa was best from the working standpoint in the respect in which you were using

575 the ponderosa; do you regard the ponderosa better than genuine white pine for the interior of the frame, or do you use it on account of cheapness, or what is the reason you make your frames from two different classes of wood at the same time?

A. My answer would be yes to both of your questions. We use it because it is cheaper, and also it more nearly meets the requirements of that part of the frame-consuming trade, or rather the frame-using trade, who still cling to the idea that their pulley styles should be yellow pine.

Q. In other words, it is not a preference merely for other types of yellow pine, but also a preference over genuine white pine for that part of the frame; is that correct?

A. I would not like to say that, if the price was equal with the other, that the preference for slightly harder wood would influence

us to use ponderosa pine for the unexposed parts, but the combination of the two influences, that of the price and that of the preference in some quarters for the slightly harder wood, is what determines our choice.

Recross-examination by Mr. MATTHEW:

Q. Would you regard pondosa pine as being only slightly harder than the northern white or Idaho white?

A. I think that pretty well describes my idea; parts of it are no harder. Speaking of pondosa, you will find just as soft pieces as in parts of genuine white pine that you ever
576 picked up.

Mr. MATTHEW. That is all.

Redirect examination by Mr. BURR:

Q. But there would be a contrast in durability between the sap of pondosa and white pine?

A. Between the sap of pondosa and the heart of the white pine?

Q. Does the heart of the white pine represent the part that you are using in the main?

A. Yes.

By Examiner SHEPPARD:

Q. Mr. Andersen, did I understand you to say that there is no sap in the genuine white pine?

A. No; I did not say that.

Q. There is sap in it?

A. Every tree has sap.

Examiner SHEPPARD. That is my understanding and I did not want to get you wrong.

(Witness excused.)

577 DWIGHT J. BAUM was thereupon called as a witness and, having been first duly sworn, testified as follows:

Direct examination by Mr. BURR:

Q. Your business is what, Mr. Baum?

A. Architect.

Q. How long have you been an architect?

A. In my own practice fifteen years.

Q. You are not associated with another firm; you are in for yourself at the present time?

A. Yes, sir.

Q. Unincorporated?

A. Yes.

Q. Where is your location here in the city?

A. Riverdale-on-Hudson, New York City.

Q. You have been in the vicinity of New York in your entire experience as an architect?

A. All my life.

Q. Mr. Baum, has the term "white pine" lost its significance in the architects' profession in this locality?

A. No.

Q. Why did you hesitate over that answer, sir; can you explain?

A. Because generally the specification writer in the office writes "white pine." They haven't in mind really anything except the Eastern States pine, the Lake States pine, because it has
578 always been the custom of the trade. Specification writing is a sort of hang-over affair. A man is liable to take one specification, and he copies it over and over; he is liable to use old terms. A specification writer, as a lawyer, whom you would consider as a technical adviser, does not really exist. If you ask me personally what white pine means, I can say that I have a house in upper New York 120 feet long, every stick of which is of white pine.

Q. You built that for yourself, Mr. Baum?

A. I built that for myself, and I got the lumber from Tonawanda, New York. I moved over 100,000 feet of lumber to get the siding of that white-pine lumber. I might say that most of my work is along domestic work, along colonial lines, so I use a great deal of lumber.

Q. Will you be kind enough to state, in order to give us a picture, some of the jobs on which you have been the architect?

A. They extend from Maine to California and Florida to Canada.

Q. Will you mention a few notable ones, if there are such?

A. The residence of Cleveland H. Dodge at Riverdale.

Q. That is one of the Dodge Brothers, is it?

A. No; that is Phelps Dodge—I just can't think of any at the time, but I can give you a list of a hundred—Charles Evans Hughes, Jr., my next-door neighbor at Riverdale, William P. Hoffman has a big southern house and the trim and columns are genuine
579 white pine. I am reproducing now in Milwaukee, Wisconsin, the oldest northern white pine house in the United States; that is the old Fairbanks house in Dedham.

Q. Where do you get the northern pine for that job?

A. Usually through distributors at North Tonawanda; most of the pine seems to come from the eastern mills, through that jobbing section near Buffalo.

Q. Why do you recommend northern pine?

A. Because of its great record of durability, of having stood all these years—outside of St. Augustine in southern Florida, they have stood longer than any buildings in the country. Some of the masonry work in the houses in New England have disintegrated and have been torn down, but the Fairbanks house still stands. Of course, that was due, to some extent, to the lime mortar and other conditions, but still the real New England houses are still there.

Q. Were you able in the erection of these residences to eliminate sapwood for exterior exposure?

A. Yes; not only that but knots. We have one knot in the entire house, and we kept that as a curiosity.

Q. Are you able to get northern white pine of good quality now, Mr. Baum?

A. Yes.

Q. Where does it come from?

A. I cannot say that. My work is so varied—I have a specification writer, and I have an office manager—that I only personally
580 take care of the clients and design.

Q. Do you watch the contrast between the sap- and the heartwood of the genuine white pine?

A. When I go to a job, and I see a sash that is not painted, I might pull out my knife and start to whittle a piece off to see whether it appears to be as genuine white pine. Technically, I do not know, only from experience of having seen it.

Q. Do you call it genuine white pine, irrespective of whether it is heart- or sapwood?

A. I suppose I do, to be honest.

Q. That is a rather doubtful answer.

A. Yes; it is. I could not honestly say otherwise.

Q. Going back now to the question which I think you answered only in part, does the profession attach a significance to genuine white pine—I think that answer was interrupted.

A. I say they attach a significance to genuine white pine, yes.

Q. Does that significance include any other variety than the northern white pine or Pinus strobus?

A. I personally have always thought that from the old New England or around the Great Lakes region was the genuine white pine, and in my own specifications, I have warned my specification writer to put in northern genuine white pine, but I have not stated what States it came from or anything else.

Q. Have you had any experience in the substitution of any
581 other wood for northern white pine, when white pine was specified?

A. Only in this way. I have had shutters and moldings in houses that have come loose and apparently had a sign of rot, and I have rejected this and after they had been taken out and replaced I could not imagine that happening to genuine white pine. I do not know from a technical standpoint what the reason is.

Q. You don't know what the wood was that rotted in that fashion?

A. No; I do not. In fact, I have a couple of shutters in my own house, an extension that was added, maybe five years, and some of the moldings that have apparently deteriorated.

Q. For all you know it might be genuine white pine?

A. I do not know, but I have never seen any other get that way.

Q. Any other of what wood get that way?

A. What I considered genuine white pine.

Q. Have you had any experience of being offered California white pine as genuine white pine, or any attempt to sell you California white pine for such a purpose?

A. No, sir. No one has ever endeavored to substitute it to me; they might to my specification writer, but it has never been changed in our specification and we never used any such trade name in our specifications.

Mr. BURR. I think that is all.

582 Cross-examination by Mr. MATTHEW:

Q. You have stated, Mr. Baum, that the term white pine means to you the Lake States pine?

A. Yes.

Q. Do you exclude Idaho white pine, so called, and that would also exclude sugar pine—California sugar pine?

A. I said it meant that to me, but I would not say definitely it would exclude them.

Q. I mean to you.

A. Generally speaking, I had that in mind; yes.

Q. So far as you are concerned it would exclude California sugar pine and Idaho white pine?

A. Yes.

Mr. MATTHEW. That is all.

(Witness excused.)

LEWIS E. WELSH was thereupon called as a witness and, having been first duly sworn, testified as follows:

Direct examination by Mr. BURR:

Q. Mr. Welsh, you are an architect, are you?

A. Yes.

Q. How long have you been such?

A. About twelve years.

583 Q. With whom are you affiliated or connected?

A. No one.

Q. You are in for yourself?

A. Yes.

Q. At what location?

A. 25 West 45th Street.

Q. Mr. Welsh, has the term "white pine" any significance to you as an architect; and if so, what?

A. Well, it means a perfectly good wood that I like to use.

Q. Do you regard California white pine as a fulfillment of your specifications for white pine?

A. No, sir.

Q. Why not, sir?

A. Well, I have the impression that it is not as durable.

Q. Do you specify it at all for inside finish?

A. I have never specified it by name.

Q. Have you ever used it, so far as you know, for inside work?

A. I do not think so.

Q. What do you use in the way of pine, if any, for interior work?
A. White pine.
Q. What do you get for your specification of white pine, the northern or California or sugar?
A. I cannot tell that, because I cannot tell them apart.
584 Q. Do you regard the furnishing of northern white pine as a compliance with your specifications calling for white pine?
A. Yes, sir.
Q. Do you regard the furnishing of Idaho white pine as compliance?
A. I should say yes.
Q. Do you regard the furnishing of sugar pine as compliance with the specifications calling for white pine?
A. I am not familiar with sugar pine at all.
Q. Do you regard the furnishing of California white pine as compliance with your specifications for white pine?
A. No, sir.

By Examiner SHEPPARD:

Q. How about pondosa?
A. I do not know the difference.
Mr. BURR. I think that is all, sir.

Cross-examination by Mr. MATTHEW:

Q. Mr. Welsh, why did you hesitate in response to counsel's question as to whether you regard Idaho white pine as compliance with white pine specifications?
A. Because I am not familiar enough with the various things coming here.
Q. So you are not really certain whether you should regard Idaho white pine as satisfactory compliance with white pine
585 specifications?
A. No; I am not.

Redirect-examination by Mr. BURR:

Q. Are you certain in your own mind as to whether or not California white pine is genuine white pine?
A. No.
Examiner SHEPPARD. Of course, if you don't know anything about it, just say so.
Mr. BURR. If he is certain in his own mind, he knows that.
The WITNESS. No; I am not.
(Witness excused.)
(Whereupon, at 1:00 p.m., a recess was taken until 2:00 p.m.

586 AFTER RECESS

2:00 P.M.

R. E. DANAHER was thereupon called as a witness and, having been first duly sworn, testified as follows:

Direct examination by Mr. BURR:

Q. Mr. Danaher, your business is what?

A. Mostly the lumber business.

Q. What lumber company are you connected with?

A. I am connected with two; I am president of the Booth-Kelly Lumber Company, whose head offices are in Eugene, Oregon; and vice president and in control of operations of the Michigan-California Lumber Company, head offices in Grand Rapids, Michigan, with an office at Camino, California.

Q. Where do you make your headquarters?

A. I live in Detroit, Michigan, but I am away a great deal of the time; I spend a good deal of my time on the coast between those two operations.

Q. How long have you been president of the Booth-Kelly and in charge of operations of the Michigan-California Company?

A. I have been president of the Booth-Kelly since February 1921.

Examiner SHEPPARD. Are both of these companies respondents in the case?

The WITNESS. The Michigan-California is a respondent; the other is not.

587 By Mr. BURR:

Q. Now will you please finish your answer?

A. I have been vice president of the Michigan-California Lumber Company since it was organized in 1918; up until 1923 I was vice president and general manager; in 1923 I went back to Detroit to live and continued to be vice president and have been only active in the operations of the Michigan-California this past year, 1929, because the manager out there died.

Q. I wish you would tell the examiner as best you may, without specific questioning, what your experience has been with forests and with forest products; what species you have been familiar with at the various stages from the beginning of your experience—just give us the outline, I do not mean in great detail.

A. Well, as a boy, before I got into business, I was more or less familiar with the white-pine operations in Michigan. I am of the third generation in the lumber business and I worked as a tally boy when very young, thirteen years old, in Michigan. Our operations were both in the Southern Peninsula and also in the Northern Peninsula. After I left school, in 1901, I spent practically two years in the South with timber cruisers, or estimaters, learning to estimate timber.

Q. What part of the South was that?

A. Mississippi and Louisiana mostly, although I had some experience in Alabama.

588 In 1904, I went up to northern Michigan and took charge of the Danaher Hardwood Lumber Company, which manufactured hardwood and hemlock lumber.

From 1906 to 1909 I was in British Columbia estimating and cruising timber.

In 1910 I started an office in Portland, Oregon, and did timber cruising for banks and trust companies making bond issues on timber. That was continued there in Portland, although I was not there in charge all the time, until 1916, at which time R. E. Danaher Company took over this mill that now belongs to the Michigan-California Lumber Company.

There was a default in the bonds out on the company that owned it, and we made arrangements with the bondholders, and leased the mill paid them for the timber, and in that way started to liquidate the bonds.

We ran that for two years and then formed the Michigan-California Lumber Company—In 1918 joined with Mr. John W. Blodgett, of Grand Rapids, who had purchased a large tract of pine in that locality.

Q. Mr. Danaher, what type of lumber does the Booth-Kelly Company produce?

A. Entirely Douglas fir.

Q. What type of lumber does the Michigan-California Lumber Company produce?

A. California sugar pine, so-called California white pine, a small amount of Douglas fir, white fir, and some incense cedar.

589 Q. When you said, "so-called California white pine", are you selling it under that trade name at the present time?

A. No; not for the past year.

Q. What do you call it?

A. Pondosa.

Q. When you sell it, you name it pondosa, do you?

A. Yes.

Q. In what part of the country is the largest market which you have secured?

A. Will you explain that question, do you mean for pondosa?

Q. Let us divide the question: Where is your principal market, so far as your efforts have gone for the disposal of the pondosa pine that you produce?

A. Mostly in the central west.

Q. Which side of the Mississippi, or both sides?

A. I would say both sides of the Mississippi, but not very much east of a line through Detroit and Cleveland; south from Detroit through Cleveland.

Q. Do you maintain your own independent sales forces?

A. No, sir; we sell through wholesalers.

Q. Where is your principal market for the sale of your sugar pine?

A. East of a line, south from Buffalo and from Pittsburgh.

Q. Your sugar pine gets further east, does it?

A. Yes, sir.

590 Q. Do you make your sales also through wholesalers for the sugar pine?

A. Yes, sir.

Q. Referring now to the Michigan-California Lumber Company, your product also has been sold for how long a period under the trade name pondosa?

A. Just slightly over a year.

Q. Will you state what your trade name prior to that time was?

A. Our trade name for pondosa timber was California white pine.

Q. Did you formerly regard that trade name as accurate and a proper designation of your lumber?

Mr. MATTHEW. Is not that calling for a conclusion?

Mr. BURR. Probably it is.

Examiner SHEPPARD. That is something that we have got to decide in this case.

Q. What led you to change from the name California white pine to the term pondosa pine?

A. The answer to that question would be rather long and involved, because it would take into consideration the things that went through my mind over a long period of years, that is, over a period of several years.

Q. Well, can you not summarize that for me?

Mr. MATTHEW. I am assuming that the witness is going to give statements of facts and not a statement of reasoning.

591 The WITNESS. I am going to state the facts as they appeared to be facts in my mind that led me to make that change.

Mr. BURR. That is quite all right, Mr. Danaher.

Mr. MATTHEW. I just want to suggest not to indulge or argument or that sort of thing.

The WITNESS. I was formerly convinced at one time that California white pine was the proper name for that lumber, and continued to be of that mind until I found—it was called to my attention that we were losing the sale of some sugar pine because California white pine had been substituted for it.

Then, in 1923 the then Secretary of Commerce, Hoover, called a meeting of the lumbermen in Washington to develop an American lumber standard. I attended those meetings regularly for three years, and the more I got into it the more it seemed to me that American lumber standards should mean absolute integrity in grades manufactured and species.

In my own mind I did not think that California white pine, so-called, was as good a wood as Pinus strobus, to which my mind

always goes back when you say white pine. I thought that under these American Lumber Standards, and at the suggestion and instigation of Secretary of Commerce Hoover, that grade-marked
American standard lumber—I felt that such lumber should
592 not in any way—the trade names of any of that grade mark or trade-marked lumber should not be misleading, and I did feel that the name California white pine was misleading to some, at least, of the ultimate consumers and to some architects and contractors. Therefore I took the matter up with the president of our company and we determined to make a change of trade name.

Q. That is the change you referred to before?

A. That was the change to pondosa.

By Examiner SHEPPARD:

Q. I want to know about when that change was made?

A. That change, as near as I can remember it, was made in the spring of 1928. At that time I was not so actively engaged in the management, but I had a cousin who died last December, and I had to go back there.

By Mr. BURR:

Q. Does the term "white pine" retain any significance in the lumber industry at the present time?

A. I think it does.

Q. What is that significance, briefly speaking?

A. To my mind that means that in the New England States and in some of the Lake States the term "white pine" means Pinus strobus alone to a great many of the architects and to most of the consumers.

Q. Does the term "white pine" have any significance outside of that territory that you have mentioned?

593 A. I do not believe that I understand the question.

Mr. BURR. Read the question.

(The question was thereupon repeated by the reporter as above recorded.)

A. I think it does, in a broader way.

Q. Do you regard Pinus monticola or northern white pine as a genuine white pine?

A. Yes, sir.

Q. Do you regard Pinus lambertiana or sugar white pine as a genuine white pine?

A. Botanically, yes.

Q. Do you regard it as a genuine white pine from the standpoint of practical utility, and, if not, to what extent do you regard it to fall short of genuine white pine?

A. I think Pinus lambertiana has all of the attributes of the genuine white pine, Pinus strobus, but it has a defect to a slighter degree to Pinus strobus in the fact that it does show traces of sugar or pitch coming through it at certain times.

Q. Turning to the Pinus ponderosa, will you state in what localities you have had an opportunity to study it on the ground as a growing timber or as felled logs?

A. I have been in the forest where ponderosa grows in British Columbia, Oregon, California, and New Mexico.

Q. What parts of California?

594 A. In the northern part of California, in the Siskiyou Mountain District in the Feather River part over near Loyalton, California, in central California, in our timber, which lies between the forks of the American River near Lake Tahoe, also south of there on the Stanislau River, the forest that now belongs to the Pickering Lumber Company; again south of there to the forests that were until just recently the property of the Yosemite Lumber Company, which now, I understand, belong to the Sugar Pine Lumber Company.

Q. Will you state what your experience is as regards the uniformity of Pinus ponderosa as between the various sections of its range? That is a rather broad question, but I wish you would say briefly what you can say to clarify that situation.

A. The size, quality, or texture of the timber differs very greatly in different localities. In some localities it is apparently young timber and quite small; in others, it is medium-sized timber with a fairly good texture; in others, it is very large timber with a comparatively poor texture. If you will let me explain what I mean——

Q. Yes; go ahead.

A. The timber of southeastern Oregon is a medium-sized timber to a great extent, with a very good texture. It grows at comparatively high altitudes and on the tableland. The ponderosa growing along the Feather River in the Feather River country in Cali-

595 fornia, for some reason that I do not know, was of better texture, that is the majority, and that also holds good of the timber east of the mountains in Lassen County, California.

Q. Is that particularly large growth also?

A. That is quite large and of very good texture.

Q. All right, proceed.

A. The timber in central California, well, I might say, from the operation of the Michigan-California Lumber Company, beginning a few miles north of there, and south, as far as I know, which will include the old Yosemite, is very large. A considerable proportion of it is a fairly good, soft texture, and also there is a portion that is hard and flinty.

Our own timber, to that extent, is so hard and flinty that we have never been able to market it in the eastern part of the country, where they are used to demand a soft pine.

If you want me to continue to New Mexico, that lumber is small, defective, and fairly soft in texture.

Q. How is it in Arizona, have you been familiar with that?

A. I have never been in the timber country in Arizona.

Q. What part of New Mexico are you referring to?

A. To the Zuni Mountains in New Mexico. I was chairman of the board of the American Lumber Company there, and I spent considerable time in the Zuni Mountains in logging operations.

Q. I wish you would describe in the same way the uniformity or lack of uniformity of the sugar pine over the district with which you are familiar with that tree?

596 A. I am familiar with the sugar pine in the Siskiyou Mountains in northern California down to the Yosemite country. That is the Yosemite Lumber Company's timber.

Q. That is the main habitat of the tree, is it not?

A. Yes; that is the main habitat of the tree. The heaviest growth tree is again from the operations of the Michigan-California Lumber Company, or a few miles north of there, down through to the operations of the Sugar Pine Lumber Company down near Fresno.

There is sugar pine found up in southern Oregon, west of Klamath Falls and mostly in the country west of the Southern Pacific Railroad, although there is some sugar pine found between there and the Klamath Falls—the city of Klamath Falls and the lake.

Q. Is there not some sugar pine up east of Eugene and Albany, and in that district?

A. An occasional tree you may run on there, but it is not in commercial quantities. There is some difference in the texture of sugar pine, but the difference in texture and in size is not nearly so notable as is the difference in ponderosa. In my opinion, the sugar pine of the north extremities to where it grows in commercial quantities is slightly harder than it is in its main habitat. The size of the trees may be on an average slightly smaller, but there is no great variation in size or texture.

597 Q. What would you say as to the uniformity or lack of uniformity of sugar pine as regards the wood to be found in the individual tree, taking as near as you can conceive of it the average tree; is there a wide variation between various parts of the lumber in the individual tree, or what is the situation?

A. Well, there is a variation, of course, between the sapwood and heartwood, which is true in all trees.

Q. On appearance, is there much difference in appearance between heart and sap?

A. Yes; there is a difference in appearance; it is easy to distinguish between the heart and sapwood. The sapwood is lighter in color and there is generally a fairly well-defined line between the two.

Q. How is the difference in texture between the sapwood and heartwood; is there much variation?

A. The sapwood is lighter and softer than the heartwood, but not to the extent that it might be in other woods.

Q. Will you state what the uniformity or lack of uniformity would be in the Pinus ponderosa, taking as nearly as you may aver-

age conditions as between the heartwood and the sapwood in the Pinus ponderosa, in texture, appearance, and so forth?

A. I could not take to the average of conditions in ponderosa until I take the average of districts. The districts in which this softer grade of ponderosa timber grows there is not such a big variation——

598 Q. As there is in the others, you mean?

A. As it is, we will say, in the central California district, where there is on the average a very wide differential between the texture of the sapwood and the heartwood.

Q. In what respect?

A. The heartwood being heavier and harder.

Q. Referring to the ponderosa which grows in the district that you have described, as not the soft-texture ponderosa, will you say whether the heartwood and sapwood differ as regards the pitch that is to be found there more than it does in the fine-textured ponderosa belt; is that clear?

A. Yes. I could not say.

Q. You could not say as to that?

A. No, sir.

Q. Referring to the finer-textured ponderosa lumber that you described, would you say whether the difference in texture between the heartwood and the sapwood is about the same as the average difference in texture between the heartwood and sapwood of sugar pines, or how would you say it varies?

A. About the same. I would describe it by saying, in my opinion, there is a little bigger variation, I think, in ponderosa than I think there is in sugar pine.

Q. Have you noticed in your studies of these lumber differences between the summer and the spring growth in the annual rings?

A. No, sir; I cannot say that I have. I have never been
599 that technical.

Q. Is there a difference in the utility of sugar pine and of Pinus ponderosa for exterior use, in your opinion?

A. Yes, sir.

Q. Will you describe what that distinction is?

A. It has been my experience in watching this lumber in the piles than ponderosa is more liable to warp, twist, and cup than sugar pine.

Q. Is that when exposed to the weather, or is that for inside finish also?

A. That would be exposed to the weather, in my experience—I am not a builder, and I do not know much about it, but I have seen it in the yards—in piles where we are drying it out—drying the stock.

Q. Is that same thing true of the lumber of the two species referred to in the process of kiln drying?

A. I would not be qualified to answer on that, because it is not usual to kiln dry sugar pine to any great extent, or it has not been until the last year or so.

Q. Have you seen any cases of Pinus ponderosa warp, twist, or get out of shape in process of kiln drying or as a result of it?

A. Very decidedly; yes.

Q. Your answers as to this quality in ponderosa, of greater likelihood of warping and twisting, is that true of the better grades of Pinus ponderosa to the same extent as harder grades, or
600 is it less true?

A. I could not say definitely.

Q. You have seen evidences of it in both qualities of lumber, have you?

A. Yes, sir.

Q. Have you had experience in the durability of the two woods where exposed to weather?

A. No, sir; I have not; that would be hearsay.

Q. Do you know what the rules of your Michigan-California Lumber Company are as regards the length of time that a sugar pine tree may properly be left in the log stage before cutting?

Mr. MATTHEW. Can you not ask that question as to the witness's own views? You ask for the views of the company. I would like to have his own experience.

Mr. BURR. All right; I will qualify him in better shape.

By Mr. BURR:

Q. Have you had an opportunity to observe the sugar pine trees and the ponderosa trees after they have been felled and before they have been transferred into lumber?

A. Yes, sir.

Q. Have you noted the length of time that can elapse in the sugar pine log before it is brought in and cut up without evidences of decay?

A. I would have to answer that by saying this: That after a year of being down, the sapwood of the ponderosa is practically
601 worthless; it is all rotten, while the heartwood has become infected with rot, so that it is practically worthless to bring it into the sawmill and cut it into lumber.

On the other hand, sugar pine, we have cut the sugar pine logs, and I have seen them cut of timber that has been down so long that small trees were growing out of the dirt that had accumulated on the butt of the log. The sapwood of that sugar pine was entirely worthless, but there was a lot of good lumber in the heartwood.

Q. For how long a period would that type of log have lain on the ground before those circumstances of growth from the butt would take place?

A. At least ten or twelve years. I want you to understand, of course, that that is an unusual case. But sugar pine on Government contracts—we are now working on a Government contract, forest surveys—the Government contract demands that you bring in all down sugar pine, but it is not necessary to bring in all down ponderosa pine or western yellow pine, as is specified in the contract.

Q. Within what period?

A. They have been down a year and a half or two years, where the sap has gone.

Q. What is the significance of that difference in the rule or contract?

602 A. I would say the significance of that rule is that the forest surveys recognize the fact that the heartwood of sugar pine will last and be good, sound wood for a considerable length of time after the sapwood has rotted.

Q. In the Klamath Falls district in southern Oregon near the State line, do you know whether the ponderosa trees are occasionally called pondosa and sometimes California white pine, right from the same district, irrespective?

A. Well, the Shevlin-Hickson Company with mills at Bend, Oregon, are logging south from Bend, practically to the upper reaches of Klamath Lake and their ponderosa timber from that locality is marketed under the name pondosa. Numerous Klamath Falls mills are logging practically up to the line to which the Bend operations reach, and ponderosa from that is manufactured at Klamath Falls or at Klamath Lake and is marketed as California white pine.

Q. Do you regard the sapwood of sugar pine as more durable than the sapwood of Pinus ponderosa?

A. I would not say so.

Q. You would not say there was much difference?

A. There is not much difference in any sapwood.

Q. Do you regard that Pinus ponderosa when used for interior finish, as a satisfactory wood?

A. Interior finish, did you say?

Q. Yes; interior finish.

603 A. Yes, sir; I would be perfectly willing to use Pinus ponderosa for interior finish on a job that was being done for me.

Q. How do you get along with this characteristic or tendency to warp; do you handle it faster, or what is the system?

A. When it is thoroughly dry, not exposed to the weather, when it does not get wet and dry and does not absorb the moisture of the air, it will stay put on interior work.

Q. What advantages has it for interior work; will you state?

A. What advantages over sugar pine?

Q. I was speaking more or less in that district, but I imagine it would have to be comparative to be of much value; what advantages has it over other soft pines for interior work?

A. I do not think it has any advantages over other soft pines for interior work, but it is an excellent wood for interior work wherever it is not exposed to the weather.

Q. As contrasted to sugar pine, is it not more reasonable in price to the builder?

A. Very much so.

Q. The same is true of strobus or monticola?

A. As compared with the price of strobus or monticola, do you mean?

Q. Yes.

A. Yes, sir; it is very much cheaper.

Q. You think it is a satisfactory wood at a less price, do you?

A. For certain purposes.

Q. For interior finish we are talking about now, are we not?

604 A. Yes, sir.

Q. Do you know whether these contracts of the Government for the handling of Pinus ponderosa logs within a set period which you testified to, whether that relates to both the softer and the harder grades of Pinus ponderosa?

A. Before answering that, I would like to just correct my testimony on that contract stuff.

Q. Please do.

A. As I think over it, I am not quite sure of the length of time that the Government specifies, but I do know that we are not required to bring in dead and down ponderosa timber after it has reached a certain stage, where we are required to bring in the same kind of timber in sugar pine.

Q. And you are not required to bring in the ponderosa timber for what reason?

A. Because it is practically worthless after a certain length of time. I want to correct my testimony as regards the length of time, because I am not certain.

Q. Do you know, of your own knowledge, whether they make the same requirement regarding dead and down ponderosa in the softer texture that they do in the territory where you are working?

A. I have no knowledge of that.

Q. This contract with the Government that you referred to is a contract for the logging off of some of the lands within the forest preserve; is that it?

605 A. That is for Government-owned land.

Q. That logging is to be conducted under the contract regulations which are imposed in connection with the matter when offered for bidding; is that right?

A. Yes, sir.

Q. As I understand your testimony, it is not necessarily the largest pondosa logs that are the softest?

A. No, sir.

Q. It is not a matter of maturity, but of locality partly; is that true?

A. I think both. I think it is climatic and soil conditions covered with the maturity of the lumber. Mature lumber, in certain climatic soil conditions, can have this hard texture, whereas the matured timber in a different place will have very soft texture under different conditions.

Again, that is a surmise on my part, because I am not a wood technician and do not know the aspects—the scientific reasons for that.

Q. With reference to the situation as regards percentage of heart and sap wood in the ponderosa timber, have you had occasion to observe that?

A. You mean the percentage of heart and sap wood?

Q. I mean the proportion—"percentage" calls for too much accuracy?

A. I have had occasion to observe it; yes.

606 Q. I would like to ask you this: Referring now to the average soft-textured ponderosa tree and comparing it with the average sugar-pine tree, which has the greater percentage of proportion of heartwood?

A. Of heartwood?

Q. Yes, sir.

A. The sugar pine.

Q. Is that a materially and noticeably larger percentage?

A. Yes; I should say quite noticeable.

Q. Referring to the harder texture of ponderosa tree, how does that compare with the sugar pine?

A. The sugar pine has a larger percentage of heartwood.

Q. That is a materially larger percentage, noticeably larger?

A. Yes.

Q. Do you have a substantial outlet for sugar pine for pattern stock?

A. Yes, sir.

Q. I wish you would explain to me what kind of a thing a pattern is for purposes of the trade for which sugar pine is susceptible of use. I do not think that that is very clear in the record, although references to pattern stock have been made frequently; can you give us a little further light on that?

A. Pattern stock is a lumber used for making patterns from which moldings are cast; that is, patterns are built up in any shape desired and planted in the sand in the regular way of casting

607 either steel or brass, whatever you are going to cast to your pattern.

For the main requirements of the stock it has to be workable, soft-texture, fairly straight grain, with the ability to hold its shape under practically all conditions, and also to be decay resisting to a considerable extent, because these patterns are sometimes put away for years and then dug out and casting of that kind made, particularly where it is special work.

Q. Do you have a material outlet for sugar pine for pattern purposes?

A. Yes, sir.

Q. Does your own company sell a good deal along that line?

A. We do not sell it as pattern stock except occasionally we get an order for a carload, which says, "For pattern purposes", and in that case we take care to select, and throw out pieces that we do not believe would be fitted for pattern stock.

Q. The shipments that you make of both products to wholesalers go right to the purchaser, do they not?

A. Generally they go direct to the wholesalers' customer and we do not know who he is.

Q. The wholesaler does not warehouse this material?

A. Not to my knowledge.

Q. It is a brokerage business in the main, is it?

A. Yes, sir.

Q. Sugar pine is, in your judgment, particularly adaptable
608 to pattern work?

A. Yes, sir. That is hearsay, because I am speaking only from what I have been told by people buying it.

Q. You know for what purposes you sell this stock and whether it gives satisfaction, do you not?

A. I know that we sell the stock and I know we have had orders calling for pattern stock, but I do not know to whom that pattern stock went, because as we market our stock to the wholesalers, we are not in contact with the ultimate consumer.

Q. If you ship direct from the mill to the ultimate consumer, on order of the wholesaler, don't you get to know who it is then?

A. You don't do it that way. The wholesaler has it consigned to him, and he diverts it, so you don't know his customer.

Q. Do you ever have orders for Pinus ponderosa or for California white pine when your order calls for pattern-stock purposes?

A. No, sir.

Q. Do you regard Pinus ponderosa as suitable for pattern purposes?

A. No, sir.

Q. Have you ever had occasion to compare or experiment upon the matter of the way in which ponderosa and lambertiana take paint?

A. No, sir.

Q. You do not know which retains the paint better then?

A. No, sir.

Q. Is there competition between California white pine and sugar pine in the parts of the country where you sell?

609 A. Yes, sir; I should say that there was.

Q. Your trade in Pinus ponderosa competes with sugar pine of sap or the heart?

A. Well, without an explanation, I do not believe I could answer that question satisfactorily. A large percentage of the upper grades of ponderosa come from the sap. That is your clears and "C" Select and better in all thicknesses. The lesser percentage, a great deal of the upper grades of sugar pine come from the sap.

Q. Is it or is it not the upper grades of the California white pine and ponderosa that compete with sugar pine?

A. I don't understand the question.

Mr. BURR. Read the question.

(The question was thereupon repeated by the reporter as above recorded.)

A. Yes; in this eastern market.

Q. What do you mean when you refer to "this eastern market", right here in New York or New England, or how wide a territory?

A. My idea of eastern territory is from Buffalo, Pittsburgh, east.

Q. Is it or is it not the light-colored, fine-textured, part of the Pinus ponderosa that competes most strongly with the genuine white pines in markets generally?

A. I am afraid I would again get into hearsay on that, because I am not much of a marketer of lumber, having always sold our product to wholesalers.

610 Q. And you don't get as far east as this, very much?

A. We sell to wholesalers in this eastern territory; yes, sir.

Q. I would like to ask you this: You said something about the integrity of grades and species. Does the preservation of the grade and species constitute an important consideration as regards the maintenance of soft-pine lumber as contrasted with other materials in lumber at all? Is that question clear?

A. I think so. In answering that I would have to say I think the integrity of grades, species, and manufacture of lumber is important to all lumber, because the misuse of lumber or using of the wrong lumber, or lumber in the wrong place or a wrong class of lumber for a certain thing, where the lumber does not stand up, produces a dissatisfied customer and tends to throw the market off of lumber for building material to the lumber's substitute, and I think it is important for all lumber, not only soft pine but all lumber, that each lumber be marketed under a name that is not misleading, and that the grades manufactured be absolutely true.

Q. Do you think that the use of a type of lumber for exterior residence purposes, which fails to show durability, has a tendency to affect one way or the other the market for lumber for building purposes?

A. Yes, sir.

Q. What effect would that have?

A. Well, it would naturally have the effect of producing sus-

611 picion in the mind of the person who built, the builders, architects, and also in the minds of everybody who heard of it that lumber, as such, was not fit building material and that they should use some substitute, such as brick, cement——

Q. In order to get durability?

A. In order to get durability.

Mr. BURR. I think that is all.

Cross-examination by Mr. MATTHEW:

Q. You have just stated, Mr. Danaher, that the preservation of the integrity of the grades and species is very important to the lumber industry?

A. Yes, sir.

Q. In the early part of your testimony, you referred to the lumber which is produced by the Booth-Kelly Lumber Company in Eugene, Oregon, which I think you said is entirely Douglas fir?

A. Practically all Douglas fir.

Q. Is that marketed as Douglas fir?

A. Yes, sir.

Q. Is it marketed to any extent as Oregon pine?

Mr. BURR. Just a moment, if the examiner please; I think that counsel for the defense is obviously intending to lay a foundation for the contention that inasmuch as certain other lumber has been perhaps misnamed, that therefore the misnaming of this lum-
612 ber is innocent. That throws upon counsel for the Commission a burden to try and prove that the misnaming of this lumber, that tree and the other lumber, does no harm to the public.

If the argument for which he is now laying the basis is to be met in proper shape, in other words, without any lumberman present, who knows at firsthand these other types of lumber intimately, we are now putting the Commission in a position of having to determine whether some other misnomer is deceptive; whether some other trade practice is acceptable as against this. We do not want in this case to force the Government to go on here and prove that the misnaming of the Douglas fir, if it be misnamed, is not detrimental.

It seems to me, whether it is detrimental in that particular branch of the lumber industry, is another case. If there is a misnomer there and if the misnomer has the effect on the public which is detrimental, that makes another case, and that does not palliate this case one way or the other.

On the other hand, if that misnomer is not detrimental, it makes respondent's case neither weaker nor stronger. Each one of those cases should stand on their own merits. The misnomer here, is enough. Other things are immaterial, and I will object to the entire line of questions, and I think I am right.

Mr. MATTHEW. Counsel for the Commission misconceives and unintentionally somewhat mistakes my purpose. I am testing the validity of the testimony of this very witness respecting the
613 necessity of maintaining the integrity of goods and species, and I am testing it with respect to his own testimony as to lumber produced by his own companies.

I submit I am not going far afield. I am not going to attempt to show, if the examiner please, that lumber which is marketed as poplar lumber does not come from a poplar tree at all; I am not going very far afield; I am not going to retry the mahogany case; I am dealing with the testimony of this very witness.

Mr. BURR. May I have the question read?

(The question was thereupon repeated by the reporter as above recorded.)

Examiner SHEPPARD. You may answer the question.

A. The legal name in California for Douglas fir is Oregon pine. We do not turn down any orders from California, because they state that it should be Oregon pine instead of Douglas fir, because that has been the local name for a long time; they know what they are getting in that restricted territory.

By Mr. MATTHEW:

Q. You feel entirely free to fill an order for Oregon pine which you receive in California, with Douglas fir?

A. I would. I don't know if we ever get them that way, but I know that is the local name in California.

Q. Throughout the west of the United States, I assume, you market that lumber as Douglas fir?

614 A. Douglas fir; yes.

Q. You know the tree from which that lumber is produced is not a fir tree, do you not?

A. I do not know what the——

Mr. BURR. Just one moment, Mr. Witness; it seems to me that is subject to my objection. He is trying to lay a foundation here that there are other misnomers, and I don't think that that has a thing to do with this misnomer, if I have proved that this is a misnomer, after I have proved it is misleading to the public, as I believe we will prove.

Mr. MATTHEW. I do not think that you have proved either.

Mr. BURR. It seems to me that is this attempt to try misnomer stuff in other cases does not belong in this record, and it is wholly immaterial to this issue.

Examiner SHEPPARD. Mr. Burr, I take it that Mr. Matthew knows that sins committed by others are no justification for sins committed by somebody else, and I do not think that he has any particular idea of going too far along this line. If it will be any consolation to you, there will be no finding of fact along that line. Go ahead. Read the question.

(The question was thereupon repeated by the reporter as above recorded.)

A. I have heard that is the case, but I don't know it.

Q. In other words, you are not interested in the botanical name of the tree from which you obtain Douglas fir lumber?

615 A. No, sir; not particularly.

Q. Your real objection, Mr. Danaher—and I think your testimony upon your examination in chief shows that—is to avoid misconception, confusion, misunderstanding in the trade or on the part of consumers?

A. Yes, sir.

Q. And your interest is not in the botanical species particularly?

A. It is not.

Q. Throughout what period, to your knowledge, has lumber from the Pinus ponderosa tree been marketed under the name of California white pine?

A. I have knowledge of it since about 1906.

By Examiner SHEPPARD:

Q. That is twenty-six years?

A. Yes, sir.

By Mr. MATTHEW:

Q. Has sugar pine ever been marketed, to your knowledge, under the name of California white pine?

A. No, sir.

Q. Might I ask whether, if these respondents discontinued the use of the name California white pine, you would expect that your company would make use of the name California white pine as a trade name for sugar pine?

A. We would not. I would fight that move, if it were at-
616 tempted, in every case, because it would again be misleading.

Q. You have no desire to adopt the name "California white pine" for sugar pine?

A. No, sir.

Q. And I assume, so far as you can determine at present in any event, you intend to continue to market your sugar pine as sugar pine?

A. As sugar pine.

Q. How long have you been familiar with the name "sugar pine" for this lumber?

A. Since 1906.

Q. In other words, you became familiar with both of these lumbers at about the same time?

A. Yes, sir.

Q. Are the sugar pine trees and the ponderosa pine trees largely intermingled in the forest?

A. In some parts; in some localities.

Q. That is quite generally true, is it not?

A. No, sir.

Q. That is, you find some pure stands of sugar pine and some pure stands of ponderosa pine, but as far as the sugar pine is concerned those pure stands are rather limited, are they not?

A. No, sir; I have never seen a pure stand of sugar pine, but I have seen a pure stand of ponderosa.

Q. All right; where you find sugar pine you find a good
617 deal of ponderosa pine intermingled with it?

A. Yes.

Q. And in the logging operations, the sugar pine and the ponderosa pine are cut indiscriminately?

A. They are cut at the same time.

Q. And they are moved to the mill at the same time?

A. Yes.

Q. And put through the sawmill at the same time?

A. Yes, sir.

Q. And thereafter graded and stacked and shipped?

A. Yes, sir.

Q. After the lumber leaves the saws and reaches the grader, is it customary to segregate the sugar pine from the ponderosa pine?

A. Yes, sir.

Q. Is it true as to all the lumber grades?

A. No, sir; it has not been true as to the common grades of sugar pine. We have put the common grades of sugar pine and the common grades of ponderosa pine in together, as a general trade practice.

Q. That is your practice and, so far as you know, it is the prevailing practice of the mills which cut both sugar and ponderosa pine?

A. Yes, sir.

Q. When these common grades of lumber are shipped to the market, under what name—under what trade name do we find
618 this intermingled sugar and ponderosa pine marketed?

A. Mostly just the common pine or mixed pines.

Q. Is it ever sold as California white pine of common grades?

A. I imagine it has been; yes, sir.

Q. It is very commonly sold in that fashion, is it not?

A. I am not entirely familiar with that, because up until the past year we have never manufactured grades in boards and shipped them, because our timber and the timber generally in that central California territory is so big and the knot defects so big that we could not make commercial common or yard common type, and it is just this last year that we have been selecting logs that will make that grade.

Q. So prior to last year, you were not marketing any common?

A. No, sir; except as box lumber and manufacturing it into box.

Q. Did your box lumber consist of California sugar pine and pondosa pine indiscriminately?

A. Yes.

Q. They were intermingled?

A. Yes, sir.

Q. When sold as box lumber, does it bear the name of sugar pine?

A. Pine box.

Q. Just pine box. It is not customary to distinguish in any fashion?

A. No, sir.

Q. Since you have adopted the name "pondosa pine" as a
619 trade name for your ponderosa pine lumber, how do you describe the common lumber which you produce and ship—I understand you have been producing it and shipping it within the last year?

A. We ship it as a mixed shipment; we also segregate it on racks; we have shipped this year some sugar pine common; also some pondosa common.

Q. When you have the mixture, you describe it as mixed pine common?

A. Yes.

Q. Is that the practice of the trade?

A. I think that is a fairly well-known practice of the trade in that locality in which sugar pine grows, yes. Where there is no sugar pine, where they have a stand of natural ponderosa forest, they generally describe it as white pine, I believe.

Q. I think perhaps the examiner is interested in knowing for what purposes the common grades of this lumber are used?

Examiner SHEPPARD. Yes; I would like to know that.

A. It is used for shelving, fence boards, barn boards, sheathing—anything that does not take an absolutely sound-knot, tight-knot stock. No. 1 Commons do take that; they use that for shelving and different purposes. I am not entirely familiar with all the purposes for which it is used.

By Mr. MATTHEW:

Q. Can you tell me whether the greater portion of your common lumber is shipped as mixed pine or as either pondosa or sugar
620 pine?

A. The greater part of the commons produced by our mill in California is handled as box lumber. We can only get common in board type in inch boards, from a very few selected logs, that have small knots; in the ordinary log, the defects are too big.

Q. Let us take the mills generally, which cut sugar and white pine and obtain a mixed common; do you happen to know whether, generally speaking, the common lumber is shipped as a mixed common?

A. I think it is.

Q. It is comparatively the unusual thing to segregate the sugar pine from the ponderosa pine and ship the sugar pine alone, as sugar pine common?

A. Yes; that is brought about by the fact that ordinarily you get a very small percentage of sugar pine commons—in the two or three common grades, because of the knot defect. It is big timber and has big knots in it.

Q. About how large a proportion of common do you get out of a sugar pine tree as compared with the proportion that goes in the upper grades?

A. Just what do you mean by upper grades; the B shop and better?

Q. Just quality shop and better; that excludes the box, as I understand it.

A. That would mean the common and box being all based as common lumber?

621 Q. If you please.

A. I would say some place between 35 and 40 percent of the product of your sugar pine logs is of the common type that would be box and common boards, and so forth.

Q. The remainder would go into the upper grades?
A. Into 3 shop and better grades?
Q. What proportion is normally shop?
A. Let us see; I will have to do some mental arithmetic.
Q. 1, 2, and 3 shop; is that it?
A. 1, 2, and 3 shop, and the third clear of the factory plank; I would say some place around 40 percent.

By Mr. BURR:

Q. Would be what?
A. Would be shop factory plank, 3 shop, 2 shop, 1 shop, and third clear.

By Mr. MATTHEW:

Q. That does not mean very much for the highest grades?
A. It leaves about 25 percent—35 of common and 40 of shops.
Q. Could you make the same segregation roughly with respect to the ponderosa pines?
A. Yes, sir; I would say that your ponderosa pine would develop about 10 percent more common, taking an equal amount off of your shop, most of that 10 percent coming off of your better grades.

Now, I am speaking of the large type ponderosa timber that
622 I am comparing with in our own operations.

Q. Does your company receive any orders for California white pine under that name?
A. I suppose we have.
Q. And in such instances I assume it is your present practice to furnish the lumber which you carry under the name of pondosa pine?
A. Yes, sir. On receipt of an order we send a verification in which we set forth the term of their order and put the name of the wood, instead of white pine, pondosa.
Q. Is it sometimes quite difficult to distinguish the pondosa pine lumber from sugar pine lumber?
A. Not in our locality.
Q. Are there not some boards yielded by the ponderosa pine tree which resemble very closely boards yielded by the sugar pine tree?
A. Yes; I think that is so.
Q. You were asked by the counsel for the Federal Trade Commission upon your direct examination as to various uses to which sugar pine is particularly adapted. There was a reference to pattern wood, for example, and I think one or two others; I am not sure whether you gave us a general list of the special uses which you believe sugar pine is best adapted for. Would you do so, please?
A. I think sugar pine is best adapted for pattern stock and for such uses as building exterior woodwork, where you need a
623 lasting wood, a wood that does not decay readily, one that will hold its shape and stay put, that has not a tendency to warp and twist that some other woods have.

Q. You would not recommend that sapwood or sugar pine being used for exterior finish?

A. No, sir.

Q. In fact, you would not recommend that the sapwood of any pine be used in exterior finish, would you?

A. No, sir.

Q. Have you any other more important uses for sugar pine in mind?

A. I have not. I think it is used for interior finish, but to my mind, it is not as good possibly as pondosa for interior finish in some ways.

Q. Is that because of the pitch pockets that you have referred to?

A. Little sugar grains and little flecks of pitch coming through.

Q. It is used for interior finish, to some extent, is it?

A. Yes, sir.

Q. In that respect, it is in some competition with ponderosa pine lumber?

A. Yes, sir.

Q. You do not encounter any particular competition from the ponderosa pine so far as the pattern wood is concerned, do you?

A. From my own knowledge, I would say, no. As I explained, it is only occasionally we know that our stock is to be used for
624 pattern work.

Q. Do you know that the ponderosa pine is marketed very largely as California white pine, and is not largely used for pattern purposes?

A. I think it is not common.

Q. Let us turn for a moment to the use of sugar pine for interior work; is it a fact that the heart wood of the sugar pine tends to cause discoloration of the enamel?

A. I understand that the little pitch flecks or sugar, as we call it, will come through white enamel paint and show, in some cases.

Q. And that is true of heart wood as well as sapwood?

A. It is.

Q. Does the Michigan-California Lumber Company produce a larger relative quantity of sugar pine than the ponderosa pine?

A. Our cut varies from year to year, but the amount of timber we own is about equally divided in pine timber, between sugar and ponderosa.

Q. During the past four or five years, has the sugar pine cut predominated?

A. I could not answer that. I would say for four or five years—or for the last three years, I would say not—the ponderosa cut has predominated.

Q. You have testified that approximately one year ago you changed the trade name of your ponderosa pine from California
625 white to pondosa pine; did other manufacturers of sugar pine and of California white pine make the change in trade names for ponderosa as of about the same time?

A. Yes, sir; I think they did; I think two of them did.

Q. What were those two?

A. The Madera Sugar Pine Company and the Sugar Pine Lumber Company.

Q. What name is now employed by the Sugar Pine Company to designate the ponderosa pine?

A. By "now" do you mean today or last week, or when?

Q. I do not think my question is misleading. About a year ago you say three of these companies changed their name?

A. Yes.

Q. Which they frequently use, namely, California white pine, and your company went to pondosa pine?

A. Yes.

Q. The Sugar Pine Lumber Company went to what name?

A. To pondosa pine, so I understand.

Q. Do you know what they use now?

A. I think they have gone back to white pine—California white pine.

Q. You are not sure that they use the name "Western yellow pine"?

A. No, sir; I don't know.

Q. Or California yellow pine?

A. I don't know.

626 Q. Do you know whether or not the Sugar Pine Company has within the last month or so put out a price list in which pondosa pine is described as yellow pine?

A. No, sir; I do not.

Q. All right. Now, as to the Madera Lumber Company; do you know what name they are using?

A. I think they are using the name "pondosa", but I don't know, because I have not seen their price list.

Examiner SHEPPARD. Are they respondents in this case?

Mr. MATTHEW. No, sir.

Examiner SHEPPARD. Neither one of them?

Mr. MATTHEW. I think counsel will permit me to clear this one point up that I have before me. The price list of the Sugar Pine Lumber Company, of Pinedale, California—I am not sure that it bears the date—yes; effective August 1, 1929, and, therefore, is comparatively recent, which carries as a caption on one of the price tables the words "yellow pine" and below that in parentheses the word "pondosa."

By Mr. MATTHEW:

Q. Mr. Danaher, you have stated that you have been under the impression that you have been losing orders for sugar pine to California white pine; do you remember making a statement to that effect?

A. I made the statement that at the time and during the period of years, I remember that impression and that that was one

627 of the reasons that caused me to advocate the change in name.

Q. Is it your view that you have been losing orders for sugar pine to California white pine?

A. I think that the trade name California white pine—the use of that name has enabled the manufacturers of ponderosa timber to sell more of their stuff under that name than they might have under another, and in that way, I am losing.

Q. You have no specific instances in mind where you lost a particular order?

A. No, sir.

Q. But your testimony just reflected the conviction which you had?

A. Yes, sir.

Q. That the use of this particular trade name tends to result in your losing some orders?

A. Yes, sir.

Q. Of course, you do not think yellow pine is a correct commercial name for this material?

A. Absolutely not.

Q. You would hardly approve of the price list I just directed your attention to, in that respect?

A. No, sir.

Q. Why don't you approve the term "yellow pine"?

A. Because I do not think the wood, as a whole, and as an average of the entire district from which California white
628 pine is shipped resembles to any extent yellow pine, to any considerable extent, and I think the use of the trade name "yellow pine" would be confusing and misleading.

By Examiner SHEPPARD:

Q. Let me get you straight; am I to understand from what you just said that to call ponderosa pine yellow pine would be erroneous and deceiving as a trade name?

A. My impression is it would be misleading, because its qualities for workability, and so forth, are not possessed by the yellow pines as the trade and consumers in general know.

Q. My understanding from the testimony is that ponderosa is soft and yellow pines are hardwoods.

A. Ponderosa pine is much softer.

By Mr. MATTHEW:

Q. As far as that quality of softness is concerned, the ponderosa pine lumber which is now commonly marketed as California white pine more nearly resembles the true white pines than southern yellow pines?

A. Yes, sir.

Q. If the manufacturers and distributors of California ponderosa pine lumber were entirely to abandon the trade name of California

white pine and adopt some other name, I care not what it may be, in your opinion would their relative volume of sales decline?

Mr. BURR. If the examiner please, it seems to me that is too theoretical, "if he does not care what the name is." It
629 might vary very widely according to the name.

Examiner SHEPPARD. I do not know that that question will help me or the Commission.

Mr. MATTHEW. If you will bear with me, I can break that question up. I think it is a perfectly proper question; if not, the question can be stricken out.

Examiner SHEPPARD. All right.

By Mr. MATTHEW:

Q. If the manufacturers and distributors of ponderosa pine lumber, which is now marketed under the trade name of California white pine, were to abandon that present trade name of California white pine and replace it by the trade name California pondosa pine, in your opinion, would their relative volume of sales decline?

Mr. BURR. Just one moment, Mr. Examiner; I would like to object to that as highly speculative.

In the first place, he has suggested no alternative name.

Mr. MATTHEW. I certainly have; that is in the question.

Mr. BURR. Would it not depend on whether they called it yellow pine? He already said yellow pine would not be a fair name.

Mr. MATTHEW. You have not followed my question. I will ask the reporter to read the question.

(The question was thereupon repeated by the reporter as above recorded.)

630 Mr. BURR. I see I did not catch the entire question. I withdraw my objection.

Examiner SHEPPARD. I do not see much materiality in it, Mr. Burr.

Mr. BURR. It is highly speculative, but I do not mind his answer.

A. Temporarily it might, but that would not be a lasting condition, to my mind, because they could advertise and sell it just as much on its own merits as under a misnomer.

By Mr. MATTHEW:

Q. Temporarily you think there might be a little loss of marketing entailed by that change; is that so?

A. Yes.

Q. But within a year or so, perhaps, with vigorous advertising campaigns and the expenditure of some money, do you think they could sell as much of this lumber as they now sell under the term "California white pine"?

A. If you will allow me to tell you what I think——

Q. If you will just answer the question first, and then you may explain.

The WITNESS. Will you read the question?

(The question was repeated by the reporter as above recorded.)

A. As much or more.

Q. You mean by that, that relatively their position would
631 be at least as good as it is now?

A. I think, with advertising, it would be better. They are not now advertising to any extent.

By Examiner SHEPPARD:

Q. You mean the white pine growers?

A. Individually they are, but there is no concerted action in advertising.

By Mr. MATTHEW:

Q. Let us pursue that just a little further, Mr. Danaher. At the present time there is a certain volume of California white pine, under that name, going into the market, and a certain volume of sugar pine going into the market; we will pool, for the purposes of my inquiry, if you please, the sugar pine and the California white pine, that is, we will say that the sugar pine represents a certain proportion of the total, call it 30 percent, if you will, or any other figure, and that the remainder or 70 percent represents the sales of California white pine; it is your testimony, as I understand it, that such a change in name as I have suggested would shortly result in a loss of sales of California white pine under the new name, which would still represent 70 percent or better of the total; in other words, the relative position of the manufacturer of California white pine lumber in the market could not be impaired; if that was so, how would your position be improved?

In other words, if the California white pine manufacturer
632 can sell just as much of this pine under a different name as he can sell under the name of California white pine, it must follow that the sugar pine position cannot be improved.

Mr. BURR. Oh, no; not at all.

Mr. MATTHEW. I am asking the witness.

Mr. BURR. It is very unfair for counsel to make that suggestion, because it is not proper cross-examination.

Mr. MATTHEW. I think the purpose of my cross-examination is now obvious, and I submit the question to the examiner.

Examiner SHEPPARD. Let me hear the question again, please?

(The question was thereupon repeated by the reporter as above recorded.)

Mr. BURR. I object to the question on the ground that it is highly speculative and calls for the conclusion of the witness.

Mr. MATTHEW. I shall press the question for this reason, Mr. Examiner, that the witness has testified, or at least he implied directly upon his examination in chief, that the continued use of this term, "California white pine", resulted in a loss of sales to the sugar pine producers.

In other words, California white pine is being used where sugar pine would be used, except for the use of this trade name. Now, my questions are intended to bring out the circumstance that this lumber under a different name would presumptively still hold
633 its present place or even have a better position, which, of course, tends to negative the contention of the witness upon his direct examination that the sales of sugar pine are being impaired by the use of this trade name, one of the very issues of this case.

Mr. BURR. There is no such thing to negative, unless these two were the only ones in existence. I object on the ground that it is speculative. What he knows about the effect—or what he knows to be the fact under the present misnomer may be evidence, but what might happen under an entirely new set of circumstances is speculative, whereas his answers on direct examination were from his own experience.

Mr. MATTHEW. If Your Honor please, the whole complaint revolves around the question of the effect of the trade name. That is the very central issue in the case.

Now, we are trying to test the effect of the trade name, and I submit to Your Honor it is the very essence of proper cross-examination to undertake to determine the effect of a change in the trade name which, after all, is the object of certain gentlemen who are in the friendliest way opposed to it.

Examiner SHEPPARD. Mr. Matthews, as I said awhile ago, speaking off the record, I do not believe that any inquiry as to what results may follow the Commission's action in this case or in any similar case, is a proper subject matter for us to go into here. The Commission's proceedings are brought in the interest of the
634 public, in this case the ultimate consumer. Whether or not another manufacturer's business will be influenced or affected by the change of the name, which may or may not follow the Commission's action, I doubt whether it will be of any particular use to me or to the Commission in allowing it to go in.

I will tell you what I will do. I do not want to cut off the respondent in this case from anything they wish to argue before the Commission, so that to that extent I am going to allow the testimony as given to remain in the record for the purposes of argument before the Commission if you so see fit to do.

Mr. BURR. I will give you an exception. Now, will you please read the question?

Mr. BURR. Are you going to allow the present question?

Examiner SHEPPARD. I will allow the question for the benefit of the respondent's argument. You need not rebut it, because, so far as I am concerned, I shall make no finding regarding it, and it is for the purpose simply of argument.

Mr. BURR. I might have to rebut it, although you might expect to make no finding, because the Commission may determine to make some finding, even though the examiner does not.

Examiner SHEPPARD. I doubt it very much.

Mr. BURR. They do sometimes make some changes.

Examiner SHEPPARD. Yes; I know they do.

My purpose in doing this, Mr. Matthew, is in following my
635 policy, which is always to allow the respondent in the case to have every opportunity to put in whatever he believes will benefit him, and I will follow that line with you.

Mr. BURR. My objection goes to the whole line of this testimony.

Mr. MATTHEW. It is my very earnest belief that this line of questions goes to the very heart of the case. I assume that Your Honor is not as familiar with either the text of the complaint or the background of the case as we are on our side here.

Examiner SHEPPARD. That is very true; I know very little about at as yet.

Mr. MATTHEW. If Your Honor will read the complaint, you will find that they have alleged, not merely once, but several times——

Mr. BURR. If the Examiner please, if the question is allowed, why, we will fill the record with arguments——

Mr. MATTHEW. Please allow me to finish.

Mr. BURR. I object to the argument. Why spread it on the record, if the question is permitted. It seems to be unimportant to fill up the record.

Examiner SHEPPARD. This is all argument, and it will be in the brief, if you desire.

Mr. MATTHEW. I want my argument to appear on the record here.

Mr. BURR. Then I will have mine in also.

636 Mr. MATTHEW. I believe counsel will concede that I am entitled to at least complete my sentence. I am making this argument for the record, and the purpose for which I am addressing you, Mr. Examiner, is to ask for a specific ruling upon this point, because I think this testimony should either be in the record for all purposes or out of the record for all purposes. I do not believe it should be in the record merely for purposes of argument, as you have used that expression—it should either be in and a finding should be made responsive to it, or it should be out altogether.

I recognize the purpose of the examiner is to show proper latitude to the parties in presenting their contentions in matters of this kind, yet the statement made by Your Honor and announced in the ruling practically forecloses from requesting or expecting a finding of facts. I am not asking you to make a finding of the facts that are not in issue in this case, because I can show them to Your Honor by going over the complaint.

Mr. BURR. May I be heard before the examiner replies?

Examiner SHEPPARD. I cannot see it, Mr. Matthew, where this record has any right to go into any speculative matters, the results of which would be contingent upon the Commission's action. That must be stated in the final order, and with that this inquiry has nothing to do.

Our inquiry is entirely about the use of the trade name,
637 and we are not interested in any way with the result that might follow. It is to be presumed that when the Commission, after consideration of the case, promulgates an order, that the result will be beneficial to the interests of the public, and it is not for us now to inquire what that result will be; we have nothing to do with it.

Mr. MATTHEW. Mr. Examiner, I have not suggested any action on the part of the Commission. My question did not say anything at all as to what the Commission might order.

Examiner SHEPPARD. Your question, as I understand it, is this: You want to know from this gentleman, if these respondents change their name, what would be the result thereof?

Mr. MATTHEW. Yes, sir.

Examiner SHEPPARD. That is exactly what I am telling you. We have no interest in the result of the order.

Mr. BURR. If the Examiner please, I would like to be heard at this juncture, if I may.

Examiner SHEPPARD. Yes.

Mr. BURR. I am inclined to agree with counsel for the respondent in one respect. I really think that material should be in the record only to the extent that it is an appropriate basis for a finding, one way or the other. I do not believe that this record should be encumbered with material which the examiner believes clearly cannot properly lead up to a finding. In that respect I agree with
838 counsel for the respondent. Beyond that, as regards the testimony he is trying to bring out now, how it should be classified, I differ from him.

I do not think it is appropriate for this examiner, or for the Commission later on, to have a finding that if the names were changed to California pondosa pine, that it would or would not result in an increase of sales. I think that would be a very strange sort of finding for you to make or for the Commission to make later on.

That being the case, it seems to me fairly obvious that it is unnecessary, it is wasteful to take up the time of the examiner and the Commission and build up a great big record on speculative matters on which the examiner could not possibly properly make a finding, and therefore I press my objection to that line of questions.

Examiner SHEPPARD. For the reason I said awhile ago, Mr. Matthew, it is not my province to make a finding on something that may follow.

Mr. MATTHEW. If Your Honor please, I am not suggesting any finding of the Commission at all. I carefully avoided that. Counsel has been very insistent in creating an impression that that is what I have in mind.

Examiner SHEPPARD. That is what I have had in mind.

Mr. MATTHEW. It is not in my mind, Mr. Examiner, at all. The complaint alleges that we are engaged in unfair competition with the sugar pine, Idaho white pine manufacturers, the northern
639 white pine manufacturers, and that is the very reason why this complaint is brought.

Examiner SHEPPARD. I will let you put it in.

Mr. BURR. I reserve an objection to this entire line of cross-examination.

Examiner SHEPPARD. I will let you put it in; go ahead, and if I can make a finding on it, I will do so.

Mr. BURR. If the examiner please, I do not think it proper cross-examination. May it be considered that this is a defense witness for the purpose of these questions? It certainly is not cross-examination. I did not go into any such wild speculation.

Mr. MATTHEW. It is cross-examination on the testimony in chief, that sugar pine is losing sales to California white pine.

Mr. BURR. It does not seem to me that that authorizes counsel to turn the whole thing loose for wild speculation as to what might happen under a hypothetical set of circumstances.

Examiner SHEPPARD. We will consider it cross-examination, Mr. Burr, and if you desire to, you may rebut it.

Mr. BURR. I will take an exception to the examiner's ruling to be noted in the record.

Examiner SHEPPARD. Now, go ahead and answer the question. Let us have the question read.

(The question was thereupon again repeated by the reporter as above recorded.)

640 By Mr. MATTHEW:

Q. Give me your best judgment.

A. The position of the sugar-pine manufacturer would be improved, because he would be able to sell sugar pine to those users and purchasers who are buying California white pine under a misapprehension that they are using true white pine, therefore the sugar-pine producer would be able to sell that much additional sugar pine, or make it easier to sell his supply of sugar pine, and the producer of the California white pine, or ponderosa pine, would naturally have to find other markets for his product.

Q. He has got to get an additional market to make good the loss of a certain proportion of sales to sugar pine; that is your point?

A. To sugar pine or white pine.

Q. At one time, Mr. Danaher, did your company become a member of the association or corporation known as the Sugar Pine Sales Agency?

A. We became a member of the corporation, Sugar Pine Sales Company, I think it was.

Q. When was that formed?

A. Either 1926 or 1927; I am not certain; I think it was in 1927.

Q. Did that company represent all the producers of sugar-pine lumber in California?

A. Practically all of them; yes.

Q. Is the company still in existence?

641 A. No, sir.

Q. When did its corporate existence terminate?

A. That I could not say.

Q. You are sure it was a corporation?

A. No; I am not sure just exactly it was. It was a sales organization; just the form under which it was organized; I do not know; I think it was done under advice of your counselor, Mr. Andrews.

Q. Did you personally have any contact with the formation of that association?

A. I sat in at a couple of meetings before the company was formed, and on preliminary talks I was present, at which it was decided to leave the form in which this organization was to be put together up to certain attorneys.

Mr. BURR. If the Court please, I think this is irrelevant, and I would like to know what the purpose of it is.

Mr. MATTHEW. Very often on preliminary examination it is not deemed advisable to indicate the purposes of the cross-examination.

Mr. BURR. All right; I will withdraw that objection.

By Mr. MATTHEW:

Q. What was the purpose of forming this company or organization, Mr. Danaher?

A. The purpose of forming the company was to advertise and promulgate the use of sugar pine.

642 Q. Were any changes in prices of sugar-pine lumber made after the company was formed?

A. Yes; I think immediately after the company was formed we got about two dollars a thousand less for sugar pine than it was before.

Q. Did the market price advance or fall upon the formation of the company?

A. I think it remained stationary.

Q. What circumstances brought about the discontinuance of the organization?

A. I understand and was told that it was because certain members of the organization could not sell the product of all of its members; the market was bad and the sugar pine piled up in the mills, and some arbitrarily withdrew and the association broke up.

Q. That association broke up by 1927; was that the time?

A. I think that was along in—yes; I think we broke up in 1927.

Q. Was it not about that time, then, that the manufacturers or producers of sugar pine, at least those who were very largely interested in sugar pine, decided that it was quite necessary to attempt to bring about a change in the name of the California white pine?

A. It might have been about that time, but I do not think the fact that they broke up had anything to do with it.

Q. Frankly, I intended to suggest that very thing, Mr. Danaher. In this respect, am I wrong in understanding that the attempt

643 to promote and stimulate the sales of sugar pine through this organization, and possibly to get better prices for sugar pine having quite seriously failed—that is, through the formation of your organization—that the organization broke up and there was so much ill feeling and dissatisfaction that those sugar-pine manufacturers decided that they must perhaps make some effort to bring about a discontinuance of the trade name of California white pine?

A. Such is not my understanding.

Q. All right. You referred to a visit that you made to some mill manufacturing ponderosa pine in New Mexico. Do you recall the name of the mill?

A. The American Lumber Company.

Q. Located where?

A. Albuquerque.

Q. The mill is at Albuquerque?

A. The mill is at Albuquerque.

Q. Where did they obtain their lumber?

A. 125 miles south of the Santa Fe, up in the Zuni Mountains.

Q. Is that company now operating?

A. I think it is, but not under that name.

Q. I am not sure whether you answered this question, Mr. Danaher: Does the sugar pine have a greater proportion of sap than the strobus pine?

A. Yes, sir.

644 Q. Does it have a greater proportion of sap than the Idaho white pine?

A. Yes, sir.

Q. Since you adopted the name "California pondosa pine" for your ponderosa lumber, does it go to the trade in substantially the same way as it did before you changed the name?

A. Yes.

Q. Marketing methods are just the same?

A. The marketing methods are just the same.

Q. And the lumber is used for the same purposes, as far as you know?

A. As far as I know; yes.

Q. You are selling or shipping grades of your California pondosa pine through the remanufacturing plants, such as manufacturers of sash, doors, blinds, and moldings?

A. Yes, sir.

Q. There is one further question I desire to ask, Mr. Danaher, unless you feel that you have fully answered it: The examiner asked you a question, following a question of my own, as to your reasons for your feeling that ponderosa pine lumber should not be termed

"yellow pine lumber"; did you give all the reasons which, in your opinion, make it unwise and undesirable and likely to lead to confusion if the word "yellow" were employed?

A. I thought I did.

Q. I shall not ask any further questions if you have no other
645 trade reasons in mind.

Examiner SHEPPARD. I believe you covered that.

The WITNESS. I thought I covered that as fully as I could.

Mr. MATTHEW. I would ask leave, if Mr. Danaher expects to be in attendance throughout the hearing in New York, to recall him for further cross-examination.

Mr. BURR. For further cross-examination, or do you intend to put him on as a defense witness?

Mr. MATTHEW. Both. I shall not ask Mr. Danaher in advance if he happens to be here——

The WITNESS. If I am not here, I will be at Detroit, and probably at San Francisco when you meet out there.

Redirect examination by Mr. BURR:

Q. Mr. Danaher, the Sugar Pine Sales Company was formed for advertising or for promotion of sales, or for what purpose?

A. It was formed for the purpose of selling, advertising, and promulgating the use and sale of sugar pine.

Q. Its membership composed the manufacturers of sugar pine in the various parts of California?

A. Yes; practically all the mills that manufactured sugar pine in California, I think, were members.

Q. Were you present at the meetings when the association broke up?

A. No, sir.

646 Q. You were not present at those meetings?

A. No, sir.

Q. Then, how far does your knowledge go as to the reason for breaking up?

A. It is entirely hearsay.

Q. It is entirely hearsay?

A. I think I testified, I was told, in answer to counsel's question.

Q. I believe you said that since your company changed its name from California white pine to pondosa pine for ponderosa products, that, so far as you know, the lumber has been used for the same purposes as before; did you so testify?

A. Yes, sir.

Q. I believe you stated that, in your judgment, genuine white pines are more adapted than ponderosa pine for exterior finish; is that true?

A. Yes.

Q. Do you regard the use of the words "white pine" as a trade term for ponderosa products as having a tendency toward having the builder use ponderosa products in positions where white pine

would be specified, or does it not have such a tendency? Is that question clear?

Mr. MATTHEW. I think he testified to that on his direct examination.

Mr. BURR. I am addressing myself to your question on
647 cross-examination. Read the question.

(The question was thereupon repeated by the reporter as above recorded.)

A. I think it has a tendency to have the products of ponderosa used under a misapprehension that they are getting white pine.

Q. Do you have sufficient knowledges of the purposes for which the lumber made by your company, after being bought from the wholesalers, is put to, to be able to say whether there has been a change, such that not so much of your product is used on the outside of a building as was the case before; do you have knowledge enough to testify as to that?

A. No, sir.

Q. Are you able to say with any assurance that the products now named as pondosa by your company is still used for the same purposes as they were before?

A. No; I have not knowledge to say they are still used; they are still sold to the same customers.

Q. You mean the same wholesalers?

A. To the same wholesalers and occasionally to the same manufacturer.

Q. Do you know whether the wholesaler has followed your lead and sells the product as pondosa, or do you know whether he changes the name to California white pine when he sells it?

A. I do not know that. I know that he is going pretty soon to follow our rule, because we are going to trade mark it "pondosa."

648 Q. You are going to trade mark it "pondosa"?

A. Yes, sir.

Q. Have you given any advice or instructions to your customers to change to pondosa for purposes of resale by them?

A. No, sir; we have no control over the wholesaler.

Q. You attempt no control whatever?

A. No, sir.

Q. I believe you testified on cross-examination that you had never known a pure stand of lambertiana sugar pine?

A. No.

Q. Would you state whether or not there is a tendency toward a higher cost of producing lumber due to the fact that the stands are not uniform where sugar pine is found; I am referring to sugar pine?

A. Higher cost of producing sugar pine?

Q. Yes.

Mr. MATTHEW. Do I understand the examiner to rule that the cost of production is a proper matter of inquiry here?

The EXAMINER. I don't want to go into a matter of economics here.

Mr. BURR. I do not think that is a matter of economics, if the examiner please. I am just asking for a tendency.

Mr. MATTHEW. You are asking about relative costs——

Mr. BURR. Read the question if you want to know.

(The question was thereupon repeated by the reporter as
649 above recorded.)

A. By "uniform", just what do you mean?

(Discussion off the record.)

By Mr. BURR:

Q. You testified with regard to mixed pine common at the institute of opposing counsel. What uses do the mixed pine common products go into? Did you go into that in your cross-examination as fully as you desired?

A. I went into the uses as far as I know of them for pine commons and mixed pine commons; they would go into the same uses as straight pine common, that is, whether it was considered white pine common, it would be used for certain things, and mixed pine common would be used for the same things that straight white common would be used for.

Q. Are they used where durability is a consideration?

A. Well, they are used for such things as fence boards; it has not much of a use, except by railroads to build drift fences to protect the railroad tracks from snow.

Q. The common, does that come out of the heart or sap, largely?

A. It is heart.

Q. That is, heart, both in the case of ponderosa and sugar pine?

A. Practically, yes.

Q. But that is the knotty portion of the wood, therefore heart; is that true?

A. Yes.

650 Q. I wish you would explain to me whether the 1, 2, and 3 shop is from that part of the tree that is between the common and the select grade, or how does it come?

A. 1, 2, and 3 shop is designated as shop common. This common shop is the clear cuttings taken from in between the knots; the percentage of door or sash cutting between the knots determine its grade, whether 1, 2, or 3 shop.

Q. That is heartwood or sapwood, in the case of sugar pine; do you know?

A. Practically all heartwood in sugar pine.

Q. That is a little further out from the center of the tree than is the mixed pine common material?

A. No, sir; in most trees that are of the shop common type, you get very little in yard common; we have to differentiate between yard common, which is the board common that you are talking of. The 1, 2, and 3 common, and the shop common, that is more in the top of the tree, although you do get some shop out of the yard com-

mon type of tree, because the knot defects are smaller, and they may be at certain stages of the cutting of the log where you will produce lumber that has the door cuttings in the plank, but when you get into shop common type, the knots are so large that you can make very little shop type, when you get into no. 3, and most of that goes into box; the knots are too big to go into yard common.

Q. Is it the yard type of common that goes into the mixed?

651 A. Yes, sir.

Q. Turning to the Pinus ponderosa, does your last answer hold true for that?

A. Yes.

Q. As regards the shop grades 1, 2, and 3 shop common—is that the right phrase?

A. Yes, sir.

Q. Would Pinus ponderosa be heart or sapwood in the main?

A. I would say the biggest percentage of it would be heart, although there would be some sap.

Q. Where, in the tree, do the selects D, C, and B repectively come from; are they as you proceed out, or how?

A. They are right under the bark, until you get into a defect, or a natural defect that lowers the grade.

Q. Taking the B and better of the sugar pine, is that largely heart or sap?

A. To a large extent, that would depend on the thickness in cutting sugar pine, that has a relatively small sap ring, and it is the general practice, I believe—I know it is at our plant—to take inch pieces after you have taken the slab—to cut it all into inch until you get what is called a heart face. That sap is generally clear or nearly clear, so it would probably go into C or better.

Q. That would be sap largely?

A. In inch, yes, sir. Then as we get to that sap or cut
652 thicker lumber and cut some more heart inch—that is the manufacturing process, because it is necessary to prevent checks, and so forth.

Q. I wish you would cover the same ground with regard to the average ponderosa, if you will?

A. Your practice is the same, of course; after your slab is cut, until you get a good-sized face of the log, you go around, take the slab off here—you have to take enough off to get the fair face, eight inches or wider before you take any thicker, unless you want to waste a lot of material.

If you take a two-inch piece off and only add an inch face here and your next piece was two inches, you would have to throw too much lumber away, so you take an inch, then you take another, and you won't lose so much if you take two inches.

Q. And is that true of sugar pine or ponderosa?

A. That is true, yes. In a great many cases, if you get in there, you are still in the sap, after you have opened up this face, you are still in the sap, then you take your thick pieces in the sap——

Q. After you remove the one-inch slab from the sugar pine, have you removed a larger percentage of the sapwoods than you have in the case of the ponderosa?

A. Yes, sir. This is rather technical. The percentage of sap being less in sugar pine than in ponderosa, if you grant that,
653 a good deal of your sawmill waste other than sawdust, such as edgings and so forth come from the sapwood, granted that on the same-sized log, your waste is the same on the sugar pine log as it is on the ponderosa log. You have removed a larger percentage of your sapwood on your sugar pine, because you had a lesser amount of sap to begin with.

Q. With regard to these pitch pockets that you referred to in the sugar-pine lumber, would you say whether the sugar-pine manufacturers have developed a certain variety of so-called "killer" or wash to eliminate those pitch pockets?

A. I do not think the term "pitch pockets" is entirely clear to me, but I think I know what you are speaking of; you are referring to these little pitch spots that ooze through once in a while, whereas a pitch pocket to a lumberman means a pocket deep into the log of the wood, where there is quite a mass of pitch.

Q. How do you describe it as it appears in sugar-pine lumber?

A. We call it sugar, just as the ordinary type.

Q. They are tiny pock marks?

A. They are just tiny specks of pitch. I just wanted to correct that impression of pitch pocket. That is entirely different. I don't know whether they develop anything along that line or not.

Q. I would like to ask you this, In your judgment, does the sale of Pinus ponderosa for exterior purposes aid in the marketing
654 of that type of lumber, the sale of that type of lumber in the long run?

Mr. MATTHEW. Will you amend your question to read "use" instead of "sale"?

Mr. BURR. Read the question.

(The question was thereupon repeated by the reporter as above recorded.)

Mr. BURR. I don't think I want to change it. Is the question clear to you?

A. Do you mean does the use of ponderosa products for exterior work aid in the continued sale of that lumber; that is practically what you mean? I don't know that I can answer that. I think it has up to the present time. Again I am thinking. I don't see that I am getting any place on that.

Q. Let me ask you this: You have testified that Pinus ponderosa is not as durable where exposed to the weather; is that true, as the genuine white pine?

A. That is my opinion.

Q. Where Pinus ponderosa is used in places where it is exposed to the weather does it deteriorate and rot out more rapidly than genuine white pines?

A. In my opinion it does.

Q. The use of the variety of lumber where it fails to give satisfaction, in your judgment, does it tend to promote the continued large sale of that type of lumber?

655 A. No, sir.

Q. Then it would be, in your judgment, a detriment to the marketability of Pinus ponderosa to change the name so that it no longer simulated the name of white pine?

A. No, sir.

Mr. BURR. Read the question.

(The question was thereupon repeated by the reporter as above recorded.)

The WITNESS. If I understand the question, do I think white pine could be sold—ponderosa products could be sold as readily under some other name; is that what it means?

By Mr. BURR:

Q. Yes.

A. I think it could.

Q. Would it be a benefit to the marketability of Pinus ponderosa that it no longer be offered under a name if it resembles the name of a product famous for outside construction purposes?

A. I don't think I understand that question at all, sir.

Mr. BURR. I will withdraw the question; I think it is sufficiently clear.

Q. I believe you said if sugar pine was marketed under the name "California white pine", it would be misleading?

A. Yes, sir.

Q. Why would that be the case?

656 A. Because white pine to me means Pinus strobus and all that Pinus strobus or northern white pine originally stood for, while sugar pine has those attributes, it still has its defect, and that is the little sugar showing through, and I think a person buying sugar pine for certain purposes thinking he was getting the old Pinus strobus, would be misled.

Q. Do you regard the sugar pine as more nearly entitled to the term "white pine" than Pinus ponderosa?

A. Very much more.

Mr. BURR. That is all.

Recross-examination by Mr. MATTHEW:

Q. Do you regard it as misleading to market Pinus monticola under the name of white pine?

A. If the name "Idaho" was not placed before it, I would.

Q. It is the use of that term "Idaho" which, in your opinion, justifies the name "Idaho white pine"?

A. Yes, sir.

Redirect examination by Mr. BURR:

Q. You think Idaho white pine is more nearly entitled to the use white pine than California white pine or ponderosa?

A. Yes, sir.

Mr. BURR. That is all.

(Whereupon, at 4:30 o'clock p.m. an adjournment was taken to October 11th, 1929, at 10:00 o'clock a.m.)

657 Docket Nos. 1620–1669, inc.

NEW YORK, *October 11th, 1929.*

Met pursuant to adjournment, 10:00 o'clock a.m.

Before William W. Sheppard, examiner.

Appearances: Eugene W. Burr and J. G. Birks, attorneys for the Commission.

McCutcheon, Olney, Mannon & Greene, by Allan P. Matthew and Carl I. Wheat, attorneys for the respondents, Clover Valley Lumber Company et al., Davies-Johnson Lumber Co. et al., Diamond Match Company et al., California Fruit Exchange et al., Penman Peak Lumber Co. et al., Feather River Lumber Company et al., Kesterson Lumber Company et al., Hobart Estate Company et al., Fruit Growers Supply Company et al., Quincy Lumber Company et al., Spanish Peak Lumber Company et al., Lassen Lumber and Box Company et al., Red River Lumber Company et al., Owen-Oregon Lumber Company et al., Big Lakes Box Company et al., Ewauana Box Company et al., Klamath Lumber & Box Company et al., Lamm Lumber Company et al., Pelican Bay Lumber Company et al., Algoma Lumber Company et al., Shaw Bertram Lumber Company et al.

658 Examiner SHEPPARD. I believe, gentlemen, that it is by mutual agreement and stipulation that the respondent is putting on some of his case here, out of turn, in order to facilitate the hearing and keep down expenses, and in order to avoid the necessity of a return trip to this city.

Mr. MATTHEW. Yes, sir.

Mr. BURR. You might also say that a suggestion to that end was made by the chief counsel, which was sent out to the respondents in this case—both those represented by counsel and those not represented.

Examiner SHEPPARD. That is all right with the examiner to follow such procedure: anything that will lessen expense and trouble is always desirable.

ARTHUR E. LANE was thereupon called as a witness and, having been duly sworn, testified as follows:

Direct examination by Mr. MATTHEW:

Q. Mr. Lane, what is your business?

A. Wholesale lumber.

Q. Is your place of business in this city?

A. Grand Central Terminal, New York City.

Q. How long have you been in the lumber business?

A. About 37 years.

659 Q. Will you relate your experience in the lumber business generally, if you please?

A. In 1895, I started with the west coast woods, and specialized in western woods since that time, and during that time we have acted as wholesale distributors entirely.

Q. Through what general territory do you distribute lumber, as a wholesaler?

A. New York State, the New England States, Pennsylvania, New Jersey, Delaware, Maryland, District of Columbia.

Q. You have been engaged in the business approximately thirty-five years?

A. Since 1895.

Q. Continuously?

A. Yes, sir.

Q. What particular varieties of lumber do you carry?

A. Would you like to have me name them?

Q. If you please.

A. Douglas fir, western red cedar, Sitka spruce, western hemlock, Idaho white pine, Idaho white fir, Idaho spruce, Engleman spruce, Idaho cedar, Idaho and Montana larch, Port Arthur cedar, California sugar pine, California white pine, redwood, and California white fir.

Q. Do you carry any pondosa pine by that name?

A. Pardon me; I should have mentioned pondosa pine.

Q. The list of lumber which you have given practically
660 covers these Pacific coast woods in which you specialize, Mr. Lane?

A. Yes, sir.

Q. To what trade do you distribute the lumber in which you deal?

A. Retail lumber dealers, what we call trim manufacturing plants, and some industrial business, as well as some cheap building business and a few specialty operations.

Q. Throughout what period has the name "California white pine" been established in this local lumber trade?

A. How long?

Q. Yes.

A. From twenty to twenty-five years.

Q. And you have been familiar with that term during that period?

A. Yes, sir.

By Mr. BURR:

Q. That is California white pine?

By Mr. MATTHEW:

Q. As to California white pine, is the name well and generally understood in the trade?

A. I should say it was very well understood.

Q. So far as you can determine, is there any confusion or misunderstanding in the lumber trade as to the identity of the lumber which is distributed under the name "California white pine?"

A. I do not think there is.

Q. It is known that, botanically speaking, it is not classi-
661 fied as a white pine, is it, Mr. Lane?

A. We sell it entirely as California white pine.

Mr. BURR. May I ask that the witness answer the question? Read the question.

(The question was thereupon repeated by the reporter as above recorded.)

A. That is a botanical question.

Examiner SHEPPARD. If you can not answer it, just say so.

Mr. MATTHEW. Let me withdraw the question.

Mr. BURR. Let him say whether it is known or not; he says that is a botanical question.

The WITNESS. I don't know what other people know about it; all I know is what I tell you here.

Examiner SHEPPARD. That is perfectly all right, Mr. Lane; if you don't know, just say so.

By Mr. MATTHEW:

Q. Do you know whether it is classified botanically as white pine or not?

A. Do I know whether *it is or not?*

Q. Yes; or are you interested in the botany of the species?

A. I would say that I was not interested in the botanical side of it.

Q. Do you know the botanical names of the trees which yield the several varieties of lumber which you distribute?

662 A. Very few.

Q. Lumber sells on its quality and utility rather than its botanical species, does it?

A. Yes, sir.

Q. Under what name do you offer this particular lumber to the trade?

A. California white pine.

Q. Is that your invariable practice?

A. Always.

Q. Under what name do you receive orders for this lumber?

A. California white pine.

Q. Do you ever receive any orders for white pine without any qualifying designation?

A. No, sir.

Q. Is the term "Idaho white pine" well known to the trade?

A. Yes, sir.

Q. You stated that you are engaged in selling Idaho white pine as well as these other Pacific slope woods?

A. Yes, sir.

Q. I take it you undertake to sell as much in volume as possible of each one of them?

A. Yes, sir.

Q. You are not pushing any particular variety at the expense of any other variety, I take it?

A. No, sir.

663 Q. If a customer inquires for Idaho white pine, does he inquire for it under that name or does he simply ask for white pine?

A. He asks for Idaho white pine.

Q. If a customer asks for Idaho white pine, is it your invariable practice to furnish Idaho white pine?

A. Yes, sir.

Q. There is no substitution in your business of one lumber for another?

A. No, sir.

Q. And you never furnish California white pine upon orders for northern white or Idaho white pine or any other variety of lumber?

A. No, sir.

Q. Do you have any complaints from your customers upon the ground that the lumber which you furnish them as California white pine has been misrepresented, or there has been deception or substitution in any way?

A. No, sir.

Q. Is the distribution of California white pine in this territory increasing or has it been decreasing during a period of the last few years?

A. I would not be able to give you any definite information on that.

Q. Do you know whether the supply of northern white pine lumber in the New York area has been increasing or decreasing?

664 A. My personal opinion would be that there has not been much change.

Q. Mr. Lane, there has been testimony in this proceeding on the part of salesmen for the Weyerhaeuser interests, I think specifically the Weyerhaeuser Sales Company, to the effect that the Weyerhaeuser interests are losing orders to California white pine in three classes of cases.

First, it is stated by this witness, there are some retail lumber dealers who naturally think that California white pine is superior to pondosa pine.

Second, there are some dealers who think that California white pine is a true white pine, although the witness states that these are in the minority.

And, third, there are some dealers who know that California white pine is not a true white pine, but since it is invoiced to them as white, they feel at liberty to resell it as a true white pine, so called.

Now, I will ask you if you know of any lumber dealers who belong in the third category; that is, dealers who know that California white pine is not a true white pine, but who, nevertheless, feel at liberty to sell it as a true white pine because it is invoiced to them under a name which includes the word "white"?

A. I do not.

Q. Do you know of any lumber dealers in the second category; that is, who think that California white pine is a true white pine?

665

A. No.

Q. Are these several woods sold on their merits, Mr. Lane, in your opinion?

A. They are so far as we are concerned, and I think others are doing the same.

Q. That is, they sell with respect to their quality and their utility?

A. Yes, sir.

Mr. MATTHEW. That is all.

Cross-examination by Mr. BURR:

Q. In outlining the various types of lumber that you handle, I believe you said, in a preliminary way, that you were specializing in western lumber; do you handle anything besides western lumber?

A. No, sir.

Q. You do not handle Northern white pine at all?

A. Pardon me, we do on special occasions.

Q. To meet special orders?

A. Yes, sir.

Q. How often, in the last year, would you say you handled Northern white pine?

A. We have sold two cars this year.

666

Q. Where did they come from?

A. Wisconsin.

Q. Was that virgin white pine, original first growth, or was it second growth?

A. I would not be able to answer that.

Q. Do you remember anything about the width of it?

A. No.

Q. Did that come through your yards or go direct to the customer?

A. We do not have any yards; we do not see the lumber.

Q. You never see the lumber?

A. Only when we go to the yards and look at it.

Q. How much experience have you had personally in the woods? Have you ever been in the forests yourself?

A. Not in the western forests.

Q. Not in the forests which yield the woods that you specialize in?

A. Only on inspection tours.

Q. Driving through in an automobile, or something like that?

A. Walking around, and that is very different.

Q. Yes, walking around is a little bit different and gives you a chance of getting a more intimate acquaintance with the tree; now, do you ever have occasion to come in contact with the actual consumer of lumber?

A. Yes, sir.

667 Q. And by that I mean the man who buys from your customer, the retailer; do you ever come in contact with him?

A. Yes, sir.

Q. In what way does that happen?

A. That is usually brought about by a request from a retail lumber distributor or a trim mill manufacturer to discuss the western woods, and we call on his customers.

Q. And he comes to you for that purpose?

A. Our customer comes to us for that assistance.

Q. I believe you testified that you are not pushing any variety at the expense of any other variety of lumber?

A. Right.

Q. Do you distinguish at all between the characteristics and qualities of lumber for the ultimate purpose of the buyer; do you distinguish that one type of lumber is good for one thing and another type is good for another?

A. We do when the customer makes the request, and sometimes——

Q. And sometimes that happens?

A. Sometimes we think the customer does not know.

Q. And then you volunteer some information for him?

A. That is it.

Q. Which do you regard as the woods that are outstanding in the characteristic and quality of durability, when exposed to conditions likely to induce decay?

A. You are talking now only on the question of durability

668 in the western woods?

Q. No; woods in general. You are familiar with the durability of various types of lumber, I presume?

A. Yes, sir.

Q. You have to meet southern woods in competition, do you not?

A. Yes, sir.

Q. And it is your endeavor to quote western woods and secure sales, and in that way you come in contact with competitors who are selling woods from other parts of the country, do you not?

A. Yes.

Q. So you are familiar, in a general way, with the durability of woods, are you not?

A. Yes, sir.

Q. Will you kindly answer the question as to which types of woods you regard as outstanding for that characteristic and quality of durability?

A. Western red cedar.

Q. What else?

A. May I ask you a question?

Q. Yes; I may not be able to answer it, sir, but I have no objection to your asking.

A. On the question of durability, that is quite an expansive word, and it makes a great difference whether the piece of wood or
669 lumber is exposed in various ways. If you put a piece of wood in the ground, or if you put it in the air, or paint it, or don't paint it—all of those things make a difference, so when you say durability there might be certain woods that would exceed other woods on account of certain conditions.

Q. Suppose, then, we confine the consideration in the first instance to lumber which is used for exterior finish, where it is exposed to rainfall and weather conditions?

A. I would place western red cedar no. 1.

Q. At the top?

A. Yes, sir.

Q. What else?

A. California sugar pine no. 2; I would put Idaho white pine no. 3; I would put Sitka spruce no. 4; in certain places I would put Port Arthur cedar no. 3; in other places I would put it at no. 4.

Q. Depending on what?

A. Depending on the exposure and wear. If it is strictly for outside finish, it would go no. 4, in my opinion.

I left out one important wood, and no California man would want me to leave that out, and that is redwood.

Q. Where would you put that?

A. As no. 2.

Q. And the others shift down one place?

A. The others would shift down one place; yes.

Q. All right, proceed.

670 A. I have mentioned Idaho white pine and Sitka spruce. Well, several of those woods are close to the line, I suppose, and it is your purpose to find a position for California white pine in comparison with the other woods?

Q. Only partly so.

A. California white pine——

Q. Before you proceed on that, let me ask you—my question was broad enough to cover other woods than woods from the Pacific coast, but I think you mentioned nothing but Pacific coast lumber.

A. I understood you to say that you were referring to western woods.

Q. If you include northern white pine within the purview of your answer, where in the category would you put northern white pine?

A. Generally, I suppose you mean?

Q. Yes; for outside exterior use, the same as the other woods that you have referred to.

A. I think I would put that about in the same position as California sugar pine.

Q. I think that was third, after you made the readjustment?

Examiner SHEPPARD. Yes.

By Mr. BURR:

Q. Where would you put the pondosa wood—pondosa pine?

A. I would place the California white pine, and then I
671 think I would put pondosa pine next.

Q. After the others, or where in your category?

A. After the others. Spruce would fit in there just above or just below, according to the way they were treated.

Q. Is there any difference in the durability and the rating that you would give for durability of these varieties of lumber where the piece is exposed to the weather and is partly underneath the surface of the soil; in other words, here is a clapboard or piece of rustic or another—I don't know what they are—you know, that is exposed in part and is in part underneath the surface of the soil. Is there any difference in that line, would you say, or have you not studied that particular feature?

A. I don't think that makes any difference in that class of construction.

Q. There are some woods that are particularly good for fence posts where they have to protrude above the soil, and then be stuck about 3 feet into the soil, that makes, does it, a different category?

A. Yes.

Q. That would make it of a different category, you say?

A. Yes, sir.

Q. Why would it not be a different category where the board on the outside of the house is partly underneath the soil?

A. I could not tell you why.

672 Q. But you would not think it made any difference if a piece of outside finish was partly exposed to the soil and partly to the winds of heaven?

A. If you will allow me to explain, fence posts is of course an entirely different form of construction. If you put a post in the ground it comes in contact with the moist soil; the upper part of the post is supposed to come in contact with the elements, wet, dry, and sun, and they are entirely contrary treatments, almost.

Q. Do you distinguish between pondosa pine and California white pine; are they two different varieties of lumber, or are the same variety, or what is your understanding?

A. In our classification they are different.

Q. They are different?

A. Yes, sir.

Q. Do you understand that they come from a different variety of tree?

A. You mean a different species?

Q. Yes; a different species of tree.

A. The species is called the same, yet there is some difference in the tree.

Q. Do you know where the pondosa pine comes from?

A. Yes, sir.

Q. Where?

A. All the Western States.

673 Q. Including California, Arizona, and the Southwest?

A. Yes, sir; practically every State in the Northwest and on the Pacific slope have some.

Q. Did you finish your answer?

A. Practically.

Q. Where does California white pine come from?

A. California and Oregon.

Q. Do you buy lumber, that is billed to you as pondosa pine, from the entire territory that you referred to, as territory where the pondosa pine grows?

A. We might, but we don't.

Q. Where do you buy it from?

A. Most from Oregon and Idaho and western Washington.

Q. What part of Oregon do you buy the lumber that is billed to you as pondosa pine from?

A. Most of it east of the central and southeastern.

Q. Do you remember the name of the concern through which you buy that in that part of Oregon that you refer to?

A. You mean what the name of the concern is where we buy the pondosa pine?

Q. In Oregon; yes, sir.

A. Is that an important question?

Q. If you do not want to answer, I won't press it.

A. It is a commercial matter.

Examiner SHEPPARD. I don't want you to divulge any of
674 your personal trade matters.

By Mr. BURR:

Q. Do you remember when the pondosa pine first came into the market under that trade name?

A. Well, I would not be very definite; I might say possibly ten years ago; maybe eight.

Q. Were you buying the same type of lumber before that?

A. Yes, sir.

Q. Under what trade name?

A. Western white pine.

Q. In what respects do you distinguish between pondosa pine and California white pine in the general character of the wood, as lumber?

A. I guess you will have to explain that question a little bit.

Q. I think you said that you distinguished between pondosa pine and California white pine as two varieties of lumber from a practical,

commercial standpoint; did you not? If I misunderstood you, set me right.

A. I will tell you, I admit that California white pine and ponderosa pine come from the same species of tree, but differ as to the product of the tree because of the location of the timber where it is cut, and other things relating to that.

Now, when you ask me how I determine the difference, I don't know just what you want.

Q. They shade off into one another, I suppose, in character
675 and quality, do they?

A. The general appearance is quite similar.

Q. Where are you buying your California white pine from, what locality?

A. We buy some in what is called the Klamath Falls district; we buy some of it further south, I should say probably a couple of hundred miles; some of it in the central part and some in the central western part.

Q. When a buyer wants to get from you a wood that is valuable where exposed to the weather, you do not recommend California white pine, do you?

A. Well, as a rule, we would not.

Q. What would you recommend among your products?

A. We would recommend cedar, redwood, sugar pine, depending on the class of work that the wood is going to be used in.

Q. How large a percentage of your buyers get your advice on the subject of what wood to buy?

A. Very little at this time.

Q. Your buyers are retailers, manufacturers, specialty manufacturers, and millworkers, and are all pretty well posted on what they want, and they order by trade name, and you give it to them; is that right?

A. Yes, sir.

Q. You do not endeavor to be the guardian to your trade and tell them what they want, when they ask for something, do you?

676 A. Not necessarily.

Q. How often in the past year, would you say, that you have given advice as to what variety of lumber to use—just give us a rough estimate, how many times has that occurred?

A. I don't think that answer would be worth a nickel.

Q. That is my business, sir, if you will excuse me.

A. Pardon me.

Q. Can you give us your best answer on that, just your best judgment, how often that occurs?

A. Possibly twenty-five times, or possibly seventy-five or a hundred.

Q. Is that so? That is a pretty good number of cases. I am surprised that it is so large. You give them advice when the ques-

tion of durability comes up along the line you have suggested in that category of western lumber; is that so?

A. Yes, sir.

Q. Suppose you were asked for something to be used for pattern stock—does that question ever come up?

A. Yes.

Q. What do you recommend for pattern stock—is that what the retailer asks you for or what the millman asks you for?

A. That question does come up from certain sources.

Q. All right; what advice do you give on pattern stock?

A. Our first choice for pattern stock would be California sugar pine.

677 Q. Why?

A. Because of its texture.

Q. What is the texture?

A. The texture means whether it is hard or easy to work, principally.

Q. Now, what is your second choice on pattern stock; have you any, or do you just recommend sugar pine and let it go at that?

A. No; there are others of these that can be used.

Q. What else? What would be your second choice among the woods that you handle?

A. Well, I would say Washington white pine, if I could get it.

Q. Is that the same as Idaho white pine, do you mean?

A. Practically the same, only it is a little different.

Q. You do not happen to know the botanical name of that tree, do you?

A. No; we just call it Washington white pine.

Q. Where do you buy that?

A. Close to the northern and central part of Washington, mostly on the west side of the Cascades.

Q. Is that the same variety of tree which you know as Idaho white pine?

A. Practically the same, but somewhat different on account of its location and growth.

Q. You mean there are local differences in the same tree; is that the idea you have in mind?

678 A. No; it will go a little further than that.

Q. How far?

A. I am not prepared to give you the scientific side of it.

Q. No; I do not expect that.

A. Only in a general way.

Q. Your office handles Idaho white pine, and you did not mention Washington white pine when you mentioned these varieties of lumber you handled?

A. Possibly not, because there are so many. Your last is not a question and should not have an answer.

Mr. BURR. Will you read that question, please?

(The question was thereupon repeated by the reporter as above recorded.)

The WITNESS. That is not a question.

Q. All right, I will ask you a question. Why did you not mention Washington white pine when you listed for counsel for the defense the different types of lumber that you handle from the western coast?

A. I did not remember it. I also left out some other woods.

Q. You do not know whether the variety of white pine that you secure from Washington in that district, that you just described a moment ago, is the same variety of tree as the lumber that you receive under the trade name "Idaho white pine"; is that true?

A. I think it comes from the same species.

Q. Do you understand whether or not that species, Idaho white pine and Washington white pine that you buy is the same
679 species as California white pine?

A. They are not, in my opinion.

Q. Are they the same species as the pondosa pine, in your opinion?

A. No.

Q. You are sure of that, are you?

A. As sure as I can be of anything.

Q. Is the sugar pine a different species from any of those four that we have just referred to?

A. Yes, sir.

Q. Is northern pine a different species than any of those we have just mentioned?

Mr. MATTHEW. Do you mean northern white pine?

By Mr. BURR:

Q. Yes; northern white pine, thank you.

A. It is considered to be the same species, and yet those different woods have different botanical names. There are some differences in the woods, and I am not able to say from a scientific standpoint whether they are exactly the same thing in every respect or not.

Q. You now know which are white pines and which are not white pines, of those various western pine woods?

A. Am I asked a question?

Q. Yes.

A. I don't know just what you mean by your reference to white pines.

680 Q. I will say the record shows that there are two groups of pine; that all pines are grouped under two categories, the white-pine group and the yellow-pine group; now, do you know whether northern white pine belongs to the white-pine group or not?

A. It is considered so.

Q. Do you know whether the Idaho white pine belongs to that group?

A. It is considered that same species.

Q. These are several species belonging to one group?

A. That is where you define your species; do you mean other characteristics or using the botanical name, or what?

Mr. MATTHEW. The examiner understands that I have not offered this witness as a botanist?

Examiner SHEPPARD. Yes.

Mr. BURR. I am simply exercising my right under the broad powers of cross-examination.

Mr. MATTHEW. Your powers on cross-examination are broader than mine were yesterday.

Mr. BURR. I don't think so.

Examiner SHEPPARD. Go ahead; let us not waste time in arguing.

By Mr. BURR:

681 Q. To which group does the California white pine belong, if any? Is that a member of the true white-pine group, or does that belong to the yellow-pine group?

A. It belongs to the yellow-pine group.

Q. Where does the pondosa pine belong?

A. I think it belongs to the same group.

Q. Where does the Washington white pine that you referred to belong?

A. That belongs to what you call the other group.

Q. The white-pine group?

A. Yes.

Q. I believe you testified on direct examination that you seldom or never, whichever it was, that you never had any call for white pine without designating the species?

A. Very seldom.

Q. You do on occasion, do you?

A. I presume we do.

Q. Do you know what you furnish under those circumstances?

A. We do not furnish anything.

Q. What do you do?

A. We find out what the customer wants.

Q. And then you make him specify what species it is or what trade name it is, and then you furnish it; is that true?

A. If we can.

Mr. BURR. That is all.

682 Redirect examination by Mr. MATTHEW:

Q. Perhaps counsel will allow me to ask one question which I should have asked on direct examination; I would like to ask Mr. Lane, if the question is not embarrassing, if his business is one of the large lumber businesses in this territory; are your operations here regarded as quite large?

A. I think you could get that information possibly from someone else better than you could from me.

Q. If it is an embarrassing question, I shall not press it.

By Examiner SHEPPARD:

Q. Are you familiar with Pinus strobus?

A. Yes, sir.

Q. What does that indicate to you?

A. That indicates to me that the party making the inquiry would want pine that would come from what we call the eastern part of the country.

Q. In other words, northern pine?

A. Yes, commercially speaking; although you can buy Pinus strobus in North Carolina.

Q. Another query which I think you can answer—I want you to tell me from your experience and knowledge of woods how the so-called "white pine of California and the pondosa pine" compare in durability to the Pinus strobus or the northern pine?

A. You want to know how California white pine and
683 pondosa pine compare with Pinus strobus?

Q. As to durability?

A. Pinus strobus would be better.

(Witness excused.)

JULIAN A. RICE, was thereupon called as a witness and, having been duly sworn, testified as follows:

Direct examination by Mr. MATTHEW:

Q. What is your business, Mr. Rice?

A. Wholesale lumber.

Q. Where is your place of business?

A. New York Central Terminal.

Q. Throughout what territory, generally, do you distribute lumber?

A. New Jersey, New York, Massachusetts, Connecticut.

Q. How long have you been engaged in the wholesale distribution of lumber in this territory?

A. About nineteen years.

Q. Continuously?

A. Yes, sir.

Q. What kind of lumber do you distribute?

A. A very general lot—yellow pine, North Carolina pine, red cedar, pondosa pine, California white pine, Idaho white pine, spruce—I guess that is all.

684 Q. What is the general nature of your trade, Mr. Rice?

A. Almost entirely with retail lumber dealers and box manufacturers.

Q. Do you carry California white pine?

A. Yes.

Q. Throughout what period have you been selling California white to your trade?

A. As long as I can remember; I don't remember whether it was the whole period of nineteen years, or fifteen years of it—a long time, anyway—fifteen years or more.

Q. Has the name "California white pine" been used during that period to designate this lumber?

A. Yes, sir.

Q. And you have been familiar with it during that time?

A. Yes, sir.

Q. Will you state whether or not that name of California white pine is well understood in the lumber trade in New York City and vicinity?

A. It is well understood.

Q. When you receive orders for California white pine, are the orders placed under those terms?

A. Yes, sir.

Q. Do you ever receive an order for white pine, without any qualifying term?

A. I do not remember ever having one; I might have, but
685 I don't remember.

Q. I think you stated that you sell Idaho white pine?

A. Yes, sir.

Q. When a customer orders Idaho white pine, does he order it by that full term, "Idaho white pine"?

A. Yes; he does.

Q. Do you offer your California white-pine lumber to the trade as California white pine?

A. Yes.

Q. And not as white pine alone?

A. Not under any other name except California white pine.

Q. Do you invoice that lumber to your customers as California white pine?

A. Yes, sir.

Q. Have you ever furnished California white-pine lumber to any of your customers upon an order or in response to specifications calling for white pine only?

A. No, sir.

Q. Have you had any complaints by your customers upon the ground that the lumber which they had received from you or through you, as California white pine, had been misrepresented as to its character or as to its identity?

A. Never.

Q. There is no claim of deception or misunderstanding in
686 any respect?

A. No.

Q. Do you think your customers know exactly what they are getting?

A. I am sure they do.

Q. Your customers are well informed what is meant by these various trade names?

A. I think they are.

Q. Are these several lumbers or varieties of lumber which you carry sold on their merits; that is, for their quality and uses, irrespective of particular names?

A. Yes; they are all sold for purposes for which they are most suitable according to their characteristics.

Q. Do you find that the use of the term "California white pine" occasions any misunderstanding as to whether this lumber is obtained from some tree that is botanically classified as a white pine?

A. I do not think most people know the botanical names, so I do not think that there would be any question as to what the botanical name is.

Q. The trade hasn't any interest in that?

A. The trade has not any interest in the botanical names; they don't know them, and I don't know most of them.

Q. Mr. Rice, there has been testimony given by a sales representative of the Weyerhaeuser Lumber interests to the effect
687 that the Weyerhaeuser interests are losing orders to California white pine in three classes——

Mr. BURR. If the examiner please, I am going to object to that method of asking that question. Can he not, without bringing into the foreground what was testified by another witness, ask his questions, without showing that the witness is supposed to rebut certain matters?

It seems to me objectionable, suggestive, and leading. Why not ask the question and bring out these three alternates and try to rebut it in that way? As the question is put now, it seems to me exceedingly objectionable.

Mr. MATTHEW. Do not argue about it. I will defer to you immediately. I thought you wanted me to proceed along those lines in the interest of time saving.

Examiner SHEPPARD. All right, proceed.

By Mr. MATTHEW:

Q. Do you know of any retail lumber dealers or any other customers of yours who know that California white pine is not a true white pine botanically, but that they feel free to offer it to the trade as a true white pine, so called, because it is invoiced to them as California white pine?

A. I do not know of any such cases. Of course, I do not generally know how my customers sell their lumber, because I am not there to see them do it.

Mr. MATTHEW. I think that is all.

688 Cross-examination by Mr. BURR:

Q. You say you do not know the botanical names of some of these trees?

A. No; I do not know all of them.

Q. Botanical names are not known in the lumber trade very much, are they?

A. Not generally.

Q. You would hardly be expected to know them, to meet the questions that come to you from the trade?

A. If I used botanical names, my customers would not know what I was talking about.

Q. Which of the varieties of pine that you carry do you understand to be genuine white pine?

A. The Idaho white pine and California sugar pine.

Q. Do you handle any Northern white pine?

A. We have possibly in the last year sold one car because of special request, and we bought that from another wholesaler. We do not regularly buy it from any white pine mills.

Q. Do you know whether that is genuine white pine or not?

A. Northern white pine?

Q. Yes.

A. I could not prove it.

Q. What is your understanding?

A. It is my understanding that it is.

689 Q. Do you know whether or not the California white pine belongs to the classification of genuine white pine?

A. I understand that it does not.

Q. Does pondosa pine belong to the white-pine group?

A. I understand that does not.

Q. And that has been your understanding for a long period?

A. Ever since we have been handling them.

Q. How long have you been handling pondosa under that trade name?

A. I cannot remember when they changed the name from western pine to pondosa, but it was since that time, I suppose, seven or eight years.

Q. Do you understand that the ultimate consumer of various classes of woods is familiar with what is to be delivered under the various trade terms?

A. Who is the ultimate consumer?

Q. The builder, contractor, or owner?

A. I do not know whether you meant him or the man who lives in the house. I presume the contractor and builder is, but the person who occupied the house probably is not, but that is just guesswork; there are so many classes of people, some are very intelligent, and many of them are very stupid, like the rest of us.

Q. Would you regard genuine white pine or northern white pine as having any significance in the lumber trade?

690 A. I do not quite understand what you mean by "significance." I understand it is a wood that has been used in the East here for a good many years; it is very find and very nice wood; it is one of the first woods that the settlers in the colonial days used.

Q. What is the reputation of that wood, we will say, for durability?

A. It is very durable.

Q. What is its reputation for texture?

A. Very nice, soft texture.

Q. Nice, soft pine texture?

A. Yes.

Q. What is its reputation as regards ability to stay in place?

A. It is very good for staying in place.

Q. Do you regard Idaho white pine as having similar characteristics?

A. Yes. Not exactly, but very much the same.

Q. Do you regard California white pine as having similar characteristics?

A. They have some of the characteristics.

Q. Which ones?

A. Well, characteristics which they have would be durable, lightness in color, and lightness in weight, compared with some kinds of pine.

Q. And some is similar in texture?

691 A. Some is similar in texture; that is what I meant.

Q. How about durability?

A. It is not as durable, I understand, as northern white pine.

Q. Do you find that California white pine varies in quality in various parts of the range where you ship it?

A. Most of the stock we ship is California.

Q. Where in California?

A. Klamath Falls and some a little south of Cloud River.

Q. Do you sometimes buy that wood from some other locality?

A. We have had it from other localities, but not to any great extent.

Q. Do you regard Klamath Falls district preferable, and is that why you order it from there, or why is it?

A. It is lighter.

Q. It is lighter in color or weight?

A. Lighter in weight, and probably softer in texture.

Q. Do you think the word "white" as connected with California white pine would or would not have a tendency to cause a buyer who was not well posted on woods to regard the California white pine as belonging to the white pine group?

A. Any buyer who is not well posted on woods might not, of course, know anything about white pine, and he is very apt to say simply that he wanted shelving board or something of that sort.

692 Any of our customers that buy of us would know immediately that if we said California white pine, we meant that kind of wood.

Of course, I do not know whether a person who never heard the words "white pine" would know anything about it, and he would not know whether it was a good or a poor wood.

Q. I think you stated that northern white pine had a high reputation here?

A. Yes.

Q. In this part of the country, particularly?

A. Yes, sir.

Q. Other witnesses have stated that customers ask, on occasion, for white pine; I want to ask you whether the use of the word "white" in connection with the product California white pine would or would not, in your judgment, afford a means of misleading the ultimate buyer, getting California white pine, into thinking that he was getting genuine white pine?

Mr. MATTHEW. Just a moment; I will object to that unless you reframe the question. Ask the witness whether it does; you asked whether it would, and that is purely speculative, and it is asking a question which this witness cannot answer.

Mr. BURR. I think, if the examiner please, that this witness has testified on direct examination to a number of matters of opinion, and it seems to me this question is appropriate. If the examiner does not recall the question, I will ask to have it reread.

Examiner SHEPPARD. Read the question, Mr. Reporter.

693 (The question was thereupon repeated by the reporter as above recorded.)

Examiner SHEPPARD. That is a question, Mr. Burr, that the Commission has to decide from the testimony in this case. As to Mr. Rice's opinion on it, I do not think that would be helpful one way or another, in any shape or form.

We have to rest this case, as you know, on facts. The Commission has to make up its final decision on the facts and not on opinions of witnesses.

However, I will allow the witness to answer it, although I will give it probative value.

Mr. MATTHEW. Mr. Examiner, I was only objecting to the word "would."

Examiner SHEPPARD. All right, Mr. Rice, let me have your opinion.

The WITNESS. I think you asked me whether the word "white", used in connection with California white pine, would influence somebody to think that it was not California white pine, but true white pine?

By Mr. BURR:

Q. Might lead them to think that California white pine itself was genuine white pine?

A. I do not think I can answer that. I do not know what kind of an answer you would expect of me. I think that would be kind of a guess, would it not; it depends entirely on who you

694 asked it of.

Q. Do you regard the term "California white pine", in the respect of containing the word "white" in that name, when it is admitted by you, I believe, that the California white pine is not a

true white pine, do you regard the use of that word "white" as having the capacity or tendency to mislead?

A. I do not regard it as such in the use, in the industry. I think, of course, it might mislead a boy in school, if you asked him about the tree, or something like that, but in the lumber industry, I do not think it is misleading.

Q. You do not think it is misleading to the retailer?

A. I know it is not.

Q. How about the consumer, he is a boy in the lumber business, is he not?

A. It depends on who the consumer is. If the consumer is a contractor or builder, or if the consumer is a man who manufactures things out of wood, I do not think he is. He knows the kind of wood he wants to use for the purpose. I imagine the man who lives in the house, very likely doesn't know anything about it; does not know whether it is white pine, yellow pine, spruce, or hemlock; all he knows is the house is built.

Q. That ultimate consumer knows something of the reputation of white pine in this neighborhood, does he not? White pine has reached the ultimate consumer as a matter of reputation, hasn't it, as a term?

695 A. I really do not know. I should think the man would have heard of the words "white pine", certainly.

Q. When he goes and asks for white pine, is there not a tendency for him to get California white pine, and accept it, when he asks for white pine from this trade term?

A. You are asking me what somebody else would do?

Q. I am asking you for a tendency.

A. I don't know anything about the tendency. I do not want to argue with you, but you are asking me what somebody else is going to do. I don't know. I know we would not, if anybody asked us for white pine, we would not sell California white pine.

Q. I understand that; I am not impeaching your integrity in the slightest. I think that is perfectly clear.

A. Whether somebody else would do it, I don't know.

Q. I asked for your opinion, after long years of handling lumber, whether or not in your judgment the use of the word "white" in connection with California white pine, in the territory where white pine has had a reputation for generations, has or has not a tendency or capacity to mislead the ultimate consumer who knows the white pine reputation?

A. I do not think the word "California" white pine would have anything to do with it. If a substitution would be made, the man would readily substitute pondosa, just as soon as he would Cal-

696 ifornia white pine. It is the appearance that would call for substitution.

A man who goes into a lumber yard to buy lumber, and he says he wants to buy white pine, and, if the man did not have true white pine, he would bring out something that looked like it; spruce, Cali-

fornia white pine or pondosa pine, or any wood that he wanted to make a substitute of, and the party who was buying it, if he thought it satisfactory, would take it. I do not think the word "white" in connection with California white pine would be brought into it. I do not think the lumber dealer would say he had California white pine, if he wanted to substitute.

Q. If the lumber dealer said, "We have Idaho white pine", would he or would he not be selling genuine white pine, if he sold the Idaho?

A. He would be selling genuine white pine.

Q. What if he said, "We have California white pine", would he or would he not be selling genuine white pine?

A. No; he would not be selling genuine white pine.

Q. Do you or do you not believe that the California white pine pile would be easier to sell, because he would be able to say, "This is California white pine", than a stack which is made up of pondosa, where, if the purchaser asked what it was, he would have to answer, "pondosa", which did not include the word "white"?

697 A. You are asking me if a man who wants to cheat is willing to go one step further, and cheat with pondosa white pine or California white pine. My answer is, if he is going to cheat, he will say, "I have white pine."

Q. Is it not easier to sell as and for white pine something that is called "California white pine", than to sell something without the use of the word "white"?

A. Well, it might ease his conscience.

Q. And it might be easier to put it over, would it not, because it has the word "white" in it?

A. The word "white" does not appear on the lumber, and he would not show the invoice, because he would not want the customer to see the prices at which he bought it.

Q. When a customer comes into a lumberyard and says, "What is that?" and he is answered, "California white pine", does that not help to sell it for white pine?

A. Possibly it would be easier than if it were some other name.

Q. That did not have "white" in it?

A. If you called it by some other name that was not known, a man would have to describe it to him——

Q. If it did not have the word "white" in it, it would not be as easy to sell it for white pine than if it did have the word "white" in it; isn't that true?

A. I suppose that is so.

Q. You say you have no complaints with regard to misrepresentation; the complaints of the ultimate consumer go to the

698 retailer rather than to you, or would they come to you?

A. They would not come to us unless we, in turn, misrepresented it. If we sold exactly what the man bought, they could not come back to us.

Q. The buyer could not come back to you, you say?

A. No; if we sold what he intended to buy.

Mr. BURR. That is all.

Redirect examination by Mr. MATTHEW:

Q. I would like to ask you, Mr. Rice, whether in your opinion this term "California white pine" is best adapted to characterize this particular lumber, and if so, why?

A. I think it describes the lumber accurately, because it is light in color and weight and resembles white pine in those characteristics and comes from California. I know that our customers draw distinctions between California white pine and pondosa, but if we called it all the same thing, there would have to be some distinctive name so that we could sell them one wood in preference to the other.

Q. Does the California white pine resemble the typical southern yellow pines in any respect?

A. It does not. Southern yellow pine is heavy and pitchy, very hard. Those are the common characteristics about it, especially the hardness.

Q. Southern yellow pines are used generally for far differ-
699 ent purposes?

A. Yes; for timbers and that sort of thing.

Q. So far as appearance, quality, and utility are concerned, is this California white pine lumber more nearly like the so-called true northern white pine lumber than any other?

A. I don't know about any other.

Q. I mean does it more nearly resemble the northern white pine than the yellow pine?

A. Oh, yes.

Q. Counsel has suggested that the use of this term "white" might have a tendency to deceive a customer or the ultimate consumer as to the lumber which he is getting; do you know of any such case where he has been deceived?

A. No. I know of no case where there has been any deception practiced.

Q. It is just as easy to practice substitution or deception if a dealer is unscrupulous, irrespective of the name under which the lumber is distributed to the general trade?

A. Yes; I think if he is going to start out to deceive and he has an opportunity to do so he may practice the substitution on any boards.

Q. If a radical change were made in the present name of California white pine, would it, in your opinion, be likely to result in some confusion in the trade?

A. I cannot think offhand of any name that would as accu-
700 rately describe the lumber, if that is what you mean. I cannot think of any other name that would describe it more accurately.

Q. You think that term describes the lumber most accurately?

A. It does to my mind.

Q. It would be entirely possible for an unscrupulous lumber dealer to furnish spruce for white pine if he desired to do so?

A. I am sure he could with certain kinds of spruce.

Q. In other words, the name has nothing to do with it when it comes to substitution?

A. Very often the name does not enter into it at all.

Mr. MATTHEW. I think that is all.

Re-cross-examination by Mr. BURR:

Q. If someone furnished spruce when white pine was ordered, and it was so shown, it would be a palpable fraud, wouldn't it?

A. Yes, sir.

Q. Suppose somebody asked for white pine and California white pine is furnished, does not that present a radically different situation?

A. In what way different? I do not understand.

Q. A man asks for white pine and gets California white pine; it is not deception in the same class as furnishing spruce when white pine is ordered, is it?

A. It would be if the seller was attempting to deceive him. I do not see that the degree of deception would make any difference.

701 Q. The retailer might say, "I bought it as white pine—California white pine."

A. The retailer knows very well he has not bought true white pine, but has bought this wood called California white pine, which is the same as pondosa.

Q. You think it is deception to sell California white pine on an order for white pine, do you?

A. Yes, sir.

Q. But do you think that the retailer would feel that he was somewhat fortified if he were able to say, "I bought it as California white pine; I am not familiar with the varieties of trees on that, and I do not know whether it is genuine white pine"?

A. No; not if he knew that he was lying, and I think he would know it.

Q. Nevertheless, with the word "white" included in the name, does that or does that not operate to afford a better opportunity for the retailer to sell California white pine as and for white pine?

A. My answer to that is, if a man is going to deceive, I suppose it gives him a chance to pretend to himself that he has not deceived as much in that event, but it does not alter the fact that he is guilty of deception.

Q. In the instrumentality of deception there is a difference, is there not?

A. It might ease his own conscience, but I do not see how

702 it has anything to do with the matter of deceiving—I do not see how it can even ease his conscience; it is silly to say that.

Q. You say that the trade term "California white pine" describes the lumber well?

A. It does to my mind.

Q. You think it describes the lumber well in point of color?

A. Yes, sir.

Q. You think it describes the lumber well in point of texture?

A. Yes, sir.

Q. Let me ask you, does it describe the lumber well in point of durability, when you have in mind the durable characteristics of the other white pines that you have described?

A. No; I do not think it does describe it in that particular as well, because I know it is not as durable as the other pines.

Q. Do you know any firm that is selling the same variety of tree as California white pine under the term "soft pine"?

A. That has not come to my knowledge.

Q. Would you regard that as a fairly good term, "California soft pine"?

A. I am afraid there might be some confusion between California soft pine and California sugar pine; it sound something alike. It begins with an "S", and if you say it repeatedly over the telephone, you might misunderstand it.

Mr. BURR. That is all.

703 Redirect examination by Mr. MATTHEW:

Q. Would that term "California soft pine" you think be an unsatisfactory substitution for California white pine?

A. I think it would be or might be possible, if you were talking to a man, for instance over the telephone, to misunderstand; he might be saying "sugar" for "soft"; they are somewhat alike; not exactly alike. Of course, if it were printed it would evidently not be the same word.

Re-cross-examination by Mr. BURR:

Q. In other respects, would you regard that a good term?

A. It is better than I thought of myself.

Q. Would you regard it better than California white pine, in view of the testimony?

A. No; I don't think it is as good as California white pine; it seems to me "white" describes the lumber very accurately.

Q. In view of the other white pines that are so diametrically different in point of durability, do you still contend that it is a good term?

A. I do, because never to my knowledge has there been any confusion.

Q. But you testified that the consumer——

A. I did not testify the consumer was confused.

Q. I did not finish—you interrupted me.

704 A. I beg your pardon.

Q. The consumer does not come to you with his complaint, and you do not get his complaints?

A. I do not get them at all.

(Witness excused.)

W. A. GAETZ was thereupon called as a witness and, having been duly sworn, testified as follows:

Direct examination by Mr. MATTHEW:

Q. Mr. Gaetz, what is your business?

A. I act as manufacturer's representative, selling lumber.

Q. How many years' experience have you had in the lumber business?

A. Well, practically all my life, that is, as a boy I worked in the woods in the winter, but I have been actively engaged in the manufacture and sale of lumber for 29 years.

Q. Will you relate your lumber experience in some detail from the very beginning, right down to date, Mr. Gaetz?

A. That is as a manufacturer, you mean?

Q. I wish you would start with your first experience in the woods.

A. My first experience in the woods would be logging.

Q. Where was that?

A. That was in Nova Scotia.

705 Q. In connection with what variety of timber?

A. White pine and spruce.

Q. Is there a northern white pine in this territory?

A. Well, it would be the so-called "white pine", the same as you would have in Maine and Michigan.

Q. Strobus pine?

A. Yes; with a little Norway mixed in with it.

Q. Now, will you continue, please?

A. From there I came to Maine, and I worked there in the manufacture of window frames, interior finish; from there I went to Spokane, Washington; that was twenty-six years ago, and I have been in that district ever since; that is, selling on the road, and for the past six years here in New York.

Q. How many years were you in the State of Washington?

A. Well, I have to figure it up—about nineteen to twenty years. I made that my home, but since 1917 I have been on the road practically all the time through the Middle West and here.

Q. Did you become personally familiar with the lumber industry on the Pacific Northwest during the period of your stay in Washington?

A. In the Spokane district; yes.

Q. With what varieties of lumber did you become particularly familiar?

A. I became particularly familiar with what you term now
706 "pondosa and Idaho white pine."

Q. You were in the mills?

A. Yes.

Q. You know something, then, about the manufacture of lumber?

A. Some.

Q. And you are familiar with the appearance and quality and utility of lumber?

A. Yes; to a considerable extent.

Q. What varieties of lumber did you sell when you made your home at Spokane and were engaged in distributing lumber?

A. Pondosa and Idaho, with fir and larch mixed in.

Q. Was pondosa pine sold under that name?

A. It was first sold under the name of "western white pine", then later on, about eight or ten years ago, they changed to pondosa—I don't know the exact date.

Q. You are now engaged in the wholesale business in New York?

A. No; I am not a wholesaler; I am selling to wholesalers and jobbers.

Q. You are a manufacturers' agent, I think you said?

A. Yes.

Q. How long have you been engaged in that business here in New York?

A. Since November 1923.

Q. Prior to that time you had experience in selling?

A. Yes; to the retail trade.

707 Q. Throughout what part of the United States?

A. Wyoming, Colorado, Nebraska, Iowa, North and South Dakota, part of Kansas, part of Illinois.

By Examiner SHEPPARD:

Q. The Middle West?

A. The Middle West.

Q. Your direct experience on the east coast has been what?

A. As a wholesaler in connection with sash and door jobbers; I only get to the retail trade when I am asked to go with someone else.

Q. What kinds of lumber do you sell or distribute?

A. Principally pondosa, some Idaho, and a little California white pine.

Q. Do you directly represent any manufacturer of California white pine?

A. No, sir.

Q. Do you represent any manufacturer of California sugar pine?

A. No, sir.

Q. Your principal interest then is in the pondosa pine?

A. What we term the inland empire district.

Q. You carry the Idaho white pine as well?

A. Yes, sir.

Q. Are you familiar with these various lumbers which are marketed here under the name of Idaho white pine, pondosa pine, and California white pine?

708 A. Yes, sir.

Q. How long have you been familiar with that term "California white pine"?

A. I first started to hear about it in 1909 in the Middle West; it was sold by the McLeod River Lumber Company, sold as California white pine; that was my first experience with it.

Q. Has it been sold under that name ever since?

A. To my knowledge; yes, sir.

Q. Is that term now well established in the lumber trade and well known to the lumber trade?

A. Yes; it is.

Q. As far as you know, is there any confusion or misunderstanding in the lumber trade as to the identity of the lumber that is sold under that name?

A. Not to my knowledge.

Q. Mr. Gaetz, you have stated that you carry principally pondosa pine; do you know whether or not the pondosa pine is obtained from the same species of trees which yield the California white pine?

A. As I understand it, botanically it is the same tree. The trees growing in different districts will have different little characteristics when cut into lumber.

Q. Right in connection with that, I would like to ask you, Mr. Gaetz, whether there is any well-recognized commercial distinction between the pondosa pine, which is distributed in this
709 territory, and the California white pine, which is likewise distributed here?

A. There is a distinction.

Q. Will you explain that distinction as carefully as you can?

A. The pondosa pine comes from a smaller tree; the knots are smaller, consequently the common lumber would have a smaller knot, so it would be a smoother board; when we come to the upper grades, the shop grades, that is from a larger tree and produces a softer-textured finish and wider. The shop lumber being wider, you have more cutting volume than you have from a narrower piece of lumber.

Q. You are referring now to California white pine?

A. California. As I understand it, pondosa pine is more desirable for common boards, because it is a smaller knotted timber, but when we come to the upper grades, then the California pine is more desirable, because it is a larger tree and is of softer texture.

Q. Then I gather from your testimony that the pondosa pine has superior utility for certain purposes, and that the California white pine, in turn, has superior utility for other purposes?

A. That is my understanding.

Q. Has that been your experience in the trade?

A. Yes, it has.

Q. Will you likewise explain to what extent the pondosa pine and the California white pine are in competition in this territory
710 with which you are intimately familiar?

A. Our molding business; we are in competition, that is, interior finish, and in common boards, in wider finish; the narrower finish from the pondosa is cheaper, so it sells over the California.

Q. Will you explain the differences in price for the two varieties or of the two trade names of the lumber in the different grades?

A. That is between California white pine and pondosa?

Q. Yes. Contrast, for example, pondosa common with California common and then proceed to other grades.

A. California common and pondosa common by rail rate is practically the same; California coming in by water and rail, they have a three-dollar differential in freight. That can be eliminated in a certain class of trade, but when we come to the finished lumber, the pondosa pine producing a lot of narrow stuff and they make a lot of narrow stuff at a low price, but they produce very little wide lumber, whereas California white pine produces very little narrow and a larger proportion of wide. They are higher priced on the narrow and lower priced on the wide.

By Examiner SHEPPARD:

Q. How about the comparison of the two from the standpoint of sap?

711 A. The pondosa will have a little more sap in the finish, because it is a smaller tree.

Q. I had the opposite idea; I thought the sap was eliminated on the first cut-off?

A. In the ponderosa tree your sap comes in the first cut, and as you get into the heart, you get the common lumber.

Q. So California pine has more sap?

A. It is a larger tree, and you get into the clear lumber after you get through the sap.

By Mr. MATTHEW:

Q. Is Idaho white pine in direct competition with the pondosa pine and the California white pine?

A. People who want Idaho white pine buy it. For instance, the price would tell you. Take, for instance, the six-, eight-, ten-inch common pondosa, the market price is supposed to be $45.25; the same thing in Idaho would be $51.50. Twelve-inch is worth $49.25, and twelve-inch Idaho is $57.50—I believe that is what it is; I am not positive about it.

Q. Is it recognized in the trade that the Idaho white pine has superior utility for certain purposes?

A. Yes, sir.

Q. For what purposes particularly?

A. From the lumber dealer's standpoint, who carries it in his yard, it is regarded as a softer lumber, looks nicer, and it is supposed

712 to last longer, but I think that is a question, because I do not think any of us know whether it will or not. These woods have not been used long enough to tell which will last the longest. The Idaho lasting qualities are based on the old eastern woods, which are graded entirely different.

Q. Is there a marked difference between Idaho white pine and your eastern lumber to which you have referred?

A. There is a difference, which the experienced lumberman can tell, but perhaps the average man could not tell.

Q. Are there differences between the two regarding their utility?

A. I do not know, because the eastern white pine has proven its lasting qualities, whereas Idaho is still going through that process.

By Examiner SHEPPARD:

Q. Both are used for exterior finish?

A. Yes, sir.

By Mr. MATTHEW:

Q. As a distributor of the pondosa pine, under that name, Mr. Gaetz, do you find yourself at a trade disadvantage because of the use of the name "California white pine"——

A. No.

Q. (Continuing). By the manufacturers or dealers in this California white pine?

A. No, sir.

Mr. MATTHEW. In this connection, Mr. Examiner, I think I may be allowed to refer to the paragraph in the complaint to
713 which this particular inquiry is directly responsive.

Mr. BURR. Is that part of the question?

Mr. MATTHEW. I am explaining to the examiner the purpose of the question. Subdivision K of paragraph 9 of the complaint, is my reason for this question.

Q. Why is it you believe you are not at a trade disadvantage because you use the term "pondosa", whereas the distributor of California white pine uses the latter term?

A. The name is well established with the lumber trade that I deal with. One is called "pondosa", and they know what you mean by that. When you say "California", they know what they are buying; that is, the wholesale and jobbing trade that I deal with.

By Examiner SHEPPARD:

Q. They know the difference in the woods?

A. Yes, sir.

By Mr. MATTHEW:

Q. From a business point of view, you have no complaint against the use of the term "California white pine" to describe this particular lumber?

A. No, sir; I have not.

Q. Is there any confusion or misunderstanding in the lumber trade as to what California white pine lumber is?

A. Not to the trade that I deal with; that is, the wholesaler and jobbing trade; they know, and through the Middle West where
714 I travel on the road, there wasn't any confusion in the dealers' minds, but back here, I don't get to go to the dealer very much, so I am not so well posted on what the dealer knows about it.

Q. For the proper protection and conservation of your business in selling pondosa pine, would you prefer that the term "California white pine" be retained by these California and Oregon manufacturers?

Mr. BURR. If the examiner please, I think preference is going still further than any of the questions which either side have asked thus far.

Examiner SHEPPARD. That is a question that the Commission has to decide, and I do not know that the opinion of this witness or any other witness would do any good. I shall bar questions on either side with reference to the very question that the Commission has to decide in this case.

Mr. MATTHEW. My question was addressed to the very definitely alleged statement in subdivision K of paragraph 9 of the complaint, and I think naturally a supplementary question to determine whether or not it is to the advantage of these people who are alleged to be at a disadvantage to have this particular trade name retained, is a proper question.

However, if the examiner still feels the question is unnecessary, I shall not press it, of course.

Examiner SHEPPARD. I did not get, Mr. Matthew, that that was your question. I thought you asked this witness the
715 question whether or not the trade should or should not retain those names.

Mr. BURR. He asked for his preference. Let us have the last question read.

(The question was thereupon repeated by the reporter as above recorded.)

Mr. MATTHEW. I am not asking him to advise the Commission, but I am asking what is to his best interest as to the retention or loss of this term.

Examiner SHEPPARD. I will let you answer.

A. My preference would be to have it retain California white pine.

By Mr. MATTHEW:

Q. Are these several varieties of lumber selling on their merits in this market, Mr. Gaetz?

A. Yes, sir.

Q. Because they have utility for certain purposes and uses?

A. The very reason that a man will pay from $5 to $7 more for Idaho white pine he must believe in its merits or he would buy the cheaper stuff, would he not?

Q. Is Idaho white pine graded somewhat higher—that is, somewhat more strictly than pondosa or California white pine?

A. It is graded under the same rules, but, being a smaller tree, the stock is somewhat smoother lumber, and when graded, for instance, a pondosa knot will check because it is solid, because it
716 shrinks, whereas an Idaho white-pine knot is smaller and you do not get that checking.

Q. Is Idaho no. 3 common about as good as no. 2 pondosa common?

A. In some cases it will replace pondosa no. 2, but not always, because Idaho no. 3 may have some dry rot strak' in it which the pondosa will not have, but a knot defect would be a similar proposition.

Q. Does the Idaho white pine lumber characteristic in different thickness vary from the pondosa pine lumber?

A. I have always thought that, especially in the thicker common, 5/4, 6/4, and 8/4 Idaho will stay in place in a man's yard better than pondosa of the same thickness and not warp so much.

Q. Certain portions of your trade take Idaho white pine in preference to pondosa pine?

A. Yes, sir.

Q. In some parts of this territory, where Idaho white pine seems to be preferred?

A. Very much so.

Q. Can you explain that in some more detail?

A. I do not know how to explain it. We sell some window frames mixed with clear, with no particular demand for Idaho in common lumber, but where we haven't been able to furnish that Idaho we to lose the business. On one or two occasions we had a man try pondosa to see how he liked it; when he got it there he sold it as
717 pondosa, but his trade did not like it, so he would not buy any more. That happened a year ago, and we made a change.

Q. Then, on the other hand, you find certain portions of the trade that prefer pondosa?

A. The pondosa is handled more in the larger cities where they have cheaper buildings. It is a case of more of that speculative proposition.

Q. Do you sell a considerable amount of lumber or sell some lumber in northern New Jersey to retail yards?

A. No; I do not sell any to the retail yards myself.

Q. Can a practical lumberman readily distinguish between Idaho white pine and pondosa or California white pine on the other?

A. Very readily; yes.

Q. So far as your knowledge goes, has there been any complaint to the effect that California white pine has been furnished upon orders for so-called genuine white pine?

A. Not to my knowledge.

Q. I want to ask a question about durability of the lumber, Mr. Gaetz. Is heart wood more or less durable than sapwood?

A. Yes.

Q. Heart wood is more durable?

A. More durable than sap.

Q. Is that true of all this species of lumber?

A. In all the species of pine lumber this sapwood will rot quicker than the heart. For instance, I have got here in the old inspec-
718 tion rules that sap was considered a defect, but in our new inspection rules it is not considered a defect; it was changed

so you can adapt it to the lumber. If you made sap a defect, we would not have any upper grades.

Mr. MATTHEW. That is all.

Cross-examination by Mr. BURR:

Q. You would not have any upper grades in what variety of lumber?

A. In pondosa, Idaho, or even California, if you took out the white sap, you would not have what they term "first and second clears."

Q. Is there any distinction, in your experience, in the proportion of heart wood and sapwood in pondosa as contrasted with the heart and sapwood proportion in Idaho white pine?

A. I think the pondosa will have a little more sap; that is, in what we call the upper grades.

Q. In the Idaho would it not be possible to get heart-wood grades eliminating sap as a defect?

A. It might be, but the inspection rules do not eliminate white sap.

Q. When was the change in inspection rules made?

A. I will have to go back a long way. The first grade rules, what we termed the Tonawando inspection, took in first and second grades, first and second clears, A and B selects and common; the first three grades were free of all sap.

719 Q. They had to be free of all sap under those rules?

A. Yes; then the others would admit a certain amount of sap on the reverse side. They took those grades and what they termed the "Mississippi Valley grades", which were adapted to that lumber, which changed it, and then when we took them up later about twenty-five years ago, I think, we eliminated the white sap entirely as a defect.

Q. Are there some orders that come in for lumber under the Tonawanda rules still?

A. I do not handle Tonawanda wood, but Tonawanda still have their inspections; they have still a little lumber that goes under the Tonawanda inspection, but I am not positive about that.

Q. That feature is something that you would naturally not come in contact with?

A. No; because I do not handle northern pine.

Q. When you say there is no confusion in the trade, you are referring to confusion in the mind of which class of persons?

A. Of the wholesaler, sash-and-door man, and retail lumberman.

Q. You believe that none of those three classes are confused in their minds as to the difference between California white pine and other so-called "white pines"; is that true?

A. I have never met anyone who was confused; none, to my knowledge.

Q. Let me ask you, do you testify also as to whether or not
720 the ultimate consumer knows the difference between California white pine and Idaho white pine?

A. No; the ultimate consumer, as I understand, is the man who buys the house and lives in it.

Q. It might be the builder and contractor, perhaps; do you know?

A. The contractor would know the difference between Idaho white pine and California and pondosa; he may not know the difference between pondosa and California.

Q. Between those two?

A. Between those two, but he would know Idaho and northern pine. There is some pine yet in Maine, and they will know the difference between those. As I say, they may be confused, however, between pondosa and California.

Q. You say he will know the difference between those two; let me ask you this: You regard the northern white pine as more durable than California white pine, do you?

A. All I can say is this: The northern white pine and eastern white pine have proved themselves by years and years of experience, but we have had these western woods for only about 25 years, and it is too soon to tell which will be the best.

Q. Which will be the best of the western woods, you mean?

A. Or how they will compare with the eastern woods. It is a matter of supposition that one will compare with the other, because we have not had a real test yet.

721 Q. But there is a difference in reputation between the northern white pine and the California white pine; is that so?

A. Oh, yes; there is a difference in reputation.

Q. Would you say that was on account of the years during which those buildings made from northern white pine have withstood the weather; is that so?

A. Well, the greatest difference is the working it; there is nothing that we have found yet that works as easily as this eastern or so-called "northern" pine.

Q. I am referring to durability.

A. I am not prepared to say.

Q. I am talking about reputation for durability.

A. Of course, northern white pine has its reputation for durability, because it has proven that; the others haven't that reputation, because that is still to be proven.

Q. Have you yourself any preference from the standpoint of durability between the western woods; if you were buying for your own home and were going to use a western pine for that purpose, upon which one would you place your dependence for durability?

A. If I was in the district where they carried Idaho white pine, I would use that.

Q. Why?

A. Because it would be there——

Q. Yes.

722 A. But if I would get to another district probably where the retail yard did not carry Idaho, I would then have to take

pondosa or California, whatever they had, but if the man had two kinds of woods, I would buy Idaho.

Q. For exterior finish, you mean?

A. Yes; for exterior finish.

Q. How about interior finish?

A. I would take pondosa or California, because I would get clearer stock.

Q. How about price; it would be a little cheaper, would it?

A. The interior finish in pondosa and California would be cheaper than Idaho of the same grade of lumber.

By Examiner SHEPPARD:

Q. It is cheaper in the upper grades, too, is it not?

A. Yes, sir. The interior finish would be upper grades.

By Mr. BURR:

Q. You testified that there was no confusion in the trade resulting from the term "California white pine"; do you regard the use of the words "white pine" in the term "California white pine" as having a capacity to deceive the ultimate consumer?

A. You are speaking about the man who owns the house now?

Q. Yes.

A. Well, the man who owns the house, that is, if he is buying a house, he does not know the difference, whether it is pine or hemlock. He knows it as a house. If a man is building a
723 home for himself, then his architect would write up the specifications and he would ask the architect's say-so on it. So if there were any confusion, it might be on the part of the architect.

Q. In the New England States particularly, do you know whether some of those old white pine structures are widely known and reputed for great age?

A. Yes.

Q. You have been in New England, have you?

A. Yes, sir.

Q. Have you seen any of those old white-pine buildings that have stood—nobody knows how long?

A. Yes, sir.

Q. Would you say that the people who built residences—homes in New England—would leave it up to the architect, or do they personally know the reputation of white pine?

A. I might say this: The man who would buy pine lumber from the West today, any kind of wood, on the reputation of those old homes, would be misled.

Q. I beg your pardon?

A. He would be misled. Even our Idaho, coming to him with sap and everything, would not compare with that wood much more favorably than any of these other woods.

Q. I believe you testified that you don't know whether Idaho would stand up with northern or not?

724 A. I don't know, but these old buildings that you speak of were probably of heart lumber, treated in a different way; we do not treat our western lumber that way, and it would be unfair to even ask Idaho people to guarantee their stuff to last with this stuff. Lumber has to be treated well to last.

Q. You mean it has to be painted and all that sort of thing?

A. Yes, and keep the sap out. White sap will rot any lumber, I don't care what it is.

Q. When a man in New England asks for white pine and calls upon his architect to specify white pine, do you or do you not think that in case he was asked to substitute, he would be more apt to substitute western wood that used the word "white pine" in its trade term than if it did not have the term "white" in its trade term?

A. I do not think the word "white" would have anything to do with it. That is my personal opinion, you understand.

Q. And do you think that the man who wanted white pine for exterior finish for his residence would be equally likely, if called upon to substitute, to secure Idaho white pine or pondosa white pine interchangeably?

A. There is one thing you understand, that the retailer who carries pondosa pine would not have Idaho; if he carries Idaho white pine, he possibly would not carry pondosa, as a usual thing.

725 In a great many cases of the ordinary small house, which I am talking about, the fellow comes for finish, and the retail dealer puts in any grade or kind of lumber.

Q. This man we will say calls for and wants white pine; he finds that it is high in price, perhaps, and he says, "Can I get some western wood that will do the work"; would he not be more apt to accept Idaho white pine than pondosa?

A. Yes; if he could get Idaho, he would accept Idaho first.

Q. Does not the word "white" in the term "Idaho white pine" assist in meeting that particular type of lumber for the builder who desires white pine and is willing to substitute a western wood?

A. I don't think the "white" has anything to do with it; it is the wood.

Q. Do you or do you not think that the man who is asked for white pine would or would not be willing to substitute a genuine white pine rather than a pine that was not a genuine white pine, if he had to substitute?

A. If he were taking a genuine white pine, he would not be substituting, would he?

Q. If he would be taking Idaho white pine, would he be substituting?

A. If he was basing his contention on eastern white pine, and took Idaho, he would be substituting that for eastern white.

Q. Would he be more apt to substitute a wood from the genuine white pine group than he would to substitute something not

726 from the white pine group at all?

A. He would be more apt to substitute the Idaho because it looks like the same kind of lumber, in a way.

Q. And he could be correctly informed that it was genuine white pine, in the case of Idaho?

A. And he should be also informed that it was not the same kind of white pine that he had in mind.

Q. But would he or would he not be more apt to substitute something that could be truthfully stated to be a true white pine?

A. Yes.

Q. A man who wants northern white pine, and finds it high in price, would he or would he not be apt to accept a substitution of a wood which was designated California white pine rather than take a type of lumber which did not have the word "white" in its trade name?

A. I do not think so.

Q. You don't think so?

A. No, sir; I don't think the word "white" in the California would have anything to do with it, because the lumber is too apparent in appearance.

Q. It is too what?

A. It is too apparent.

Q. Take some of that white pine lumber, for example, that is very white and soft in texture, would you say that the everyday house builder could tell the difference between California white
727 pine and Idaho white pine?

A. The contractor could, not the ultimate consumer—he could not, but the contractor could.

Q. But sometimes the contractor's interests are a little different from the ultimate consumer's?

A. The lumberman cannot control those things.

Q. To return to the original question—here is a grade of white, beautiful California white pine, nice and soft in texture and looks a great deal like that of genuine white pine, does it not?

A. No.

Q. It looks a good deal like Idaho white pine, doesn't it, superficially?

A. When you get up to it, there is a vast difference.

Q. Do you think I would be able to go over and tell the difference between Idaho white pine and California white pine by eye?

A. I might put it this way: There are lots of metals which are mistaken for gold, but gold is never mistaken for any other metal; the qualities are there; you may not know what it is, but you know it is different.

Q. You would not think that California white pine in its softer, whiter types, could be mistaken for another of the genuine white pines; I am not talking about the contractor or builder, I am talking about the ultimate consumer?

A. He may not know that it is Idaho, but he will know that
728 it is different.

Q. Mr. Witness, there are a number of exhibits or proposed exhibits in the room of various types of lumber. Do you mean to say that the average consumer can say that this (pointing to one of them) and this over here (pointing to another) belong to the same species of tree, and pick them out and identify them as to species?

A. The layman would not know what tree they belong to, but he would know that there was a difference in the pine.

Q. Do you mean to say that he could pick and sort those samples and say, "These belong together" and "These are separate"?

A. Not the ordinary fellow who buys a piece of lumber, but he would know the difference in the texture of the pine as soon as he sees it, and tell the difference between Idaho and California.

Q. You think that the average consumer can go to those samples there and say, "These two belong to the same species" and "These two belong to the same species"?

A. He would not know the species, but he would know the difference in the general look of the lumber.

Q. I am not talking about species; do you think he can separate them and say, "These belong together and those belong to another species"?

A. Yes, I think he could. I may be mistaken, but I think he could.

729 Q. You think the consumer, then, is protected by his eye from getting a substitute, do you?

A. Usually when the consumer gets that substitute in his house it is painted, so that the eye would not know anything about it.

Q. But he may go over there and look at lumber delivered on the job?

A. You do not get what I mean. I mean that as between those two pieces of lumber that this fellow would know one from the other, yet he would not know which was the best.

Q. I understand that.

A. So his eye would not do much good in protecting him.

Q. You say, as I understand you, that it would be impossible to substitute California white pine for the genuine white pine because the consumer himself would know the difference.

Mr. MATTHEW. No; he did not say that.

The WITNESS. I did not say that, and I did not intend to say it.

By Mr. BURR:

Q. Did you say, when it came to substitution, and the consumer is bound to take a substitute, that California white pine could not be substituted for Idaho because he could tell the substitution?

A. What I was trying to say is the difference between them is pronounced enough so that any person can tell that it is dif-
730 ferent, that is, that Idaho white pine is different from California white pine, by looking at it; he may not know what

species it belongs to, but it is different looking; and he may not know it is any better than the other, but he knows that it is different.

Q. That, you think, to be true in the case of the whiter and softer types of California white pines?

A. Yes, I do; that is, to the average person, I am talking about; people of average intelligence that would give it any thought. I am not saying he could tell which is the best, you understand.

Q. I understand. Do you think that there is a capacity in the term "California white pine" to facilitate, make it easy, where the dealer is going to substitute for northern white pine, some western white, do you think there is a capacity and tendency, by the use of the word "white" in connection with California white pine, to enable that to be sold as readily or nearly as readily as Idaho white pine?

A. You are speaking now of the retail-lumber dealers?

Q. No; I am speaking of the consumer.

A. The retail-lumber dealer selling it to the consumer?

Q. Yes.

A. You see, there is another side to that. Usually the retail dealer either has Idaho, pondosa, or California. The man comes in and asks for pine and gets whatever he has, because he buys a pine
731 that his trade will use. Therefore you take the person who carries Idaho white pine, that is all you would have to give him; if he had pondosa or California, and he asks for Idaho, the dealer goes around to some yards where they have nothing but Idaho—it is usually a case of what the dealer has is what the fellow gets.

Q. So, in your opinion, it is just a case of happen-so; when a man goes to a dealer who has California pine or Idaho pine, he gets whatever the dealer happens to have?

A. Usually all the dealers in that particular town would carry the same kind of lumber; that is, the great majority of cases, the great majority of the lumber dealers carry a particular kind of lumber, either Idaho or pondosa, and if you go through a district where they carry Idaho, it is almost impossible to sell pondosa, because their trade is educated for that kind of stock; to them it is pine, that is all it is.

Q. So that when it comes to substitution of something for northern white pine, when the customer wants white pine, it would depend upon whether the dealer had California white pine or Idaho white pine, would it?

A. Yes; to some extent. The idea is this: Usually the man carries the lumber that his trade demands. In the large cities you will find yards that have all kinds of lumber, so that he can get what he wants, but in the country towns, here it is usually Idaho, but in the country towns in the West or Middle West, rather, it is usually pondosa.

732 Q. Have you seen California white pine cut from the central California district?

A. I am not so well acquainted with the districts that California white pine comes from. I have seen it at this end, but I never had much experience at that end—just one trip around the mills—so I don't know enough about it to say.

Q. I think you testified something with regard to the knots found in pondosa?

A. Yes.

Q. Is that the same situation as to the knots—does that apply to California white pine also?

A. Yes, sir.

Q. I think you testified in your direct examination that there was some line there where pondosa failed to give satisfaction as regards its use for window frames?

A. No; I said I sold pondosa pine window frames, but they wanted Idaho common lumber, and we did not have the Idaho common lumber, so therefore we lost the business.

Q. They wanted it for the frames?

A. No; they wanted it for outside, surfaced four sides; they wanted window frames shipped; we had the window frames that were made from pondosa, which we thought was satisfactory, but they would not use pondosa lumber; therefore we could not get the trade.

Q. I think you said that sometimes the trade prefer pon-
733 dosa to Idaho white; is that usually a question of price?

A. It is entirely a question of price. If the price was equal and there was plenty of Idaho, they would not buy pondosa.

Q. I think you testified that you did not know of any complaints in furnishing California white pine, due to the name or something of that kind?

A. I never knew of any confusion.

Q. Do you come in contact with customers' complaints?

A. No; only in an indirect way.

Q. Just hearsay, is it?

A. No; for instance, if we sold a man a car of lumber which was not dried and he would get it to his customer and it would shrink, we would get a kick that way, but we would not get the direct complaint.

Q. Were you referring to direct complaints when you said you never knew of customers' complaints?

A. I never heard of direct complaints or indirect complaints.

Q. That is what you meant on your direct examination?

A. Yes, sir. Also I am not very closely in touch with the ultimate consumer.

Q. The percentage of heart is higher in the Idaho white pine than it is in pondosa?

A. In the selects, possibly; yes.

Q. The same is true as regards Idaho white pine and the California white pine, is it?

734 A. I think so, although I am not so well posted on California.

Q. Are you familiar with the slabbing in the woods?

A. Of the log when they cut it?

Q. Yes.

A. Yes; the pondosa particularly.

Q. Does the slabbing of the California white pine leave more of the heartwood than the slab of the pondosa, due to the size of the piece?

A. In our pondosa the log is a little larger; for instance, you slab off the facing first, then the shop, then you get the common lumber from the heart; now, then, the Idaho being smaller, does not have very much clear lumber, so you get into the common lumber quicker. So while you find the pondosa pine board will be all heart, the Idaho may have a little sap on each edge of it.

Q. What I am getting at is the taking off of the slab lumber; that is virtually waste, is it not, that slab part?

A. Just about four feet of it.

Q. After the slabbing operation is done, is there a greater percentage of sapwood removed from the Idaho white than there is from the pondosa, due to the size of the tree? We have had statements here that the excess of sapwood is in the pondosa over that of Idaho; do you agree with that?

A. I would say, if that is so, it is because it is a larger tree.

735 Q. Would it not result then, after you take off the slab, that the percentage is still more pronounced as regards the sapwood remaining?

A. That being true, you have a wider margin of heart in pondosa than you have in Idaho.

Q. After you take off the slabwood that rather intensifies that difference?

A. What we call slabbing, is cutting it down, and then you get your finishes; the first finish in ponderosa is all sap, but with the smaller Idaho, in the same operation, you get heart with that finish—I may be mistaken, but it is my idea that you get less sap in Idaho finish than you do in pondosa.

Redirect examination by Mr. MATTHEW:

Q. Mr. Gates, you said in the inclusion of the word "white" in California white pine it does not have any tendency to facilitate deception or substitution?

A. That is my opinion.

Q. If deception is to be attempted at all, and there is to be substitution undertaken, would this particular trade name have anything to do with facilitating that effort?

A. I do not see it; I never did.

Q. In your lumber experience just what was meant by the term "white pine"?

A. In my early lumber experience we did not call it white pine; we had pine and Norway, so that when we said "pine" it
736 meant nothing else but the State of Maine pine. A little later we got what we called Michigan pine, and we termed that "Michigan." We did not use the word "white." I do not know where the word "white" started, and I haven't been able to find out.

Q. That is of comparatively recent origin?

A. I do not know how recent; it might have been for a long time. I understand when the Mississippi Valley inspection rules were made they termed it "white pine", because yellow pine came from the South, and when they decided on that they termed one "white", I suppose, because the other was known as yellow pine. That is the reason that term of white pine was used. For twenty-five or twenty-six years we had native white pine; then Michigan pine, and that we termed "Michigan pine", without any other name.

Q. "White" was not used?

A. No; we just called it either "Maine", because yellow was not coming in then.

Q. It is your contention, then, is it, that the term "white" came in in order to distinguish it from yellow?

A. That is my opinion; yes, sir.

Re-cross-examination by Mr. BURR:

Q. As I understand, when you handled your Michigan you did not even call it Michigan pine?

A. We called it Michigan pine; yes.

737 Q. You realize all the time that you had any experience with Michigan pine, that it was the same thing as northern pine, did you?

A. Oh, yes, we knew what kind of pine it was; the name did not mean so much, it is the kind, when you get it. In those days we got the upper grades only; there was very little of the common used.

Q. That was just as fine a grade as you had seen, from Maine?

A. When I got to Maine, the finer stocks were gone, and we had to go to Michigan to get it. Occasionally we could get a few logs, but the Maine pine that they were using then, you could not do anything with it.

Q. It was also called cork pine, was it?

A. Yes.

Q. When you were in the woods there in Michigan, they referred to it as white pine, did they not?

A. I have never been in the woods in Michigan, so I don't know what they called it there, but they might have, because they had Norway, and when I say "Michigan pine" I mean the same kind of pine that corresponds to the Maine pine.

Q. You contend it is just as easy to substitute for white pine, a wood that does not have the word "white" named in it, as it is a wood that is called "white"?

A. Yes; I think so. I may be mistaken, but that is my idea.

Q. You think it is?

738 A. If a fellow is going to substitute, he is going to substitute.

Q. Do you think it is just as easy to substitute spruce, when a man wants white pine, as something else?

A. No; spruce looks different, especially in this neck of the woods where, if they want to get spruce lumber, they still can get it. I don't think you would substitute spruce for white pine.

Q. You think it is just as easy to substitute a wood for pine, whether it has the name "white" in it as a wood that does not have that name?

A. Well, it would be a hard job to go and watch them, to see what they would substitute it for.

Q. You think the trade term hasn't anything to do with it?

A. No, sir.

(Witness excused.)

MILTON L. DAKE was thereupon called as a witness and, having been duly sworn, testified as follows:

Direct examination by Mr. MATTHEW:

Q. In what business are you engaged?

A. I am in the wholesale lumber business.

Q. Where is your principal place of business?

A. In Newark, New Jersey.

739 Q. How long have you been engaged in the lumber business?

A. All my life.

Q. Will you briefly relate your experience in the lumber business?

A. I was born in Manistee, Michigan; I worked for Hanna, Lay & Company. They were white-pine manufacturers in Traverse City. I started to work for the inspectors when I was sixteen years old. I operated two sawmills in Wexford County, and cruised some timberland for the Flanner-Steger Land and Lumber Company in Blackwell, Wisconsin; went back to Traverse City to inspect lumber with Lund & Gillette; went from there to the Indian Territory, when it was the Indian Territory, and cruised 110,000 acres of timber, and went from there to Tonawanda, New York, where I inspected lumber.

Q. How long were you at Tonawanda?

A. In 1911 and 1912 I visited all of the mills in northern Canada, through to Vancouver, of the white-pine lumber, and graded other kinds of lumber in northern Canada; every mill there produces its own lumber; they have their own grading terms; you have no Mississippi grades or California grades, and you have no Tonawanda grades. There is where the competition comes in with Idaho white pine in the East, is on account of the shipments of lumber out of Canada.

Q. Will you continue with the rest of your lumber experience?

740 A. Then I started in the wholesale lumber business in New York, and moved from here to Newark.

Q. That was about in 1912?

A. 1915, about then.

Q. How long have you been continuously in the wholesale lumber business; from 1915 to date?

A. Yes, sir.

Q. Throughout what territory do you distribute lumber?

A. Through the northern part of Pennsylvania—very little in Pennsylvania—through New Jersey, the southern part of New York State, Long Island, Connecticut, and a little in Massachusetts.

Q. What varieties of lumber do you distribute?

A. I distribute southern white pine, Canada pine, Tonawanda pine, and Michigan cork pine, Minnesota white pine, Vancouver white pine, Idaho white pine, pondosa white pine, California sugar pine, California white pine, the white pine of New Mexico, which has all the characteristics of the sugar pine, but it is so hard that you can not cut it even with a saw.

Q. Throughout what period have you been familiar with California white pine under that name?

A. California white pine, ever since I have been—well, ever since I have been in the wholesale business.

Q. How long have you been distributing California white pine?

A. About twelve or fourteen years.

741 Q. Will you explain briefly the nature of your trade; do you sell to retailers?

A. We sell to retailers altogether and to large box manufacturers and some shipbuilding companies.

Q. Is the term "California white pine" well known to the lumber trade?

A. Absolutely.

Q. Is there any confusion as to what that term means?

A. No confusion at all.

Q. And there isn't any misunderstanding as to the identity of the name?

A. No, sir. I had a case yesterday; I shipped a large dealer in Newark some northern Minnesota white pine—I shipped him sugar; I shipped him some sugar and California white pine; he had some 12/4 stock in California white pine; he was out of 12/4 sugar, and he asked me—called me up to find out where I could select 2,000 feet of sugar pine in order to fill that order, even though he had the California white pine.

Q. Then the term "sugar pine" is likewise well known to the trade?

A. Yes.

Q. There is no confusion between sugar pine and California white pine?

A. No, sir.

Q. Is there any confusion between California white pine and
742 Idaho white pine?

A. No confusion at all.

Q. Under what name do you receive orders for lumber which you fill with California white pine?

A. I receive orders for California white pine; they usually specify also Klamath Falls section, because we find in certain sections of California, in the lower lands, where a large amount of California pine is produced, that the California white pine is of a harder nature than it is in the higher latitudes.

By Mr. BURR:

Q. Of sugar pine?

A. California white pine.

By Mr. MATTHEW:

Q. Then your California white pine is largely drawn from Klamath Falls area, the northern part of California?

A. Yes, sir.

Q. I take it then that many of your customers at least are acquainted with the qualities of the lumber, with respect to the districts in which it is produced?

A. Yes; for instance, Tuttle Brothers, at Westfield, the Plainfield Lumber & Supply Company, of Plainfield, experimented with sugar pine and found that the outside doors went to pieces in five years, and you can not sell them sugar pine today on a bet; but you can sell California white pine.

Q. Are they satisfied with California white pine?

743 A. Yes.

Q. And they know what it is?

A. They know absolutely what it is.

Q. Are these several lumbers which you carry, particularly the pine lumbers, selling on their merits with respect to their quality and utility?

A. Every lumberman I sell knows what he wants; for instance, in your mill run lumber in northern Canada, managed by Booth & McLaughlin, they make a mill run lumber which, in general, you will find 5 percent of no. 3 barn, no. 2 barn, and 1 barn, all combined in one car, so that in competing with Idaho no. 2 common these concerns can cart that lumber up to Weyerhaeuser's and no one else can compete in selling a concern like that, that uses Canadian white pine, because they have had a large demand of that, to be dressed $\frac{13}{16}$, and it will dress $\frac{15}{16}$—every customer we sell knows what his wants actually are.

Q. Do you offer California white pine lumber to the trade under that name?

A. Yes.

Q. You do not offer it under the trade name of white pine alone?
A. No, sir.
Q. Do you invoice it to the trade as California white pine?
A. Yes.
Q. Do you have any orders for white pine, as such, without any qualifying term?
744 A. No; he never had one I know of.
Q. How do your orders come; how does the customer ask for pine lumber?
A. He asks either for Tonawanda white pine or Canadian white pine or sugar pine or else Minnesota white pine or California white pine.
Q. He does not ask for white pine alone?
A. No, sir.
Q. Does he ask for Idaho white pine, too?
A. Yes.
Q. Never without the qualifying term?
A. No, sir.
Q. Have you found that the use of the term "white" in the trade name of California white pine, particularly, leads to any confusion or misunderstanding?
A. No, sir.
Q. Does it facilitate substitution and deception?
A. It does not facilitate substitution and deception, for this reason: We check the retail lumberyards along the shore that use pondosa pine, in the interior, no. 1 and no. 3 common Idaho white pine. Where a yard uses Idaho no. 2 common in the northern part of the State, in large yards, they also handle Canadian white pine and the no. 3 barn grade, and for anybody that want something cheaper they always get it in the white pine, and if a fellow wanted pondosa
745 pine, he could not buy it in those yards, because they do not have it.
Q. I take it, Mr. Dake, that your greatest interest is in selling as much lumber as you can in the specified grades, and you are not undertaking to push a particular one at the expense of another?
A. We aim to sell the consumer the kind of lumber that we feel is good for his use.
Q. Your purpose is to satisfy your customer?
A. Yes, sir; if he wants wood for work in a pattern shop, we even question about sugar pine.
Q. Do you know of any retail dealers who know that California white pine is not a true white pine, but that they purchase it and undertake to furnish it as a white pine only because it is invoiced to them as a white pine?
A. I do not know of any.
Q. Is it generally known throughout the trade that pondosa and California white pine are obtained from the same species of tree?
A. Yes; it is.

Q. Do you receive any complaints from your customers to whom you furnish California white pine that the lumber has been misrepresented to them?

A. No, sir.

Q. Or that there has been deception or substitution practiced?

A. No, sir.

746 Q. There has been some discussion, Mr. Dake, as to possible alternative terms for California white pine; in your opinion, would the term "California soft pine" properly and adequately describe this lumber and tend to keep it distinct in the minds of the trade?

A. I think that would be very confusing.

Q. Will you please tell us why you think it would be confusing?

A. Because I think it would hit sugar pine. Sugar pine is a softer wood than California white pine, and the sugar pine manufacturers have advertised it as a true white pine. White pine, in all my years' experience, has been known as a softwood and a wood that could be easily worked because it was soft. If you were to take a California or a pondosa pine and say it is soft pine and you will confuse everybody and you will have kicks on a lot of lumber.

Q. Suppose we term it California pondosa pine, would it cause confusion in the trade, in your opinion?

A. I think it would cause confusion in the trade for this reason: Your pondosa and your Idaho white pine is composed of only ten, eleven, or twelve grades, and you only get in your pondosa 1, 2, and 3 shop; you cannot order no. 1 shop and no. 2 shop; usually they combine 1, 2, and 3 shops in the one grade, because your log is not large enough; when it comes to California white pine, that is sold here in either 3rd clear, which is a very high type shop lumber,

747 or C select, because your freight rate bars your planing mill from using the lower California grades. For instance, a grade of shop comes on a $22 freight rate, and you can only throw the excess lumber away, because the freight rate would be prohibitive, so everybody that California lumber is a wide lumber——

By Examiner SHEPPARD:

Q. It is made from a big tree?

A. It is made from a large tree, whereas your pondosa is made out of small trees, and that brings up the fact that your common boards in California white pine is not very salable in this market on account of the size of the knots.

By Mr. MATTHEW:

Q. Let us take the term "California yellow pine"; would that be a proper term by which to describe this lumber?

A. It would not, because you have your shortleaf yellow pine from the South, and you would simply be deceived there.

Q. You would confuse it with the southern yellow pines?

A. Yes.

Q. Can you think of any other term that is more likely to properly describe this lumber than the existing term "California white pine"?

A. I can not.

Mr. BURR. Mr. Examiner, I have been rather patient on this
748 examination, but I do not think that this constructive wood, as to what the lumber should be called, is of any concern to the Commission. I doubt very much if a finding can be properly based upon it, and, as I say, while I have been rather patient, thinking the examination would be short, at the same time, if we go into this subject with the respondent's witnesses, it will be properly objectionable. I do not think it ought to be brought out at all.

The Commission is not going to select a term for them to use; they are merely going to find out if this term that they are using is confusing. Let the trade get together and select their own term if this is prohibited. I do not think that this is proper, and I object to it.

Examiner SHEPPARD. What I was trying to impress upon you yesterday was that we have no interest at all in what other new names may be secured or used; we are interested, as you probably know, Mr. Matthew, in the state or conditions that exist under the present name.

Mr. MATTHEW. Mr. Examiner, I recognize that. Counsel has rather inadequately characterized the nature of my examination. I think that the Federal Trade Commission, as a practical and sensible adjusting body, will want to know whether our present term is a term that is best adapted to carry this lumber into the trade.

It is perfectly obvious from allegations of the complaint, which is here, that we may be forced to ponderosa pine or
749 some other term, and I want to make it clear to the Commission, if I can, and I believe I may be able to do so, that this term, "California white pine," is the term which preeminently carries the proper meaning to the trade of what this lumber is, and there is no other term that can take its place, properly and honestly.

You recall counsel himself, in his cross-examination of Mr. Dake, suggested this term "California soft", showing what was in counsel's mind, something that he wanted to get over to the trade.

Mr. BURR. My question, I admit, was subject to some criticism—indeed, the same criticism that I have just now made of counsel—but it was elicited by his direct examination, and therefore I am not precluded from objecting to the question he is asking the witness. There were five complaints brought on this same matter, and the manufacturers of the ponderosa pine got together and agreed upon the term "pondosa pine" without any suggestion from the Commission, and they have advertised that term, and now everybody says it is a good term.

It seems to me it is none of the business of the Commission to predict what kind of a term would be free from a misleading char-

acter. If California white pine is proved to be misleading in character—and I believe it is—it will be proper for the Commission to rely upon the ingenuity and judgment of the manufacturers
750 of this line of lumber themselves to produce the term, which they can draw out of the clear sky, perhaps, introduce and advertise it, and establish it in the trade, just as the pondosa people have done, and I do not think it is proper for the examiner to permit witnesses to speculate on what terms would be satisfactory.

Therefore, I lodge my objection to this class of testimony.

Mr. MATTHEW. The examiner certainly wants to know whether the present term is the best term to describe this lumber and avoid substitution and deception.

Examiner SHEPPARD. I am perfectly willing to allow you, and you have questioned some of the witnesses already on the present name, but as to any speculation regarding some other name, I do not think we need to go into that at all. So just remember that in your examinations on both sides. Finish up with this gentleman now.

By Mr. MATTHEW:

Q. Do you believe that the term "California white pine" is properly adapted to this particular lumber?

A. I do.

Q. Will you tell us why?

A. Because sugar pine is a true white pine; it is called "sugar pine" because every manufacturer and every retail lumberman that I have come in contact with knows what California white pine is, knows its characteristics and is not deceived by them, but he
751 is going to be deceived if we change its name. That is one of the reasons why I think it ought to be maintained.

Mr. MATTHEW: That is all of my direct.

Cross-examination by Mr. BURR:

Q. You say that sugar pine is a genuine white pine?

A. Yes.

Q. Is Idaho a genuine white pine?

A. Yes.

Q. If there were any question as to the appropriateness of the use of the word "white", Idaho would be rather more entitled to it, as a genuine white pine, than California white pine would be entitled to it, would it not?

A. If you used the term "white pine" and if you shipped Mexican white pine, for instance——

Q. Wait a minute; answer my question and you may then offer your explanations. Would or would not Idaho white pine be more deserving the term "white pine", being a genuine white pine, than California white pine is deserving of that term?

A. I do not think so.

Q. Do you know that there is a group of pines known as white pines?

A. Yes, sir.

Q. Do you or do you not believe that there are persons who would regard the words "white pine" in a trade term as giving an
752 indication that the various varieties of so-called "white pine" belong to this white pine group?

A. If you used the words "cork pines" you would be getting somewhere——

Q. Answer this question, please.

A. What is the question?

Mr. BURR. Read the question, and I want my questions answered.

Mr. MATTHEW. I object to counsel pounding the table.

Mr. BURR. Do not be alarmed, it is a perfectly good table——

Mr. MATTHEW. I object on the record to counsel pounding the table and shouting at the witness.

Mr. BURR. I think this witness has shown a desire to avoid answering questions as they are put to him, and I am entitled to get responsive answers to my questions. If he thinks any explanations are necessary, he may have that opportunity after he has answered the questions. Now, read the question.

(The question was thereupon repeated by the reporter as above recorded.)

A. No, sir.

(The question was again repeated by the reporter.)

The WITNESS. You have two questions there. If you are talking about Pinus strobus, yes; if you are talking about white pines, it all depends upon the section of the country that the pine comes from and the uses it is going to be put to.

753 Q. Do you think the term "Idaho white pine" indicates to anybody that it belongs to the white pine group?

A. If you go to the trade and sell Idaho pine——

Mr. BURR. Read the question, please; and answer it yes or no; if it is susceptible of it, and give your explanation afterwards. That is the proper way to answer a question.

Examiner SHEPPARD. Yes; answer briefly; you can always qualify your answer later.

A. Yes.

By Mr. BURR:

Q. The Idaho white pine does belong to the white pine group, and using the term "white" in connection with the Idaho white pine as a trade term indicates to some that the Idaho white pine is genuine white pine; is that true?

A. That only indicates to them that the pine comes from Idaho.

Q. Does not the word "white" mean that it is white pine?

A. It means that the trade name of Idaho white pine is a true white pine.

Q. Do you think the word "white" in connection with the term "Idaho white pine" is an indication to the trade that it belongs to the white pine group?

A. No, sir.

Q. If you called it Idaho yellow pine, do you not think that would negative the idea that it belonged to the white pine group?

A. Yes.

754 Q. Then does not the use of the word "white" negative the idea that the Idaho white pine belongs to the yellow pine group?

A. No; it does not.

Q. You think it might just as well belong to the yellow pine group with the word "white" in it?

A. No; I would say if you put the word "white" and called it Michigan white pine, that you would then negative the idea, whereas in earlier days Michigan was always called Michigan pine, and then as Michigan cork pine, and was never known under any other name.

Q. You never heard the name "Michigan white pine"?

A. No, sir.

Q. Have you not used it yourself this morning?

A. I used it this morning only in so far as it was necessary with the association that arose in the question using the words "white pine." We sell lumber not just as white pine, but the section of the country it comes from.

For instance, I could not take an order for white pine—true white pine to customers of mine and ship it out of Idaho, because they would not be familiar with it.

Q. Michigan white pine is sometimes sold as Michigan white pine, is it not?

A. Yes, sir.

Q. And the word "white" in connection with the term "Michigan white pine" indicates it is white pine, does it not?

755 A. It indicates it is white pine from Michigan.

Q. And the same is true of Canadian white pine, is it not?

A. We term that Canadian pine; very seldom use Canadian white pine.

Q. I think you testified that if California white pine were termed "California yellow pine", it would be misleading, did you not?

A. Yes.

Q. That would be because it would indicate that California white pine had the properties of other yellow pines, wouldn't it?

A. Yes.

Q. The term "California white pine" does or does not have a tendency to associate California white pine with the genuine white pine?

A. No, sir.

Q. It does not?

A. No, sir.

Q. You think the word "white" in connection with the words "California white pine" has no significance, do you?

A. No significance; if you changed California sugar pine to California white pine, it would be very misleading.

Q. But California sugar pine is a genuine white pine?

A. I don't care. They advertise it as California sugar pine, and they advertise it as genuine and true white pine; they took that out of the air, because there was sugar in the wood, and the other
756 lumber had no other name except California white pine, and every manufacturer knows that sugar pine is a true white pine, and every manufacturer knows that California white pine is not a true white pine wood.

Q. If the two types of lumber were coming on the market at the same time, sugar pine rather than California white pine would be entitled to the term "white pine" because of its connection with the white-pine group, don't you think so?

A. I imagine so.

Q. Then, coming on at the same time, you think that the term "white" in connection with California white pine has no tendency in the minds of the retailer to associate California white pine with the group of white pines—no tendency at all?

A. No, sir; absolutely not.

Q. Your testimony does not relate to the consumer, but rather to the retailer; is that true?

A. Yes, sir; absolutely to the retailer; most of the architects that build private homes all through the East and do schoolhouse jobs specify specifically the Latin names of the woods to be used.

Q. We have had several architects on the stand, and the contrary has been shown to be the case, as far as the use of those technical names is concerned.

A. In some instances, they do.

Q. In some instances they use strobus and in some they don't.

A. They are getting to do that more and more every day.

Q. Why is that?

757 A. On account of the speculative builders, and more especially on the substitution of Washington spruce for sugar pine.

Q. For sugar pine?

A. Yes. When you come to think of it——

Q. Wait a minute.

Mr. BURR. I do not care to have the witness deliver a speech. There is no question pending. I think that is all.

Mr. MATTHEW. That is all. Thank you, Mr. Dake.

(Witness excused.)

(Whereupon, at 1:00 o'clock p.m., a recess was taken to 2:00 o'clock p.m. of the same day.)

758 AFTER RECESS

2:00 P.M.

ARTHUR BERES was thereupon called as a witness and, having been duly sworn, testified as follows:

Direct examination by Mr. MATTHEW:

Q. Mr. Beres, please state your name and place of residence?

A. My name is Arthur Beres, and the residence is Greenlawn, Long Island.

Q. What is your business, Mr. Beres?

A. Lumber.

Q. With what company or concern are you connected?

A. The Brooklyn Lumber Company.

Q. That company is a corporation?

A. No; it is an ownership.

Q. A partnership?

A. An ownership.

Q. What is your relation to the Brooklyn Lumber Company?

A. I am just the manager there.

Q. Where is its place of business?

A. 454 Hamilton Avenue, Brooklyn.

Q. How long have you been connected with the Brooklyn Lumber Company?

A. Over thirty years.

Q. What is the nature of your particular connection with the company?

759 A. I am just the manager there.

Q. Is your company engaged in the wholesale lumber business or retail lumber business?

A. Retail.

Q. Have you a mill?

A. No; no mill.

Q. You just sell to the general trade as a retail lumber dealer?

A. Yes, sir.

Q. What varieties of lumber do you carry in your yards, Mr. Beres?

A. We handle all kinds—white pines, spruce, yellow pine, hardwoods.

Q. Do you carry California white pine?

A. Yes, sir.

Q. Pondosa pine?

A. Yes.

Q. Idaho white pine?

A. Yes.

Q. Northern white pine?

A. We do not handle much northern white pine; we have been handling mostly western pines in the last fifteen years.

Q. Mr. Beres, I want to direct your attention to some testimony given by a witness in this proceeding, Mr. J. M. Brady, of the Weyerhaeuser Sales Company.

760 Mr. Brady was being interrogated with respect to certain loss of sales by his company, and then we have the interrogation proceeding as follows:

"Q. Do you have occasion to find out what the reason is for losing sales, Mr. Brady?

"A. Yes; in some instances.

"Q. What do you find those reasons to be?

"A. They differ. Some of it is due to price; others in regard particularly to this California white pine; some claim they prefer California white pine; some from a price standpoint; others say it is better and softer and this name white pine, their specifications call for white pine and they buy California white pine and sell it as white pine on these specifications.

"Q. Do you recall any particular instance that you could give and that you would be willing to state, specifying any particular case where you lost sales of that kind?

"A. Yes; I have got one case in mind; a few years ago this man asked me for prices on Idaho white pine; I understood him to say that the contract he was bidding for called for genuine white pine. He got the contract and when I went back to him to try to get the order out of him, he told me that he had bought California white pine.

"Q. Do you mind stating who that was?

"A. The Brooklyn Lumber Company."

761 The part I have read, is part of Mr. Brady's testimony on his direct examination, and upon cross-examination, there were questions and answers, as follows:

First I may say I was asking Mr. Brady as to the date when this particular incident occurred, and he answered, "I don't know the date definitely; no."

"Q. Can you give us the name of the representative of the Brooklyn Lumber Company who told you that he had purchased California white pine in preference to your pine?

"A. Mr. Beres."

Now, Mr. Beres, I will ask you do you recall the incident to which Mr. Brady refers in the testimony which I have read, namely, to a conversation between Mr.Brady and yourself, respecting the attempt to obtain an order from you?

A. Yes; I remember the call.

Q. I would ask you if Mr. Brady is correct in the understanding which he gave here that the contract upon which you were bidding at that time, called for genuine white pine?

A. No, sir.

Q. What lumber was called for by the contractor?

A. California white pine.

Q. Did you supply California white pine upon that contract?

A. Yes, sir.

Q. Have you before you the specifications for the particular order upon which you were bidding at that time?

762 A. I have got two orders here. I have the order for the year 1928 and the year 1929. I did not want to bring them all, but here is a sample for both years, and you can see what that calls for.

Q. The first paper which you hand me is entitled, "Duplicate Order, Board of Education, City of New York, 1928; File No. is 3876", and it refers to various quantities and descriptions of lumber,

and we find upon the list, California white pine in two instances, and I will show it to counsel.

(Document handed to counsel.)

Mr. BURR. Thank you.

Q. The other paper which the witness has handed me is entitled "Duplicate Order, Board of Education, City of New York, 1929," and the file no. is 32245, and it calls for an order of California white pine (document handed to counsel).

What do the letters "P.S." upon these orders mean, Mr. Beres, please?

A. Public schools.

Q. I take it these were orders for lumber received by you from the board of education for use in the public schools?

A. Yes; lumber was delivered from us to them. We delivered the lumber to the board of education.

Q. And was California white pine lumber ordered from you as California white pine lumber?

A. Yes.

763 Q. Are these forms which you show me and these orders representative of and typical orders which you receive from the Board of Education?

A. Oh, yes; I have six or seven hundred of those orders, but I did not want to carry them all over here.

Q. Have you furnished any California white pine upon an order calling for genuine white pine?

A. No, sir.

Mr. MATTHEW. You may cross-examine.

Cross-examination by Mr. BURR:

Q. You say you have not furnished California white pine on any orders calling for genuine white pine?

A. No, sir.

Q. Do you ever have orders calling for white pine, without saying "Genuine white pine"?

A. Oh, yes.

Q. Do you carry Idaho white pine?

A. Oh, yes.

Q. Would you regard it as compliance with the specification, if you furnished Idaho white pine under the specification for——

A. It would not make any difference to me: If I did not have it in California pine, I would probably furnish it in Idaho white pine.

764 The man don't specify what he wants, and if he gives an order for white pine, I would send anything in the way of white pine——

Q. You would send California, Idaho, or pondosa?

A. Or pondosa, if it suits his purpose.

Q. As you happened to be stocked, you mean?

A. Yes, sir.

Q. On a specification for white pine, I mean?

A. Yes, sir.

Q. You have testified with regard to these two orders or invoices, which are they?

A. They are orders.

Q. You have testified with regard to these orders, and I think you said they are samples, didn't you, or something; just what was it?

A. The orders here?

Q. Those are ordinary cases, are they?

A. These are regular samples of orders of this particular contract we had. We got these all during the year; the contract runs for the whole year.

Q. You did not testify, did you, that these were the particular jobs that Brady was talking about, when he testified yesterday?

A. That is one of the jobs; yes, sir.

Q. This is one of the jobs?

A. Yes, sir.

Q. You would not testify this was the same job; you have not identified it as the same job, have you?

765 A. They are the same people we have been furnishing for the last six or seven years.

Q. I see there is some popular on here?

A. Yes, sir.

Q. Does the school board buy nothing but poplar and California white pine; that is not true, is it?

A. They do buy everything; they buy oak and other woods. Probably we did not get those items on that contract and somebody else got them.

Q. In other words, you bid on certain items?

A. We bid on the whole list, and whatever we want we got; what we didn't get, somebody else gets.

Q. Does the board of education ever ask for bids on white pine, without the use of the word "California"?

A. They ask for the California white pine.

Q. Is that the only pine they use?

A. Yes.

Q. The only kind of white pine they specify?

A. Yes.

Q. They always use the words "California white"; is that what you mean?

A. Yes; it is right there on the order.

Q. I see it is on this particular order; do you testify positively that it is on other orders?

A. All other orders, they call for white pine; they call for

766 California white pine.

Q. I wanted to know whether they ever varied from that specification?

A. They never do.

Q. Is this for interior or exterior work?

A. They use that in jobs in schools for the children.

Q. For interior work; you never sell them that wood, for the school board, I mean, for exterior work; they do not build the buildings out of it; do they build any frame buildings?

A. No; they don't; but they use some for little buildings like garages and things like that.

Mr. MATTHEW. You are going outside of the direct examination; I have not made any inquiry along that line.

Mr. BURR. I do not care to go any further.

Mr. MATTHEW. I just wanted to correct an erroneous impression which I thought was through a misunderstanding on Mr. Brady's part.

(Witness excused.)

FRANK O. MORRISSETTE was thereupon called as a witness and, having been duly sworn, testified as follows:

Direct examination by Mr. MATTHEW:

Q. Where do you reside, please?

A. Elizabeth, New Jersey.

767 Q. What is your business?

A. Atlantic coast representative for the California Sugar & White Pine Company.

Q. Where do you make your offices?

A. 233 Broadway.

Q. What is the California Sugar & White Pine Company?

A. They are representatives of manufacturers of sugar pine and California white pine.

Q. Does that company represent any particular mills in the sale of sugar and white pine?

A. Yes, sir.

Q. Would you name them, please?

A. The Shaw-Bertram Lumber Company of Klamath Falls, Oregon.

By Examiner SHEPPARD:

Q. Those are sugar-pine mills?

A. Sugar pine and white pine.

Swayne Lumber Company of Orejo, California, the Spanish Peak Lumber Company of Quincy, California.

Examiner SHEPPARD. If those are respondents, call my attention to them.

Mr. MATTHEW. They all are so far.

A. (Continued). California Fir Exchange, Blairsden; Hobart Mills at Hobart, California.

Mr. MATTHEW. I might explain, Mr. Examiner, that the Hobart Mills are operated by the Hobart Estate Company, which is

768 likewise one of the respondents in these proceedings. I think each of these five are respondents.

Mr. BURR. They are.

Mr. MATTHEW. Although we do not personally represent the Swayne Lumber Company.

By Mr. MATTHEW:

Q. Mr. Morrissette, throughout what territory do you sell lumber in behalf of the companies which you named?

A. The Atlantic coast territory, which includes New York State, New England, the Southern States, and the eastern part of Pennsylvania.

Q. Do you sell sugar and California white pine indiscriminately?

A. Yes, sir.

Q. Endeavoring, I assume, to sell as much lumber as possible of both types?

A. We try to sell what the man wants. If he wants California white pine, we sell it to him; if he uses sugar, we sell him sugar.

Q. How long have you been engaged in this business yourself, Mr. Morrissette?

A. In the lumber business?

Q. As Atlantic coast representative of the Sugar and White Pine Company?

A. Since 1921.

Q. How long have you been in the lumber business?

769 A. Oh, since 1913.

Q. Will you give us something about your experience in the lumber business prior to your coming to the California Sugar & White Pine Company?

A. I started in western North Carolina, the Laurel River Logging Company. When I first went there I was a sort of handy-andy man.

When I left in 1917 to join the Army I was yard superintendent, having been so for perhaps a years and a half.

Q. What kind of lumber was that company engaged in producing?

A. Mostly hardwoods and some white pine.

Q. Is that strobus pine?

A. Strobus.

Q. As produced in the western part of North Carolina?

A. Yes; as produced in the Blue Ridge Mountains.

Q. Will you give us some idea of the character of the trade to which you sell sugar and white pine lumber?

A. Retail yards, planing mills, industrials, steel companies, shipbuilding companies, piano keys and organ manufacturers.

Q. You do not sell at retail at all?

A. No; wholesale only.

Q. Under what name do you offer California white pine lumber to the trade?

A. California white pine.

Q. And under what name do you recive orders for this lumber?

770 A. California white pine.

Q. Do you ever receive orders under any other terms, that is, for example, under the term "white pine" without any qualifying term?

A. No, sir; we do not get any like that, as I recall.

Q. Under what term do you invoice this lumber to the trade?

A. California white pine, the same as we sell it.

Q. That is your invariable practice?

A. Yes, sir; invariably.

Q. And has been during the entire period of your connection with the business?

A. Yes, sir; positively.

Q. Is the term "California white pine" well known to the lumber trade in this Atlantic territory that you cover?

A. I find it is very well known. 100 percent of the people we come in contact with.

Q. You have stated, as I recall, Mr. Morrissette, that you are interested alike in the sale both of sugar pine and California white pine?

A. Yes, sir.

Q. Do you find that the sugar pine is desired by your customers for certain purposes, and that California white pine is largely desired for other uses?

A. Well, they are used for different purposes, of course.

Q. Can you indicate the principal purposes for which cus-
771 tomers desire sugar pine, for example?

A. Pipe organs, patterns, and piano keys.

Q. For what purposes is the California white pine used by your trade, as far as you know?

A. Interior trim, moldings, sash, doors, and blinds.

Q. Can you tell approximately what proportion of your total sales of lumber in this territory is represented by sugar pine and what proportion is represented by California white pine?

A. At the present time?

Q. At the present time?

A. I should judge about fifty-fifty.

Q. Has there been any change in the proportions since the time when you first entered upon this business in 1921?

A. I think in 1921 we were selling about 75 percent sugar to 25 percent California white.

Q. Has the change in the proportions been gradual since 1921 to date?

A. Well, yes; I think they have.

Q. To what reasons do you ascribe the growth in the sales of California white pine and the correlative decline in the sales of sugar pine, as far as your company is concerned?

A. I believe the planing mills, for instance, found out that the California white pine is suitable for interior trim, doors, and so
forth, as much so as sugar pine; in addition to that, it is a
772 little cheaper. They get the same cutting values out of the shop grades, particularly in the California white pine, as they do in the sugar.

Q. Are you impartial in pressing the sales of the California white pine and the California sugar pine?

A. No, sir; we do not discriminate in the sale of California white pine and sugar pine.

Q. Then you are impartial?

A. Yes, sir; we are impartial.

By Examiner SHEPPARD:

Q. Is sugar pine also used for outside work?

A. In some cases.

Q. The other is not?

A. Well, I cannot say.

Q. Is California white pine bought to be used for outside work?

A. No; I do not believe it is generally bought for outside purposes. The people we sell to are mostly to the planing mills and retail trades. The planing mills cut it up for trim, molding, sash, and doors.

Q. The sugar pine is bought in great quantities for outside use?

A. I do not know that it is used more extensively for outside uses than California white pine.

Examiner SHEPPARD. I gained the impression that it is used more—all right, go ahead.

773 By Mr. MATTHEW:

Q. You have stated, Mr. Morrissette, that you found that the California white pine was as suitable for interior trim as sugar pine in some respects, or perhaps you said even better; or how did you put it?

A. We find in some cases people would rather have the California white pine than sugar pine for interior trim.

Q. What reason is ascribed for that preference?

A. Their reason seems to be that the pitch in sugar pine would come through the paint, and they do not experience that trouble in the California white.

As a matter of fact, a lot of our trade seems to think that California white takes better paint and finish than sugar pine, exclusive of the feature of the pitch coming through.

Q. Do any of the purchasers of California white pine lumber from your company claim to have been deceived or dissatisfied with the lumber that is furnished as California white pine?

A. No, sir.

Q. Do you feel that these lumbers are selling on their merits in this territory?

A. Yes, sir; for the purposes for which they are intended to be used.

Q. They are sold for their quality and utility?

A. Yes, sir.

774 Q. Do you feel that there has been competition of the northern or eastern white pine, as it has been variously termed in these proceedings——

A. In what respect?

Q. Do you find that the northern white pine comes in competition in this market with California sugar pine or California white pine?

A. No, sir; for the reason that there is no such dependable source of supply.

Q. That is, the northern white pine is not a large factor in the market?

A. Not in the market today.

Q. Do you have competition from Idaho white pine?

A. Yes, sir.

Q. In what respect or in what grades?

A. Mostly in the common grades.

Q. Why do you find that competition is confined mostly to common grades?

A. Well, our California common grades have never been considered very satisfactory in competition with Idaho on account of the fact that the trees from which our lumber comes, in California white pine, are large, therefore the knots are larger, not as sound in some cases, and the texture has a lot to do with it, whereas I understand the Idaho is a smaller tree and has a sounder knot type of lumber.

Q. Is there competition between Idaho white pine and Cali-
775 fornia white pine in the shop grades?

A. Well, some people prefer California white pine on account of the fact that they get better cuts out of factory cuttings than they do out of Idaho.

Q. What is that due to?

A. The knots are larger and further apart and there is more meat between them; that is about the best way I can describe it.

Q. By "more meat" you mean more clear lumber?

A. More clear cuttings, more wider cuttings between the knots.

Q. Is it your impression that Idaho white pine is directly a competitor with California white pine, grade for grade?

A. No, sir; it is not.

Q. Can you clarify that a little further?

A. To start with, the common boards—we cannot compete with Idaho for the reasons I have just given previously.

Q. That is, the Idaho white pine, then, has the call of the market, as far as the common grades are concerned?

A. Idaho white pine has the call of the market for common grade, where the man is willing to pay the price; but in the yard stock, for instance, in specified widths it has a preference over California white, for the reason that we have not been able to get our mills to separate the specified widths, and the principal reason, I presume, is that the Idaho is a little softer textured than California white.

776 By Examiner SHEPPARD:

Q. Is not Idaho white used for exterior work?

A. I do not know a great deal, sir, about Idaho pine. I presume it is used as much for exterior purposes as the other pines are.

By Mr. MATTHEW:

Q. What grades of lumber in the California white pine are sold, for the most part, in this market; can you state that?

A. Mostly the higher grades, such as no. 3 Clear, D Selects, C Selects, 1 and 2 Clear. Those are the principal grades; they are the bulk of our orders that are called for.

Q. Yes; I am just asking about your experience. There has been some testimony respecting the relative softness of sugar pine on the one hand and California white pine on the other, and further testimony respecting the variability of California white pine in different portions of its range. Have you had any experience with variability in sugar pine?

A. I hardly believe I understand that question.

Q. Is sugar pine lumber uniformly quite soft and of smooth texture—that is, similar texture, no matter from what section it is obtained?

A. It is my experience that sugar pine runs more uniform than texture than California white pine.

Q. Is there any lack of uniformity noticeable in it?

A. Not in our mills.

Q. You obtain no sugar pine from Oregon?

777 A. No.

Q. And you don't know anything about the texture of the sugar pine from there?

A. We get some little from there, but the quantity is so small that we ship it with our California pine.

Q. California white pine?

A. Yes; we do not bother enough to pick it out and separate it.

Q. When you do mix the sugar pine with the California white, under what name is it invoiced to the trade?

A. The same as we sell it always, whether sold separately or in combination cars.

Q. Do you sell it as California pine?

A. As California white pine? We ship California white pine and sugar pine from the same mills; it is invoiced separately, sold separately, and separated in the car.

Q. You say it is separated in the car?

A. Yes; kept separate in the car.

Q. When you have a shipment from the Shaw-Bertram Company, which operates in the Klamath Falls section, do you attempt to separate the sugar pine from the California white pine if there happens to be lumber of both kinds in the car?

A. No, sir.

Q. Is that quite customary in the trade, to let a small amount of sugar pine that happens to come with the California white pine to remain together?

778 A. You see, in Klamath Falls our percentage of sugar pine is so small in comparison with the California white pine that we just let it remain together, and wherever we have had occasion

to ship the sugar pine with the California white, we invoice it as such; we had one case of that kind, however, where it was rejected by the customer.

Q. When you say invoiced as such, you mean invoiced as California white pine and California sugar pine?

A. Yes, sir; doing the customary thing; and he rejected it.

Q. Was that a trade shipment of sugar pine?

A. No; there was sugar pine shipped with the white pine.

Q. Just what did you furnish?

A. We furnished California white pine, with the exception of a few thousand feet of sugar; we included that with the other material, thinking that we were doing them a favor, but found that we had a complaint on our hands.

Q. He wanted California white pine only?

A. Yes, sir.

Q. Ordinarily, as I understand it, you ship the sugar pine and California white pine separately?

A. Separately, always.

Q. Have you found that there is any confusion in the lumber trade in this territory because of the use of the name "California white pine" in the lumber that you market under that name?

A. No, sir.

779 Q. Is that name thoroughly understood in the trade?

A. Everybody that we have come in contact with, whether we do business with them or not, thoroughly understands, in my opinion, what California white pine is.

Q. You think it identifies the lumber?

A. I think it is very accurately identified.

Mr. MATTHEW. Cross-examine.

Cross-examination by Mr. BURR:

Q. Do you come in contact with the actual builder, contractor, and home owner?

A. No, sir.

Q. So that any kick he might have would be registered with the retailer, would it?

A. That would not come back to us.

Q. It would not come back to you?

A. No; it would not come back to us.

Q. I think you said that northern white pine was not in competition with California white pine. Is not that largely a question of price?

A. I think it is largely, in my opinion, on account of the source of supply.

Q. You think that they prefer California as a source of supply rather than Michigan or Canada?

A. I think a lot of people would use northern white pine if
780 they could get it right along, regardless of price.

Q. Northern white pine, then, is not quite so well advertised; is that true?

A. I could not answer that. I have not noticed a great deal of advertisements regarding the northern white pine.

Q. You know there is virgin white pine coming from Minnesota, or don't you know that?

A. I do not know much about the Minnesota country with reference to quantity that is being marketed.

Q. Do you know whether there is virgin northern white pine coming from Canada?

A. I understand there is being some Canadian pine shipped into this territory.

Q. But you have not looked into that matter?

A. I spent a year and a half in Canada from August 1919 until about the middle of the summer of 1920.

Q. In what part of Canada?

A. North of Montreal, in the Laurentian Valley, inspecting hardwoods, and I found about one percent of white pine.

Q. There is very little white pine in that forest?

A. Just an occasional tree.

Q. Not enough to be commercial?

A. No; I don't believe we have a carload within five miles of it.

Q. Did you cut it down with the rest?

781 A. I was not interested in the logging; I was merely shipping it out on orders.

Q. Did I understand you to say that Idaho white pine competes strongly with California white pine on common lumber?

A. No, sir; we cannot compete with them on common lumber.

Q. You mean by "we" California white pine?

A. California white pine will not compete with Idaho in the common grades.

Q. Is that true of sugar pine also, that it will not compete in common grades?

A. Yes, sir; that is my opinion.

Q. In other words, the sugar—the Idaho white pine takes the market?

A. Practically Idaho and pondosa principally control the market in the shelving grades.

Q. Do you regard California white pine as equally durable when exposed to the weather with Idaho white pine?

A. If it is free from sap, I do, sir.

Q. You do?

A. Yes.

Q. Is not California white pine in its white and smooth texture largely a sapwood proposition? Don't you think that is so?

A. No, sir; I do not. You take our logs in California; you get a good deal more heart lumber than you do in the Idaho or the pondosa.

782 Q. Than they do in Idaho white pine?

A. Than they do in Idaho or pondosa white pine on account of the larger tree.

Q. But you do not get as large a proportion on account of the tree being larger, do you?

A. We get a larger proportion of clear lumber from the heart, on the inside of the lumber, free from sap.

Q. In other words, there is less sap in the California white pine, of that particular part that you are telling about, less proportion now, not less amount—but less proportion than there is in the Idaho white-pine lumber?

A. I don't know a great deal about Idaho white pine, but I think I can say there is a very large percentage of clear heart lumber produced in California white pine in proportion to that in pondosa.

Q. You would not be positive about the same situation prevailing as regards the Idaho?

A. I can be, sir.

Q. Have you been in the forest where they were cutting Idaho white pine?

A. No, sir.

Q. Have you ever sold that lumber?

A. No, sir.

Q. The California white pine, you say, is sold here chiefly in the higher grades; did I understand you correctly?

783 A. Yes, sir.

Q. Your market is rather restrictive in nature, is it? I noted that you talked a good deal about organ manufacturers and piano keys; that is very high-grade stuff, is it?

A. That is sugar pine.

Q. Sugar pine goes into the manufacture of piano keys and organs?

A. The best part of the logs, the cream of the logs.

Q. Is ponderosa or California white pine as suited for that type of manufacture as the sugar pine?

A. I could not say whether it could be used for that purpose or not, but none of them use it, and we have piano key manufacturers and organ people that have been on our books for twenty-five years or more.

Q. And have been using sugar pine all the time?

A. Have been using sugar pine all the time; yes, sir.

Q. How about the pattern stock?

A. Sugar pine.

Q. Have you ever had any experience in trying California white pine for pattern stock?

A. No, sir; because we do not recommend it and I do not recall that we ever made a sale for that purpose.

Q. You don't think it would be as good for that purpose?

A. No, sir; I don't.

Q. Does the word "white" in the term "California white pine" have any significance to your mind?

784 A. No, sir.

Q. Might it just as well be referred to, and the stuff be called California pine?

A. I think the name "California white pine" just about describes it.

Q. Do you regard California white pine as belonging to the so-called genuine white pine group?

A. No, sir.

Q. Then would it not be a little clearer if the word "white" had been left out of that term?

A. Well, I think if anybody was going to sell California white pine for genuine white pine, they would sell it for that purpose, regardless of the name.

Q. Would not the name help them, because they would be able to say, "We have white pine—we have California white pine", doesn't that help a sale of California white pine if the fellow is crooked enough to want to sell it for genuine white pine?

A. In that case, he is beyond redemption.

Q. Answer the question. I don't care whether he is beyond redemption or in purgatory or not; read the question back to him, please?

(The question was thereupon repeated by the reporter as above recorded.)

By Mr. BURR:

Q. Is the question clear?

785 A. It seems to me there are two answers there.

Mr. BURR. Let us read it again.

(Question again repeated by the reporter as above recorded.)

A. I do not see how he could sell it for genuine white pine.

Q. I am talking about the customer, the retailer, somebody who is not wise on the subject; suppose he asked for white pine and does not know California white pine or Idaho white pine as genuine white pine, would not the word "white" in that connection help an unscrupulous dealer to dispose of it as genuine white pine?

A. I do not think it would, sir.

Q. Let us look at it this way: You regard Idaho white pine as genuine white pine?

A. Well, it is known among the trade as genuine white pine.

Q. You think the word "white" helps to identify it as genuine white pine; I mean the word "white" in the trade name?

A. No, sir.

Q. You think it would sell just as well as genuine white pine if it were called Idaho yellow pine?

A. No, sir.

Q. You think it would sell just as well if the word "white" were left out—that is, it would sell equally well irrespective of whether the word "white" was in there or not?

A. Yes, sir.

Q. Do you think the word "yellow" would hurt it, if it
786 were used in the name, as a white pine?

A. It is not a yellow pine.

Q. Answer the question. Do you think it would be injurious to the Idaho white pine industry to call his Idaho white pine yellow pine?

A. Yes.

Q. Why?

A. Because it is not yellow pine.

Q. Absolutely. Now, then, do you think it would hurt him to drop out the word "white", when he wants to sell it as genuine white pine?

A. He should not drop the name "white" out of it.

Q. Is not the word "white", then, in connection with the words "Idaho white pine" helpful in identifying the wood as genuine white pine?

A. I presume that is was quite helpful before the wood was so well established in the trade.

Q. Is it not helpful still?

A. Yes, sir.

Q. There are new people coming in the lumber business every year, are there not?

A. Yes.

Q. There are new people that have to get acquainted with the woods every year—different types of lumber?

A. Yes.

787 Q. Is not the term "Idaho white pine" an asset if you are going to sell it as genuine white pine?

A. Yes, sir.

Q. By the same argument, do you not reach the conclusion that the term "California white pine" has a tendency to identify the product as and for a genuine white pine?

A. I don't believe it has, sir, in my opinion.

Q. Would it be detrimental to the California white pine manufacturers if they were to begin to call their wood or were required to call their wood California yellow pine?

A. I should say it would be detrimental to them, because it is known among the trade as California white pine.

Q. Would it not be detrimental for another and further reason, because it would make it appear that California white pine was a wood similar to the hard yellow pine of the South, if they were to call it California yellow pine?

A. Yes, sir.

Q. By the same token, does not the term "white" mean something to the trade in identifying California white pine as near or close to the genuine white pine?

A. Yes, sir.

Q. Then to a man who is not familiar with this type of wood, does the word "white" in the term "California white pine" have a tendency to make the purchaser believe that he is getting a genuine white pine, if he is not posted?

788 A. I presume it would; yes, sir.

Mr. BURR. That is all.

Redirect examination by Mr. MATTHEW:

Q. Mr. Morrissette, do you know of any case where a man has been led to believe or to purchase California white pine, that he is getting what counsel has termed a genuine white pine?

A. I did not catch that question.

Mr. MATTHEW. Will you read the question, please?

(The question was thereupon repeated by the reporter as above recorded.)

A. No, sir.

Re-cross-examination by Mr. BURR:

Q. You do not come in contact, I think you testified, with the actual consumer, or builder, or contractor?

A. No, sir; we do not.

(Witness excused.)

HAROLD J. PLUNKETT was thereupon called as a witness and, having been duly sworn, testified as follows:

Direct examination by Mr. MATTHEW:

Q. What is your business, Mr. Plunkett?

789 A. Wholesale lumber.

Q. What is the name of your company?

A. Plunkett and Webster Lumber Company.

Q. Is that a corporation?

A. Yes, sir.

Q. Where is your place of business?

A. Our place of business is at 260 North Avenue, New Rochelle, New York.

Q. Where is New Rochelle with reference to New York City?

A. It is northeast, on the New Haven road; it is a few miles out of New York, three or four miles from the corporate limits.

Q. How long have you been engaged in the lumber business?

A. Off and on for twenty years.

Q. You have been identified with the Plunkett Company during that period?

A. Since it was the Plunkett & Webster Lumber Company. That has been organized for fourteen years.

Q. And you have been with the company since that time?

A. Except when I was in the Army; yes, sir.

Q. Have you stated your relationship to the company?

A. No, I didn't. I am secretary.

Q. What was your experience in the lumber business prior to the time you became connected with the Plunkett & Webster Lumber Company?

A. I sold hardwoods and inspected hardwoods previous to
790 that time.

Q. What is the nature of your trade, Mr. Plunkett?

A. We are jobbers of hard and soft woods, mostly domestic woods.

Q. You do not sell as retailers?

A. Wholesale only.

Q. And you are not a millman?

A. No; except that we have an interest in one or two mills in the North, hardwood mills.

Q. But not in mills turning out pine products?

A. No.

Q. What varieties of pine lumber do you distribute?

A. Most all domestic pines.

Q. Including the northern white pine as well?

A. Yes.

Q. And the Idaho white pine?

A. Yes.

Q. And the pines of the Pacific slope, which have been referred to here?

A. Yes; principally California pine—very little of the other.

Q. You carry California white pine?

A. And sugar.

By Mr. BURR:

Q. Pondosa?

A. Some; yes.

791 By Mr. MATTHEW:

Q. Throughout what territory do you distribute your lumber, Mr. Plunkett?

A. Roughly, from Grand Rapids to Boston, north of the Mason and Dixon Line.

Q. Throughout what period have you been acquainted with the name "California white pine"?

A. Probably ten years.

Q. Has this lumber been sold under that trade name during that entire period?

A. As far as I know, it has, all that time.

Q. Do you offer California white pine under that name?

A. Yes, sir.

Q. Do you invoice it to the trade under that name?

A. Yes, sir.

Q. Do you receive orders for California white pine under that name, as well?

A. Yes, sir.

Q. Did you ever receive orders for white pine without the qualifying term, such as "California" or "Idaho"?

A. No.

Q. Is the term "California white pine" quite well known to the trade with which you deal, Mr. Plunkett?

A. Yes; very well.

Q. Is there any confusion or misunderstanding as to the
792 identity of lumber whatever denoted by that term?

A. I believe there is not; I cannot recall any case.

Q. Have you had complaints from your trade respecting lumber which was furnished as California white pine, upon the ground that it was misdescribed or that there was substitution or deception?

A. No, sir.

Q. I am not sure whether I asked you as to the exact character of your trade; you said you sell to retailers; do you also sell to remanufacturers and millmen?

A. Yes; piano manufacturers, yard trade, sash and door, organ manufacturers, but principally yard trade.

Q. What lumber do you sell especially to organ and piano manufacturers?

A. Principally sugar pine.

Q. Do you sell to contractors?

A. No; we do not.

Mr. MATTHEWS. Thank you; that is all.

Cross-examination by Mr. BURR:

Q. As I understand it, you sell only to manufacturers and retailers?

A. That is all.

Q. Do you ever come in contact with the architects?

A. No.

793 Q. Do you ever come in contact with the consumers?

A. No.

Q. Or the contractors?

A. No.

Q. Or builders?

A. No.

Q. Do you ever come in contact with the speculative building-trade business?

A. No.

Q. You have testified that the retailers to whom you sell have no confusion in their own minds as to the differences between Idaho white pine and pondosa pine and California white pine; is that true?

A. That is true.

Q. Do you regard, yourself, that pondosa pine and California white pine are different trees; as being a different species of lumber?

A. Yes; we do.

Q. A different kind of lumber?

A. Yes.

Q. Do you regard sugar pine as being the same kind of lumber as pondosa pine?

A. No.

Q. Do you regard Idaho white pine as being the same kind of lumber as California white pine?

794 A. No.

Q. Which differs more from the Idaho white pine, the pondosa or the California white pine?

A. I do not think I am competent to say.

Q. Which differs most from the pondosa pine, California white pine or Idaho white pine?

A. The Idaho, I believe.

Q. Differs from——

A. Differs more than the California white pine; yes, sir.

Q. You think California white pine and pondosa pine are closely together do you?

A. Yes; they are much alike.

Q. You do not know anything about the botanical differentiation for distinctions of the wood, do you?

A. Except in a general way, only.

Q. Do you know whether from any botanical point of view, the California white pine is a genuine white pine?

A. Yes; I know that it is not a genuine white pine.

Q. Do you regard the term "white" in connection with California white pine as in a sense identifying it with the white pine group?

A. No; I don't.

Q. The word "white" would indicate, would it not, to the average man, that the wood belonged to the white-pine group, would it not, rather than to the yellow?

795 A. It depends upon what you mean by the average man. In the average lumberman I do not think it would, because he is so familiar with it.

Q. He has readjusted himself to the difference in the terms; is that true?

A. I think that is so.

Q. But would you think that the average consumer was as well posted as that?

A. Just what is the average consumer; suppose you define that.

Q. I am talking about first the builder who hires the contractor and architect; are they familiar with the various woods of the West, so that they are able to know that the wood that is named "California white pine" is not really a white pine; would you say they are able to do that?

A. I don't know.

Q. Do you sell to the larger retailers, or do you have a lot of these little fellows with yards in the country?

A. Principally larger yards our business is with.

Q. Would you be willing to testify positively and tell the examiner here that the retailers who are running the small yards, and are presumably less experienced, that they thoroughly understand that California white pine is really not a white pine; would you be positive of that?

A. I can only tell from my own experience of those that I have come in contact with; beyond that I cannot possibly testify.

796 Q. You do not come in contact with these small yard owners?

A. Some of them, and I think that my experience would represent a pretty good average.

Q. Do you go out and actually travel over the country and see the retailer?

A. I do not now.

Q. When did you last do so?

A. Within up to about three years ago.

Q. Up to three years ago you were an actual salesman?

A. Part time; yes.

Q. Where were you traveling; not all through this entire territory that you described?

A. Yes; principally with other salesmen at that time, with our other man.

Q. That is, you go along together, do you?

A. Yes.

Q. And call on the trade with someone else?

A. Yes; usually we went to our other salesmen; yes.

Q. What distinction do you make between Idaho white pine and California white pine as to its practical utility?

A. I think that is a pretty general question. I believe that each have their uses for certain purposes and not entirely competitive uses in a great many instances.

Q. Will you distinguish what Idaho white pine is best adapted to?

797 A. I think for common boards Idaho white pine is superior to California white pine.

Q. For what reason?

A. The knot is sounder; the tree produces smaller, sounder knots.

Q. Do you recommend it for greater durability where exposed to weather influences?

A. I don't know.

Q. You don't know as to that?

A. No.

Q. Do you regard Idaho white pine as softer than California white pine or not as soft in texture?

A. It is softer, in general.

Q. How about its ability to stay in place after being completed; do you distinguish between the two at all?

A. Yes; if I were to recommend it, I would recommend Idaho white to stay in place rather than California.

Q. You do not mean for interior trim, or do you?

A. I mean in places where exposed to heat and cold, as any wood would be exposed; no matter what it is used for.

Q. You think the retailers understand those practical distinctions between the two classes of wood pretty thoroughly, do you?

A. I do.

Q. They know the attributes of Idaho white pine and California white pine, as you have stated?

A. I think so, and maybe better than I do.

798 Q. Because they come in contact with the fellow who can make the kick, if they want to?

A. That is right.

Redirect examination by Mr. MATTHEW:

Q. Mr. Plunkett, if we are to make an effort to adopt a trade name for this particular lumber which will most satisfactorily identify its quality and uses to which it may best be put, rather than to consider the botanical classification, do you think that the term "California white pine" is best suited to that purpose?

A. I believe it is very well fitted by name.

Q. Will you state why?

A. Because, in general, the wood is used by people who formerly or even at the present time use a true white pine, and in a great many instances it is adaptable for purposes where formerly the true white pine was necessary, where it does not even compete, so far as its use is concerned, with the true yellow pine.

Mr. MATTHEW. That is all.

Re-cross-examination by Mr. BURR:

Q. Which do you regard as the true white pines?

A. I cannot name them all.

Q. Commercial white pines?

799 A. Sugar pine, Idaho white pine, and what we call northern pine in Minnesota, and Canadian.

Q. You do not know any of those botanical names, or do you remember those?

A. No; I do not; except Pinus strobus and Pinus ponderosa; I know those two.

Q. Pinus ponderosa means which?

A. As I understand, yellow pine.

Q. Which lumber belongs to the Pinus ponderosa tree?

A. I suppose, possibly not all the yellow pine, but western pondosa, California white pine, and some of the other species of yellow pine.

Q. The pondosa pine and California pine are the only ponderosas?

A. They are both ponderosas.

Q. You understand that?

A. Yes.

Q. Do you understand that white pine has any prestige or reputation in the northeastern part of the country, particularly?

A. Yes, sir.

Q. It means northern white pine primarily?

A. Yes; when they speak of white pine without other names.

Q. It is most apt to mean what?

A. Eastern white pine.

Q. And also known as northern white pine, is it?

800 A. Yes; also northern white pine.

Q. Would you regard it as a proper fulfilling of specifications if Idaho white pine was supplied on an order for white pine?

A. To some trade I would, and sometimes I would not.

Q. Take this trade, suppose an architect specifies, as some of them have testified, that they have specified white pine, without saying "strobus" or "northern" or "eastern" or "Idaho"; just simply say "white pine"; would you regard Idaho white pine as fulfilling that specification?

A. Do you mean technically, now?

Q. From the practical standpoint; would it be good faith with the purchaser?

A. It would, depending on the purchaser. We have trade that if we shipped Idaho white pine to, on an order specifying white pine, we would not be shipping what he expects to get.

Q. I am talking about the retailer; would that be good faith with his customer, if he gave Idaho white pine, if he asked for white pine?

A. Yes.

Q. Would it be good faith with the customer if California white pine were given?

A. Yes.

Q. You think it would be?

A. I do, but you hardly would make a sale without knowing some of the circumstances.

801 Q. You rely on who asked about it?

A. You should, if you don't.

Q. Otherwise you are not serving the highest interests, are you?

A. No.

Q. Do you mean that he could hardly be blamed much if he gave either, in request for white pine, could he?

A. The only cases we would think of shipping——

Q. No; I do not mean you; I mean the retailer now.

A. Oh, yes; he could, in general. Yes; he could be blamed very much if, in general, he shipped California white pine on an order that specified white pine. In general, he would be very much in the wrong.

Q. A customer does not always ask for Idaho white pine if he wants Idaho white pine?

A. I think sometimes he would ask for Idaho white pine when he wants that.

Q. You throw the responsibility on the retailer, not the customer, because you say the retailer ought to know what the customer intends?

A. I guess I do; I think the retailer ought to know.

Q. Don't you think that there are more retailers who might not have the highest degree of conscientiousness, who would deliver California white pine on an order for white pine, than would be the case

if the word "white" were not in the term—California white pine?

802 A. No; I don't.

Q. Don't you think that there are retailers who would be willing to dispose of California white pine under the excuse that they bought it as California white pine and therefore it must belong to the white pines, and therefore they would have an opportunity to dispose of it as such?

A. It could be possible; yes.

Redirect examination by Mr. MATTHEW:

Q. As far as you know, is that done, Mr. Plunkett?

A. I never knew of its being done.

(Witness excused.)

P. A. ALBERTSON was thereupon called as a witness and, having been duly sworn, testified as follows:

Direct examination by Mr. MATTHEW:

Q. Mr. Albertson, where do you reside?

A. Klamath Falls, Oregon.

Q. What is your business?

A. Sales manager for the Pelican Bay Lumber Company.

Q. What is the Pelican Bay Lumber Company?

A. Producers of California white pine.

Examiner SHEPPARD. They are respondents in this case?

Mr. MATTHEW. The Pelican Bay Lumber Company is a

803 respondent in the case, Mr. Examiner.

By Mr. MATTHEW:

Q. How long have you been connected with the Pelican Bay Lumber company, Mr. Albertson?

A. I first became connected with them in 1912, and left in December 1914 and went back in August 1920, and I have been there continuously ever since.

Q. During the epriod of your service with the Pelican Bay Lumber Company have you been in the sales department continuously?

A. Yes, sir.

Q. And how long have you been sales manager?

A. Since 1920.

Q. The plant of the Pelican Bay is located at Klamath Falls, Oregon?

A. Yes.

Q. From what territory does it draw the logs which are manufactured into lumber?

A. Klamath County, Oregon.

Q. That is, generally speaking, in southern Oregon?

A. In southern Oregon.

Q. Throughout what portion of the United States is the lumber of the Pelican Bay Lumber Company distributed?

A. In California, Arizona, New Mexico, Texas, Oklahoma, the Carolinas, Georgia—practically all States except in the States of Washington, Idaho, and Montana and two or three Northern
804 States or Northwestern States.

Q. In your sales work, have your duties carried you into the eastern part of the United States?

A. Yes, sir.

Q. Throughout what portions of the United States, just roughly?

A. Southern California, Arizona, Texas, Oklahoma, Missouri, Colorado, Nebraska, Minnesota, Illinois, Indiana, Pennsylvania, New York, Connecticut, and Massachusetts.

Q. Does your company sell to the retail trade directly?

A. In some localities.

Q. Is that its general practice?

A. No, sir.

Q. What is the nature of its trade, generally?

A. Through the wholesalers in the East and the producers of sash and doors in the Middle West, and the box factories in the Pacific coast and to some retail yards located in the States of Illinois, Wisconsin, Oregon, Ohio, Oklahoma, and Texas; otherwise we sell through wholesalers.

Q. What experience have you had in the lumber industry apart from the experience which you have just described with the Pelican Bay Lumber Company?

A. I worked for three years in a sawmill, scaler, dogger, setter, edgerman, grader, tallyman.

Q. Where was that?

A. Loyalton, California.

805 Q. What varieties of lumber were purchased at that plant?

A. California white pine.

Q. What other experience have you had in the lumber industry?

A. Assistant to the sales manager at McLeod, California, for a period of approximately two or three years; in New York City as wholesaler with the Charles Este Company of Philadelphia, who have gone out of business, in the Long Leaf Pine Company in east Florida; in the New York office as sales manager for the Wisconsin-Alabama Lumber Company at Sylacauga, Alabama; buyer for W. L. Shepard Company at Montgomery.

Q. How many years, in the aggregate, have you been identified with the lumber industry?

A. Since 1906.

Q. Mr. Albertson, have you generally become familiar with the various types and varieties of pine lumber that you have distributed to the trade throughout the United States?

A. I think so.

Q. You are familiar with the lumber that is known as California white pine?

A. Yes, sir.

Q. Pondosa pine?
A. Yes, sir.
Q. Sugar pine?
A. Idaho white pine?
A. Yes, sir.
806 Q. Northern white pine?
A. No, sir. I have only handled a very limited quantity of northern white pine, and that was years ago.
Q. But you have seen northern white pine?
A. I have seen it and come in more or less contact with it occasionally.
Q. Are you able to recognize it, as such?
A. It would be questionable.
Q. Are some specimens of these various lumbers which I have named so similar in appearance as to make it difficult in some instances to identify them?
A. Yes, sir.
Mr. MATTHEW. At this time, Mr. Examiner, I will ask the witness to identify some of these specimens of lumber, all of which are marked, and may I say that there will be no claim on our part that every specimen which we have here is necessarily an average, but there has been an effort made—at least we made a request for representative pieces, and if our friends in the opposition feel that any pieces are not representative, it should be clearly understood that we are entirely ready to accept their suggestions, and perhaps other pieces might be offered in addition.
It seems to me, Mr. Examiner, we should have identified the specimens of lumber we have here and, if possible, at a later
807 time we might have smaller sections cut from these larger pieces and have them introduced of record. It is not my purpose to introduce them now, but I would like to have them identified in some fashion for some possible future use.
Q. I show you first, Mr. Albertson, a specimen of lumber which purports to have come from the plant of the Pelican Bay Lumber Company, located near Klamath Falls, Klamath County, Oregon, and ask you to state briefly what it is [handing specimen to the witness]?
A. California white pine.
Q. Is it manufactured from the tree known botanically as Pinus ponderosa?
A. I would say so.
Q. Is it sap- or heartwood?
A. All sap.
Mr. MATTHEW. I desire to have that marked for identification, "Respondents' Exhibit 1."
(The specimen was thereupon marked "Respondents' Exhibit 1" for identification.)

By Mr. BURR:

Q. Is that a typical speciment of Pinus ponderosa?

A. All sap, of our district; yes, sir.

Q. Would you say that the average piece of sapwood of Pinus ponderosa was so pretty and white and uniform in texture as that?

A. This predominates.

Q. That is the very highest type, isn't it?

808 A. Yes, sir.

Q. You would not say that is the average?

A. The average of what?

Q. In appearance?

A. Of sapwood?

Q. Yes.

A. Yes, sir.

Q. I thought you said it was the highest type?

A. The highest grade; there is no blemish in it.

Q. In that grade, in appearance, is that an average, or is that more white?

A. It is the average for what is known as no. 1 and 2 clear.

Q. There is other lumber that is even whiter and prettier and more even than that?

A. It is all like that in 1 and 2 clear.

Q. What?

A. It is all that way in the highest grade in sap 1—sap 1 and 2 clear is just like that.

Q. All of it?

A. Yes.

Q. In other words, it is typical?

A. I would say so.

Q. I see toward the bottom, reading from the top, there are some signs of darker color and streaks, and about eight inches from the bottom—calling the top of the board where the paster is,

809 rather yellow streaks, darker; does that occur frequently in sap lumber of Pinus ponderosa?

A. Yes.

Q. Is there not a difference in the lumber as regards the presence or absence of appearances of that kind?

A. I do not understand the question.

Q. Are there not high and low points; in other words, yellowish and darker marks appearing in greater or less frequency in various specimens?

A. Do I understand you to mean some pieces of sap showing more yellow than this?

Q. Yes?

A. Yes; that is true.

Q. In other words, is that not about as fine a board as could be found in Pinus ponderosa?

A. Yes; to illustrate the sap.

By Mr. MATTHEW:

Q. I show you another specimen of lumber, Mr. Albertson, purporting to have come from the plant of the Pelican Bay Lumber Co., located near Klamath Falls, Ore., identified as "B and better grade heart and sap type", and will ask you if this specimen is fairly representative of the lumber produced by your mill of that particular grade?

A. In that grade; yes, sir; 1 and 2 clear.

Q. In other words, this is clear lumber?

810 A. Clear lumber.

By Examiner SHEPPARD:

Q. No sap in it?

A. Oh, yes; right here [indicating].

Q. On the right hand side of this board, Mr. Albertson, there is an area ranging from two inches at the top, perhaps three inches at the bottom, that is lighter than the rest; is that sapwood?

A. Yes.

Q. The remainder of the wood is heart?

A. Yes.

Q. Slightly darker in color than the other?

A. Yes.

Mr. MATTHEW. I will ask that that be marked "Respondents' Exhibit No. 2" for identification.

(The specimen was thereupon marked "Respondents' Exhibit No. 2" for identification.)

Q. Mr. Albertson, have you some comment to make as to whether this board is rather typical or not?

A. It is not typical in that the heart stock would lead you to believe it was sugar pine, and the soft lead you to believe it was white pine. You get occasional pieces like that.

By Mr. BURR:

Q. What do you mean, Idaho white pine?

A. California white pine.

Q. In other words, the sap is more like California white

811 pine than the sap of sugar pine?

A. Yes, sir.

By Mr. MATTHEW:

Q. What is the particular feature of the heart wood of this specimen which leads you to say it resembles sugar pine?

A. The small flecks of pitch; we call them sugar pockets.

Mr. BURR. This is not sugar pine, but Pinus ponderosa, according to the tag.

Mr. MATTHEW. So the witness testified.

By Mr. BURR:

Q. If you had nothing before you but that portion of the board which you say resembled sugar pine, would you or would you not believe that the entire board was sugar pine?

A. I'd believe it was sugar pine.

Mr. BURR. I object to the confusion of the Commission in the situation that is difficult enough anyway to get light upon, if nine tenths of this board could be identified as sugar pine, and I object to its going in to show the Commission what California white pine looked like. I think on its face it is more likely to have a tendency to confuse than it has to clarify the situation.

Mr. MATTHEW. I have not offered anything in evidence yet; I have merely identified it; I understand I can have almost anything identified.

Examiner SHEPPARD. Nothing is in; it is only marked for
812 identification. What is the next one?

By Mr. MATTHEW:

Q. I show you another specimen of lumber, Mr. Albertson, identified by the tag upon it has having been manufactured at the plant of the Pelican Bay Lumber Company near Klamath Falls, Oregon, from Pinus ponderosa, and further identified as small-knot common type; would you say that is a fairly typical specimen of the small-knot common type?

A. I would.

Q. In this instance the difference between the sap wood and heart wood shows up quite clearly?

A. Yes, sir.

Q. The sap wood is on either side and in the center runs the heart wood; somewhat darker?

A. It does.

Q. Is this California white pine also?

A. Yes.

By Mr. BURR:

Q. Would you say that is an average of the typical specimen?

A. That is a typical specimen of small, sound, tight-knot California white pine; I would call it no. 1 common.

Mr. MATTHEW. I ask that it be marked "Respondents' Exhibit No. 3" for identification.

(The specimen was thereupon marked "Respondents' Exhibit No. 3" for identification.)

813 Q. I show you another specimen of lumber identified by the inscription upon it as having been manufactured at the plant of the Pelican Bay Lumber Company, near Klamath Falls, Klamath County, Oregon, and further identified as "large-knot common type"; will you state whether or not that is fairly typical of the large-knot common type of California white pine lumber manufactured from the Pinus ponderosa tree in the Klamath Falls area?

A. Large-knot common type? No.

Q. In what respect does it differ from a typical specimen of large-knot common type?

A. The words "large knot" is confusing in there.

Q. Why?

A. I would say this would be an average. We sometimes get larger knots than that.

Q. This would be average-sized quality of common type, in your opinion?

A. You get some knots larger than this in common types. That would be 3 common.

Q. This specimen again shows the narrow area of heartwood in the center and the sapwood on either side?

A. Yes, sir.

Mr. MATTHEW. I ask to have it marked for identification.

(The specimen was thereupon marked "Respondents' Exhibit No. 4" for identification.)

814 By Mr. BURR:

Q. If you look at the edge, Mr. Albertson, is it possible to tell how large the heart lumber was by carrying out the circle, as it appears on the edge?

A. You could not do that conclusively, because you don't know what shape the tree was in. It is conceded, as general practice——

Q. Generally speaking, the size of the heart of the tree at this particular elevation would be found, generally speaking—roughly speaking—by following out the curvature that appears on the knot; is that true?

A. Not altogether, because this curvature is a little less sharp than this curvature [indicating], and the heart is not a perfect circle.

Q. But generally speaking?

A. Generally speaking, I would say that would be the case.

By Mr. MATTHEW:

Q. I show you another specimen of lumber purporting to have come from the plant of the Pelican Bay Lumber Company, near Klamath Falls, Oregon, manufactured from the Pinus ponderosa tree, and identified further as "small-knot finished type, all heart", and will ask you to state whether that is fairly representative of small-knot finished type California white pine produced in the Klamath Falls area?

A. Yes, sir.

815 By Mr. BURR:

Q. That is all heart, is it?

A. Yes, sir.

Q. You see the narrow margin of sapwood apparently on the left-hand side of the board; is that right, Mr. Witness?

A. Yes.

Mr. MATTHEW. I ask that that be marked "Respondents' Exhibit 5" for identification.

(The specimen was thereupon marked "Respondents' Exhibit No. 5" for identification.)

By Mr. MATTHEW:

Q. I show you another specimen of lumber, Mr. Albertson, purporting, by the inscription upon it, to have come from the plant of the Diamond Match Company at Chico, California, and identified as "sugar pine lumber." Will you state whether or not that is, in your opinion, fairly typical of sugar pine lumber?

A. I would say so.

By Mr. BURR:

Q. You would say it is?

A. Yes.

Q. Heart or sap?

A. Both; sap on the left side, and the balance is heart.

Q. The left side is the upper end where the inscription is placed?

A. It is more pronounced on the back.

816 Q. It is more pronounced on the reverse side?

A. Yes, sir.

Mr. MATTHEW. I ask that it be marked "Respondents' Exhibit 6" for identification.

(The specimen was thereupon marked "Respondents' Exhibit No. 6" for identification.)

By Mr. MATTHEW:

Q. This is another specimen, Mr. Albertson, and I will ask you whether this piece of lumber purporting to have come from the Diamond Match Company at Chico, California, and labeled "sugar pine", is likewise a fair specimen of sugar pine lumber?

A. It is.

Q. In this instance the heart-wood lumber predominates as before, there being the narrow area of sap lumber on the left side?

A. Yes, sir.

Mr. MATTHEW. I ask that this be marked "Respondents' Exhibit 7" for identification.

(The specimen was thereupon marked "Respondents' Exhibit No. 7" for identification.)

Q. I show you another specimen purporting to come from the Diamond Match Company, Chico, California, identified as "sugar pine", and ask you whether, in your opinion, that is a fair specimen of sugar pine?

A. It is.

817 Q. There is a small area of sap on the right-hand side of the board, Mr. Albertson?

A. There is.

Q. And the rest of it is heart wood?

A. Yes, sir.

Mr. MATTHEW. I ask to have that marked as "Respondents' Exhibit No. 8" for identification.

(The specimen was thereupon marked "Respondents' Exhibit No. 8" for identification.)

Q. I show you another specimen of lumber from the plant of the Diamond Match Company at Chico, California, identified as "sugar pine lumber", and ask you if that is likewise a typical piece of sugar pine lumber?

A. It is.

Q. This specimen consists entirely of heart wood?

A. It does.

Q. And there are a few knots in it which are likewise typical of that grade of lumber?

A. Yes, sir.

Mr. MATTHEW. I ask that that be marked "Respondents' Exhibit No. 9" for identification.

(The specimen was thereupon marked "Respondents' Exhibit No. 9" for identification.)

Q. I show you another specimen of lumber identified by the inscription as having been cut from Pinus ponderosa at the
818 Pickering Lumber Company's sawmills, located at Standard, Tuolumne County, California, and will ask you if you can identify that as a clear piece of lumber manufactured from Pinus ponderosa, as California white pine?

A. Yes, sir.

Mr. MATTHEW. I ask that that be marked "Respondent's Exhibit No. 10" for identification.

(The specimen was thereupon marked "Respondents' Exhibit No. 10" for identification.)

Q. Is this entirely sap?

A. All sap.

Q. I show you another specimen of lumber, purporting to have been cut from Pinus ponderosa at the Pickering Lumber Company at Standard, Tuolumne County, California, and ask you if that is likewise a typical specimen?

A. Yes; it is.

Q. Is this particular sample of heart or sapwood?

A. All heart.

Mr. MATTHEW. I ask that this be marked "Respondents' Exhibit No. 11" for identification.

(The specimen was thereupon marked "Respondents' Exhibit No. 11" for identification.)

Q. I show you another specimen of lumber, which purports to have been cut from a Pinus ponderosa tree at the Pickering Lumber Company sawmills, Standard, Tuolumne County, Cali-
819 fornia and ask you if you can identify that as a fairly typical piece of Pinus ponderosa lumber?

A. Yes, sir.

Q. Is that entirely sap, or is there any heart wood in it?

A. That is entirely sap.

Mr. MATTHEW. I ask that that be marked "Respondents' Exhibit No. 12" for identification.

(The specimen was thereupon marked "Respondent's Exhibit No. 12" for identification.)

Q. I show you an additional specimen of lumber, Mr. Albertson, purporting to have been cut from a Pinus ponderosa tree at the Pickering Lumber Company sawmill at Standard, California, and ask you if that is likewise a typical specimen?

A. It is not.

Q. In what respect is it not typical?

A. It is a hard-textured piece, and I do not think that that sort of wood predominates; I know it does not predominate in any California white pine that I have had contact with; it is like some of it, but very little.

Q. You regard that as an exceptional piece?

A. I would.

Q. Is it sap or heart wood?

A. Heart.

Mr. MATTHEW. I ask to have that marked "Respondent's Exhibit 13" for identification.

820 (The specimen was thereupon marked "Respondent's Exhibit No. 13" for identification.)

Q. The next in order that I desire to call your attention to are specimens of pondosa pine lumber which have come from the Spokane District. The witness cannot personally identify these pieces of lumber as having come from any particular mill, but they obtain locally, and if there is any objection—well, at least I shall have them identified.

I am going to offer two specimens of lumber received by us or furnished to us upon our request by the Portchester Lumber Company, of Portchester, New York, with certificates upon them, in the name of the Portchester Lumber Company, stating that:

"The attached wood sample is commonly known as pondosa pine and was shipped to us by Duffy-Hammacher Lumber Company at Spokane, Washington; shipment originating at Perman, Saunders County, Montana," and I ask that they be marked, respectively, "Respondents' Exhibits 14 and 15" for identification.

(Two specimens were thereupon marked "Respondents' Exhibits Nos. 14 and 15" for identification.)

By Mr. BURR:

Q. Referring to respondents' exhibit 13 for identification, I would like to ask the witness a question or so.

Do you know whether that is typical of pondosa?

A. Pondosa more than California; yes, sir.

821 Q. Let me ask you this, Mr. Albertson: The bright yellow marks on that piece of lumber, both above and below the numeral 13, will you state whether those marks are incident to the failure of the sawing of that lumber in vertical shape, or whether they are normally fitted to the saw for Pinus ponderosa; in other words, is that defective sawing that makes that show so badly?

A. No; that is all winter wood.

Mr. MATTHEW. I will ask to have identified a further sample of pondosa pine, identified by the inscription upon it as having come from the northwestern part of the United States, shipped from the mill of Morrill & Sturgeon Lumber Company at North Powder, Oregon.

This certificate is over the name of the Lord & Bushnell Lumber Company of Chicago, dated September 27th, 1929.

(The specimen was thereupon marked "Respondent's Exhibit No. 16" for identification.)

Mr. MATTHEW. I want to have marked for identification a piece of lumber which purports to be longleaf yellow pine—Pinus palustris, bearing the certificate of the Wausau-Southern Lumber Company.

(The specimen was thereupon marked "Respondent's Exhibit No. 17" for identification.)

By Mr. MATTHEW:

Q. Is this sample which has just been identified as Respondent's Exhibit No. 17 for identification fairly representative of the
822 southern longleaf yellow pine?

A. It is.

Mr. MATTHEW. May I ask to have two further samples of southern yellow pine longleaf lumber identified as exhibits 18 and 19 for identification, respectively.

(Two specimens were thereupon marked "Respondents' Exhibits Nos. 18 and 19" for identification.)

Mr. MATTHEW. I expect at some stage of these proceedings that the parties should be able to agree as to what specimens may be fairly offered as typical, in which event, and I again repeat, we will cut off certain specimens and have them cleaned up properly and offered for the record, but I object to any intimation that we are intending to make unfair and partisan comparisons. I made that clear a moment ago, and I do not think that there should be any doubt about it now.

Mr. BURR. Is it true, is it not, Mr. Matthew, that you are inspecting and now identifying preliminary to offering southern pine that you have here in the hearing room, for the purpose of showing the marked contract that exists between the pitch pines of the South, so called, and the so-called "California" white pine; it is done for the purpose of putting the two boards side by side?

Mr. MATTHEW. Certainly.

Mr. BURR. I do not think you ought to bristle up about what Mr. Williams has said.

823 Mr. MATTHEW. I objected to the statement that was made before the examiner off the record, after I had agreed with you that I would offer samples which would be fairly representative.

Mr. WILLIAMSON. I am sorry I said what I did.

By Mr. BURR:

Q. Are these three pitch-pine specimens all heartwood, would you say, or are you not sufficiently positive to be able to testify about it?

A. There is some sap in this specimen marked "No. 18" for identification in the upper lefthand corner.

Q. There is some sap there?

A. There is some slight sap, about three quarters of an inch in width, half the length of the piece, tapering out in the middle of the piece to nothing. The other two pieces are all heart.

Q. Referring now to samples marked for identification "Nos. 17, 18, and 19", can you say, Mr. Albertson, whether or not these samples you would regard as a fair exhibition of the average normal run of the mill for longleaf yellow pine of the South?

A. Sample no. 18 contains a little more mass pitch at one end than the other two samples, but the three exhibits taken together would give you the average, because sample 19 and sample 17 are very good.

Q. Whereas sample no. 18——

A. Has a little mass pitch at one end, tapering out at the other end.

824 Q. In other words, that is below the average and the other two are above; is that true?

A. To strike your average you would have to concede that.

Q. In other words, 17 and 19, in your judgment, are more favorable than the average run of the mill?

A. They are very good samples; yes.

Q. What do you mean by good samples, for this type of lumber?

A. Because you might get pieces quite a little poorer than this.

Q. Poorer in strength to stand up?

A. No; you get pieces that would contain more of this mass pitch. This is really good longleaf yellow pine [indicating].

Q. Referring to respondents' exhibit 19 for identification?

A. Referring to exhibit 19. Referring to no. 18, you have your mass pitch; the average would be less pitch than in 18.

Q. What is the disadvantage in your longleaf yellow pine to have pitch in it; is there any disadvantage about pitch in longleaf yellow pine?

A. In some cases and for some use mass pitch is not desirable.

Q. This type of lumber is used mainly for its strength, isn't it?

A. For structural purposes mass pitch is very desirable.

Q. Then, so far as that is concerned, sample no. 18 is favorable?

A. It is very desirable for construction pieces.

Q. On account of density, strength, and hardness; is that right?

A. Yes.

825 Q. Does this type of lumber compete with Pinus ponderosa on the market for the same utility and purposes?

A. Some in the shape of boards, when you get down to your common boards.

Q. Might compete?

A. It might compete in a sense for boxing, where the texture does not bother them.

Mr. BURR. If the examiner please, I should like to have Mr. Williamson resume the stand for a moment.

(Witness excused.)

M. W. WILLIAMSON recalled, further testified as follows:

Direct examination by Mr. BURR:

Q. Mr. Williamson, inviting your attention to respondent's exhibit for identification no. 13, I would ask you to tell me the occasional reason for the spotted appearance in the center of the board on that face, which carries the typewritten identification.

A. Well, this happens to be the result, in my opinion, more from the way that lumber was manufactured than it is in the texture of the piece.

Q. How was it manufactured to bring out that spotted and dark appearance?

826 A. Because the saw passes more parallel with the grain of the wood than it does against it. In other words, it is what we call flat-sawn lumber, flash-grain or bastard-sawn, as it is sometimes called. In other words, my contention is—and I am rather defending this piece than condemning it, because it happens to fall within a beautiful line of samples of California white pine, and the contrast seemed to throw it below a typical piece.

I think the very fact that it was shipped as all-heart pondosa pine by the manufacturer is somewhat of evidence that they did not regard it as anything unusual.

Q. Do you regard that flash-sawn piece of lumber as fairly representative of pondosa pine?

A. Absolutely.

Q. You do?

A. Absolutely. In many cases it is called for by the trade. They want that-slash, that flash in the grain—in many cases that I have had transactions in pondosa pine they have demanded this very type, called the Norway grain, or yellow-pine grain.

Q. For inside finish?

A. Absolutely.

Q. In order to bring out the stain?

A. As a grain. I see beauty in that piece, whether it is for or against the case.

Q. How about no. 14?

827 A. Precisely, therefore, I contend that this is just as much a typical piece.

Q. You contend that it is typical of pondosa pine?

A. Yes.

Q. Is it called typical of California white pine?

A. Yes; it says it is a specimen of California white pine, unless I am mistaken.

Q. Manufactured in California, they might call it pondosa pine?
A. Yes, sir.

Mr. BURR. Whether the defense is willing to admit it or not, they have this yellow-pine grain appearing in their California white pine just the same as they have in the softer.

Cross-examination by Mr. MATTHEW:

Q. Mr. Williamson, what did you understand to be the purport of Mr. Albertson's comment on that piece, identified as no. 13?
A. I just think he thought it might indicate too much of a yellow-pine grain and too hard to be complimentary of the lumber.
Q. That was your inference?
A. That was my inference; yes.
Q. You did not understand him to say that it was not a beautiful piece of lumber?
A. No.
Q. Lacking in beauty in any respect?
A. No.

828 Q. Or that it was not desirable for certain particular purposes?
A. No.
Q. All you understood him to say was that it was not typical of California white-pine lumber?
A. I suppose this was all based on texture. If you are talking about typical manufacture or typical in texture, I contend that he is wrong in both cases.
Q. Your contention is that that is typical of lumber which is marketed as California white pine?
A. Yes; as much so as any of the other samples, Mr. Matthew.

Mr. MATTHEW. The respondents will have no further evidence to introduce at this New York hearing, with the reservation that the respondents may return here in case they would like to have a hearing later on.

Mr. BURR. That is understand.

(Whereupon, at 5:15 o'clock p.m., the hearing was adjourned to Detroit, Michigan, at the United States Postoffice Building, October 14th, 1929, at 10:00 o'clock a.m., in room 424.)

829 Before the Federal Trade Commission

In the matter of White Pine cases

Docket Nos. 1620–1669, inc.

DETROIT, MICHIGAN, *October 14, 1929.*

Met pursuant to notice, 10:00 o'clock a.m.
Before William W. Sheppard, examiner.
Appearances:

Eugene W. Burr (Washington, D.C.) for the Federal Trade Commission.

George F. Lindsay, 1413 Merchants Bank Building, St. Paul, Minn., for the complainants.

A. P. Matthew, 712 Railway Exchange Building, Chicago, Illinois, for the respondents.

Carl I. Wheat, 712 Railway Exchange Building, Chicago, Illinois, for the respondents.

830 PROCEEDINGS

Exam. SHEPPARD. Gentlemen, if we are ready, we will get started.

THOMAS J. ANKETELL was thereupon called as a witness, and having been duly sworn, testified as follows:

Direct examination by Mr. BURR:

Exam. SHEPPARD. This is Mr. Thomas J. Anketell?

Mr. BURR. What is your business, Mr. Anketell?

A. Lumberman.

Q. What concern are you with?

A. I am with various ones, the Anketell Lumber and Coal Company and the Gratiot Lumber Company.

Q. How long have you been in the lumber business, Mr. Anketell?

A. Over forty years.

Q. How long have you been with the Gratiot Lumber Company?

A. Well, I organized it.

Q. And it has been going how long?

A. About twenty years, I guess; fifteen or twenty.

Q. And you are located here in Detroit, are you?

A. Yes, sir.

Q. Has all of your experience the forty years been here in Detroit?

831 A. No.

Q. And where was you prior to that?

A. Well, when I was a boy or a young man I worked in the lumberyards in Chicago. After the wholesaling and distributing from Chicago, I went up into Wisconsin and then in the sawmill business.

Q. How long have you been in Detroit?

A. Oh, about twenty-four years.

Q. And your experience in the retail lumber business has been entirely during the last twenty-four years here, or were you in that business elsewhere some time?

A. I don't remember how long, I had a line of yards at various places.

Q. You have had a line of yards?

A. I did have.

Q. Was that before you came to Detroit?

A. Yes.

Q. Where were your headquarters then?

A. Well, I had headquarters in Merrill, Wisconsin; Chicago, Illinois; and Detroit, Michigan.

Q. How long has your experience been in the actual——

A. I beg your pardon.

Q. How long has your experience been in the actual forests?

A. I don't remember a number of years.

Q. And that was in Wisconsin, was it, too?

A. In Wisconsin; yes.

832 Q. Now you don't do any mill work, do you?

A. Practically none, practically none; just simply sanding and cutting.

Q. And what species of lumber do you carry, what kind of wood?

A. We carry white pine, yellow pine, fir, red cedar, oak, pondosa pine, a little, well, practically no pondosa pine, that is, with a very little poplar.

Q. What do you mean, I would say, what do you mean by white pine?

A. It is a little difficult to give an exact definition of what white pine is. But white pine—is such a common, so well known I never thought of giving a definition of it.

Q. Well, do you know anything about the names botanically?

A. No.

Q. Did you ever get orders for white pine with the word strobus connected with it?

A. No—well, since you speak of it I recognize it now.

Q. You have heard of it now?

A. Yes.

Q. I see. Do you recall what is known as to the trade as northern white pine, or genuine white pine?

A. Yes, sir.

Q. Now, have you got white pine in California also?

A. No.

Q. What do you get from California?

A. What they call sugar pine.

833 Q. You do buy sugar pine, do you?

A. I have bought it, but not recently.

Q. Do you regard sugar pine as white pine?

A. In my opinion, no.

Q. In your opinion, no? Do you buy anything under the trade name of California white pine?

A. I have bought it, but so little, I have bought so little of the California white pine and the sugar pine that is difficult to answer that question, because I have always considered the two about the same.

Q. About the same?

A. That is what I have considered, I am not qualified to give a technical opinion, because I have not been through the California pine whatsoever.

Q. Have you got any California pine in your yard at the present time?

A. Not that I know of.

Q. You have bought it at times, you say?

A. I have; I have a little. I don't remember seeing—several years ago I may have bought some, but I don't remember.

Q. Do you recall, or do you regard that as white pine, the California white pine?

A. I never have.

Q. You never have?

A. No.

Q. And do you regard Idaho white pine as white pine?

834 A. Yes.

Q. You do?

A. You say white pine, white pine, you have no pondosa pine?

Q. Yes; white pine; not pondosa pine?

A. Yes; I do mean Idaho white pine.

Q. But you regard pondosa pine as a white pine?

A. No.

Q. Do you distinguish between the pondosa pine and the California white pine?

A. I have never considered very much the difference between the two, except as I say, so far as California white pine is concerned, I mean California, because I do not have so very much of it.

Q. Well——

Mr. MATTHEW. I think the witness ought not to be interrogated about California white pine, if he does not deal in it.

Mr. BURR. Well, I think he may answer that.

Mr. MATTHEW. He said he spoke of California, but he might have bought a little a number of years ago. That is the most he has said.

By Mr. BURR:

Q. To make sure, Mr. Anketell, you don't know very much about California white pine?

A. Very little.

Q. Do you have competition with a number of dealers that sell California white pine?

A. I don't recognize—I haven't recognized or noticed any

835 competition on what is called California white pine. Never have come in competition with it as California white pine. That is all I know.

Q. Now, do you have orders come in for white pine, or do they ask for northern white pine, or how do these orders come?

A. Usually ask for white pine.

Q. What do you furnish under those orders, in compliance with those orders?

A. As we carry practically nothing but white pine in the species of what is called white pine, they usually get white pine. We have

carried a little pondosa pine and in the stress of business sometimes we have sent out a little pondosa pine as white pine. During the boom when everything was booming and everybody wanted lumber without much idea of what they got, why I presume they did get a little pondosa pine.

Q. From you?

A. From anybody—from us, sent out as white pine.

Q. Do you regard that as a correct compliance with the specifications of orders for white pine?

A. No.

Q. You don't regard that as good?

A. No.

Q. Would you fill an order for white pine interchangeably with Idaho white pine or northern white pine?

A. Yes, sir.

836 Q. Are you still getting the northern white pine in good quality?

A. Yes.

Exam. SHEPPARD. Ask him the same question, Mr. Burr, about sugar pine that you just asked him about filling orders for pine.

By Mr. BURR:

Q. Would you fill an order for white pine with sugar pine, if you had sugar pine in stock of the right dimensions, and so forth?

A. I am not quite sure what would be done under those conditions.

Q. Have you sugar pine in your yards at the present time?

A. Not that I know of.

Q. When did you get it last?

A. Several years ago.

Q. Have you used some sugar pine or some California white pine?

A. Very little of either.

Q. Very little of either, not much choice?

A. No.

Q. Have you bought any Arizona or New Mexico white pine, so called?

A. So called.

Q. Yes; I mean under that trade term.

A. Yes; so called. They call it white pine.

Q. Do you have Arizona white pine?

A. I think I have.

837 Q. In your yards now?

A. Yes.

Q. Would you fill an order, feel free to fill an order, or do you use Arizona white pine in filling orders for white pine?

A. About the only thing we carry that in is ship-lap.

Q. Ship-laps. That——

A. Yes; that is about the only thing we carry of the Arizona.

Q. Of Arizona white pine?

A. Or New Mexico.

Q. Now, if you get orders for white pine ship-lap do you feel free to furnish Arizona white pine?

A. The contractor usually understands what he is getting.

Q. Would you feel free to, please answer?

A. Yes; I certainly would.

Q. You would feel free to give Arizona pine as white pine?

A. Yes.

Q. Do you distinguish between Arizona white pine and California white pine in that respect?

A. I say I am not qualified to testify as to California white pine or sugar pine.

Q. Is the Arizona white pine a large source of your supply?

A. Not particularly.

Q. From whom do you buy it?

A. I think we buy some from the Cady Lumber Company.

Exam. SHEPPARD. If they are respondents, let me know.

Mr. BURR. Yes; they are respondents.

838 The WITNESS. The O. McNary Lumber Company.

Q. I don't know as to them.

A. The Cady Lumber Company, we buy quite a little from.

Q. Have you ever dealt with the Arizona Lumber and Timber Company?

A. Not that I remember.

Q. Not that you recall. Have you ever purchased from the Saginaw and Manistee Lumber Company any Arizona white pine?

A. Have I ever purchased any from the Saginaw and the Manistee?

Q. Yes.

A. No—wait a minute——

Q. The Signaw and the Manistee Lumber Company?

A. Manistee or Manistique?

Q. Manistee?

A. I don't remember buying any from either of them.

Q. Have you ever bought any New Mexico white pine?

A. I don't remember, I probably did.

Q. Ship-lap is an exterior finish, is it not?

A. Not in Detroit.

Q. Not in Detroit? Where is it used?

A. Used for sheathing up buildings; for instance, a veneered building they use ship-lap, and put the brick outside. And they would also use it frequently for barns.

Q. Use it for barns on the outside?

A. Occasionally, they don't build many barns any more here in Detroit.

839 Q. I didn't know but what you had a rural business too. Do you use Arizona white pine and pondosa pine interchangeably in your ship-lap?

A. Yes.

Mr. BURR. I think that is all.

Cross-examination by Mr. MATTHEW:

Q. You said, Mr. Anketell, you usually furnished Arizona white pine upon orders which you received ship-lap?

A. Yes.

Q. That is your usual practice?

A. Usual practice. It is usually called that, white pine ship-lap. That is what it is usually called.

Q. Have you sometimes furnished pondosa pine upon similar orders?

A. Yes; in ship-lap; a contractor seems to understand by white pine what he gets.

Q. Is it ordinary, you would feel free to furnish Arizona white pine or pondosa pine upon orders for ship-lap, those orders white pine ship-lap, what form does the order come in?

A. Usually comes in white pine ship-lap.

Q. And you understand from that that he expects to receive Arizona white pine ship-lap or pondosa pine ship-lap?

A. He would expect that, or even white pine, or real white pine.

840 Q. Is satisfied with either?

A. He would be satisfied for that purpose with any one of them. I think he would, we never do know.

Q. That is your understanding of the trade?

A. Yes.

Q. You are not attempting to deceive your customers at all?

A. No.

Q. With the understanding of the trade that the Arizona white pine or the pondosa will satisfy an order of that character?

A. It will satisfy an order; yes.

Q. And you purchased pondosa pine under that name?

A. I purchased pondosa pine under pondosa pine.

Q. Under that name?

A. Any purchase I specified pondosa pine in purchasing.

Q. And where did you purchase the greater amount of your pondosa pine?

A. That is difficult to answer, because it comes from various places.

Q. Does it come from the inland empire section?

A. That is the so-called "inland empire."

Q. That is from the Northwest?

A. Eastern Oregon, Idaho, or Montana.

Q. Eastern Washington?

A. I don't remember any coming from eastern Washington.

Q. So far as your recollection goes, it is eastern Oregon,

841 Idaho, and Montana?

A. Yes.

Q. And you buy it as pondosa?

A. As pondosa pine.

Q. And you furnish it upon these cases, upon orders which call for white pine, because you understand it is understood by your trade and satisfies the trade?

A. Yes.

Q. Now, you say you would not regard sugar pine as white pine. Although I understand that you would not expect to furnish sugar pine upon orders calling for white pine?

A. Excepting in ship-lap. If I buy sugar pine for the same purpose as this is used, pondosa and New Mexico as ship-lap is used.

Q. That is understood for interior use where it is not exposed to weather conditions?

A. Ship-lap we use in Detroit, goes anywhere, and is very rarely exposed to the weather.

Q. And what quality of lumber is employed for that purpose, just any lumber, or some particular type?

A. Yes; any lumber.

Q. I take it, Mr. Anketell, you are not interested in the botanical identification of trees, but you are interested as a practical lumberman in the quality and use of the word?

A. That is all.

842 Q. Now, the botanical name of sugar pine, I assume, you don't know?

A. No.

Q. Or of the Idaho white pine?

A. I would probably recognize it if I heard it.

Q. Do you obtain your pondosa pine from wholesalers or from manufacturers of lumber?

A. Usually from manufacturers.

Q. Have the manufacturers of this pondosa pine from whom you obtained your supplies made any suggestion with respect to its being furnished as white pine here upon orders for white pine, or have they just left it with you?

A. That is all.

Q. That is the extent of your dealings with them?

A. Yes.

Examiner SHEPPARD. You do retail business, do you not, Mr. Anketell?

A. Yes; retail and construction loan business.

Mr. MATTHEW. I think that is all.

Redirect examination by Mr. BURR:

Q. Do you make a distinction between the furnishing of genuine white pine as contracted with other varieties of pine for exterior use?

843 A. We carry, with the exception of this ship-lap, we carry very, very little pondosa pine, and when I say pondosa I am classifying—when I say pondosa pine, I consider, I always have considered, California pine and Arizona pine and New Mexico pine in the same category. We carry very, very little outside of the real white pine.

Q. Do you recall where—do you regard real white pine as better for exterior purposes?

A. Most assuredly.

Q. Why?

A. It does not rot as soon in this climate.

Q. Does not rot as soon in this climate?

A. In this climate.

Examiner SHEPPARD. What has led you to that belief?

A. Experience.

By Mr. BURR:

Q. Have you had any experience with pondosa pine?

A. In some places where we have made construction loans they used pondosa or pondosa pine for steps. It has rotted in two or three years and we had to replace it.

Q. Where was that, do you recall?

A. Here in the vicinity of Detroit.

Q. Do you recall any specific instances; any particular cases?

A. Yes; in a construction loan we made to a man named Paul Hecker.

Q. Was that for steps?

A. Steps.

844 Q. A porch, or something like that?

A. Porch steps.

Q. What happened?

A. Rotted.

Q. In how long a time?

A. Now, when I say this——

Q. Now, how long was it first, please?

A. I should say about three years. When I say this, this is what was reported to me by my employees, so you have to——

Q. It came in the regular course of your business from an employee, did it?

A. Yes.

Mr. MATTHEW. We object to that.

Mr. BURR. If the examiner please, when a man knows through reports from the office employees in the regular course of his business, I say, possibly is not hearsay.

Mr. MATTHEW. I submit it is the purest hearsay.

Examiner SHEPPARD. I think I ruled on that at the beginning of the trial, gentlemen. I am going to consider as knowledge what a man gets in the course of his business. That is the only way in the world we learn anything, what we read or hear, and so forth, and so on in the course of our ordinary business, our association with people who are in business with us. I don't think the hearsay rule applies to that. I am going to let the examination go on.

845 Mr. MATTHEW. He has testified to specific instance, and an instance which was reported to him, and he is merely reporting the language of others, as to his general information, that

is the only thing. It is not a matter of expert opinion upon which he is being interrogated now.

Mr. BURR. The expert rule, I think, has got nothing to do with this matter.

Mr. MATTHEW. Well, there is absolutely no basis upon which hearsay can properly come in.

Exam. SHEPPARD. Of course, I do think, Mr. Burr, that the best evidence on that would be the man himself.

Mr. BURR. If you are referring to white pine, I think so. If you are referring to the rule as admissibility, I don't think the rule as to admissibility, I don't think the best evidence rule applies.

Mr. MATTHEW. It wholly is inadmissible.

Mr. BURR. No. What a man knows in the course of his business is something that he can tell us—as to what lumber he would buy and his whole policy, and in several cases the courts have definitely held that the Federal Trade Commission may receive evidence upon which business men would be guided and guide their course of policy.

Comm. SHEPPARD. Mr. Burr—Mr. Anketell, I am letting you answer that question, because I take it that the information you received on this particular instance and probably other mat-
846 ters that are not concerned in this inquiry was from an association with your customers in the regular line of business.

The WITNESS. Yes; I might suggest that it would be very easy for me, and it might save time, to let me answer, to let my answer go through, because all you would have to do would be to call the man who reported it to me, and bring him down here and he would simply testify to the facts.

Exam. SHEPPARD. I am going to let the examination proceed.

Mr. MATTHEW. Exception.

Mr. BURR. Read the question.

(Question read.)

Q. Now, how long ago was it that those steps rotted out?

A. I don't remember the exact date. Within the last year or so.

Q. Did you replace that porch?

A. I think we did.

Q. Do you remember what you furnished?

A. I cannot remember. I don't know what we furnished.

Q. Now, was that pondosa pine or California white pine that you furnished? Do you recall what it was?

A. Reported to me as being pondosa. Of course, naturally I would not know, I would not know the details of it as to that, except what was reported to me.

Q. Now, do you remember any other specific instance of trouble with that type of lumber?

A. No.

Q. Have you built for yourself a residence, Mr. Anketell?
847 A. Yes.

Q. What lumber did you use for that?

A. How do you mean?

Q. What lumber did you use?

A. Well, there is not so awful much lumber in it. Well, let's see—solid brick house with steel frame.

Q. Any lumber trim on it?

A. Yes.

Q. Exterior lumber trim?

A. Yes.

Q. What did you use for that?

A. I don't remember. I don't remember exactly, but I think part of it was white pine, as I built the house for my own use, I used yellow pine, southern yellow pine, five eights ceiling for cornice.

Q. Yellow pine for cornices?

A. Five eighths yellow pine ceiling for cornices, because where there is practically no water; it is a very wide cornice, where it is kept painted constantly.

Q. You had that in preference to either pondosa or white pine, did you?

A. Not in preference, but it was going to be painted up, properly painted, and I was going to live in the house, so I thought I would try it out. See?

Q. Put it in there as an experiment, did you?

848 A. Partly.

Mr. BURR. All right. That is all.

Cross-examination by Mr. MATTHEWS:

Q. Mr. Anketell, in this case where some steps rotted away, where you stated that the wood was pondosa pine, do you know whether it was sap wood or h'art wood?

A. No.

Q. What wood do you prefer for frames of sash?

A. White pine.

By Mr. BURR:

Q. What did you put in your own residence?

A. White pine. I think it was white pine.

Q. You are not sure?

A. No.

Mr. BURR. That is all.

(Witness excused.)

C. W. KOTCHER, called as witness and having been duly sworn, testified as follows:

Direct examination by Mr. BURR:

Exam. SHEPPARD. Mr. C. W. Kotcher.

Q. What is your business, Mr. Kotcher?

A. Lumber, interior finish.

849 Q. Do you do any millwork?

A. Millwork?

Q. Yes.

A. Yes, sir.

Q. What line of millwork do you make?
A. Everything for the interior.
Q. Everything for the interior?
A. In the line of lumber.
Q. Do you make an exterior work?
A. Yes.
Q. What line of exterior work do you make?
A. All lines of lumber.
Q. All lines of exterior finish?
A. Out of lumber.
Q. Now, do you make stock or special order?
A. Both.
Q. Both. And how long have you been in the real estate lumber business?
A. About 43 years.
Q. All of the time in Detroit?
A. Yes, sir.
Q. How long have you been in interior- and exterior-finish millwork?
A. 43 years.
Q. Did you ever have any experience in the actual forest?
850. A. Yes, sir.
Q. Where was that?
A. State of Michigan.
Q. That was with northern white pine, was it?
A. Yes, sir.
Q. From northern pine up there?
A. That is hardwood, hemlock.
Q. How long were you in the woods?
A. Oh, probably ten years.
Q. Well, while the logging operations were on hand, I presume?
A. Yes, sir.
Q. Now, what varieties of lumber did you buy and sell for your retail trade; that is, buy lumber not restricting it to pine?
A. Well, we bought a number of different species of pine. For outside and exterior cornice work we used northern.
Q. You are talking about——
A. White pine.
Q. Now, I was talking first about the retail rather than the millwork. You referred to the millwork, were you not?
A. Yes.
Q. Now, confining yourself for the moment to the retail trade, what variety of pine did you handle for the trade that you sold to?
A. Excluding millwork?
Q. Excluding millwork for the time being?
851 A. Well, we used fir.
Q. What kind of pine?
A. Well, it is a type, we used yellow pine, mostly yellow pine for bill stuff.

Q. For what?

A. What we called bill stuff, piece stuff, construction material, like joice and scantlings, and those things; we used principally yellow pine.

Q. Now, then, did you buy, and still buy, for retail lumber purposes white pine?

A. Yes, sir.

Q. What variety of white pine do you handle?

A. You mean what quality?

Q. No; I don't mean the grade or quality. Do you use northern white pine, for example?

A. We buy Idaho pine. We buy California sugar pine. We buy northern white pine.

Q. Now, what do you mean by Idaho pine? There are two varieties of pine cut in Idaho, I believe. Which one do you refer to, or to both?

A. I refer to the Pinus monticola; that is the genuine white pine.

Q. That is the genuine white pine, is it? Where do you get your northern white pine?

A. We get it mostly from Canada.

852 Q. Do you get a good quality of genuine white pine, northern white pine?

A. We use it a great deal. We get the grade that we buy.

Q. Is that virgin timber?

A. Yes.

Q. First growth or second growth?

A. It is virgin timber, strictly, as I understand it.

Q. Do you have to pay more for it than you do for the Idaho white?

A. It is a shade higher.

Q. Now, do you buy pondosa pine?

A. Why, we use it for a very limited quantity for sheathing—sheathing houses; we get it for that purpose.

Q. That is what, sheathing—not exposed to the weather?

A. Yes.

Q. And do you regard that as efficient as the genuine northern pine for exterior use?

A. Yes.

Q. Have you had experience with it that leads you to that view?

A. Yes; I have.

Q. Will you tell us about it?

A. Well, a few years ago we were not as well posted as we are now, and we thought that we used that in our buildings for the sash, and bought it for that purpose, and in about seven or eight years we had to take that our and replace that with northern pine.

853 Q. Was that Idaho pine, Idaho pondosa?

A. It was pondosa.

Q. Pondosa?
A. That's what we bought it for as western pine.
Q. Bought it as western pine?
A. I think we did. I don't remember without looking at the invoice.
Q. That was a variety of pondosa pine?
A. Yes.
Q. You are sure of that?
A. Yes.
Q. Do you remember where it was used?
A. Used in our building on Gratiot Avenue for the front sash.
Q. Have you had to replace this front sash?
A. Yes, sir; I did.
Q. And what did you put in there then?
A. Northern pine, white pine.
Q. You answered a while ago that you regarded Idaho white pine as inferior to northern white pine for exterior use?
A. No; I didn't.
Q. Well, I thought the record would so show.
Examiner SHEPPARD. He didn't say that.
Mr. BURR. That is my mistake.
Q. Now, did you have calls from customers asking for white pine without any designation, whether northern, or Idaho, or California, what it was intended to be?
854 A. Every day.
Q. And what do you supply when you get orders for white pine?
A. We supply white pine.
Q. Now, do you use California or Arizona white pine as real white pine?
A. No.
Mr. MATTHEW. I don't think he said he sold any California or Arizona pine.
Mr. BURR. He didn't say Arizona, but I think he said he did buy California.
A. Only for sugar, for the sugar pine.
Q. Did you buy any California white pine?
A. No.
Q. Did you buy any Arizona white pine?
A. Not that I know of. We buy some pondosa as I said—I don't know where it comes from—for sheathing. That is the only thing we get it for and sell a very limited quantity.
Q. Do you sell it for anything besides interior use now?
A. That is all.
Q. Interior only?
A. That is all.

Q. Have you had any experience with pondosa as regards its durability and lack of durability for outside use, besides what you referred to on Gratiot Avenue?

A. Yes; I have.

855 Q. Will you explain?

A. Yes. We furnished quite a good-sized residence for the president of the Peerless Motor Car Company up in Alginas not long ago, and the outside door was specified white pine. We buy all the doors that we can; we bought this one, set up there, and the wet and dry twisted the door so we had to go and take it out and we found it was pondosa pine. We replaced it with northern white pine, a northern white-pine door, and it was about a year or so ago, and that door has been there since.

Q. Do you know of any other specific instances?

A. Well, there is nothing that I can relate from my own personal experience as I know of. All I know is what I have heard around town.

Q. Well, is this from your employees or just talk around town?

A. From my employees; we had had some correspondence and we have had some requests. We had a request—wait a minute, now. Off the record.

(Colloquy off the record.)

A. We had a request, I think, about a year ago from the Board of Education to go out and look at some frames in the schoolhouse.

Mr. MATTHEW. That is objected to.

The WITNESS. And to report what we found. And we reported they were not pine, and they ordered them out.

Examiner SHEPPARD. I am going to limit this to intercourse by the witness with his own employees. I don't intend to let

856 down the bars to the public. I don't think that is right.

Mr. BURR. No; I don't think so.

Examiner SHEPPARD. I will order the last stricken, Mr. Reporter.

Mr. MATTHEW. I was trying to interpose an objection.

Mr. BURR. How much are you striking?

Mr. MATTHEW. I think he should strike the answer and start again.

Mr. BURR. I think the witness where the witness testifies he went out and found it and that should be left.

Mr. MATTHEW. He didn't so testify.

Mr. BURR. Well, he did, I am quite sure.

Examiner SHEPPARD. You saw it yourself?

A. I sent out inspector out there.

Q. (By Mr. BURR.) The inspector is not in your employ?

A. Yes.

Q. (Mr. BURR.) I think that is all.

Mr. MATTHEW. Think that is nearly hearsay, and one of the fundamental reasons for hearsay is I am entitled to cross-examine the

man who knows at first-hand. It does not make any difference whether he gets it from employees or anybody else. It is a third person.

Examiner SHEPPARD. That certainly is the best evidence.

Mr. BURR. Let me see if I can qualify him.

Mr. MATTHEW. I don't care how accurate his report may be
857 that was made to this gentleman, even though he may give it here in good faith.

Mr. BURR. Did you—do you have inspectors for this kind of work?

A. Yes, sir.

Q. Is the inspector in your employ?

A. Yes, sir.

Q. To whom does he report in your organization?

A. Both Mr. Stewart and myself.

Q. How is Mr. Stewart?

A. He is the general manager of our business.

Q. And these people report also to you, do they?

A. Yes, sir.

Q. Did this man in this particular case report to you on the subject?

A. Yes, sir.

Q. And is that a part of the inspector's regular business, to report to you as well as to Mr. Stewart?

A. Yes, sir; he reports to both of us.

Q. And as a part of your regular business it is your duty to keep posted through your inspectors and their regular reports to you; is that true?

A. I don't go and check up.

Q. That is the means of information you have, through these reports?

858 A. We have to depend upon our men. That is not from my personal observation at this particular time.

Q. You didn't go out there, you mean?

A. I didn't go out there, but this other I know more about.

Q. Which other do you mean?

A. I mean the sash that I took out from our own buildings.

Q. Well, I see; I think that is admissible.

Mr. MATTHEW. I submit it is absolutely inadmissible under all of the rules. You cannot find a case which will admit hearsay under those conditions.

Exam. SHEPPARD. I think that is probably drawing it out a little too far, Mr. Burr; I think we will limit Mr. Kotcher's testimony to the instance he has narrated to his own personal experience.

Mr. BURR. If the examiner please, I wish to have an exception noted and ask in view of the exception that the matter be not finally stricken.

Exam. SHEPPARD. All right. Let the testimony remain in, Mr. Reporter, and give an exception to Mr. Burr.

Mr. BURR. There are one or two cases I would like to look up when I have an opportunity to do so.

Q. Do you recall any other specific instance, Mr. Kotcher?

A. No; I don't. They are not very fresh in my mind. I didn't know that you were going to ask me such questions or I might have refreshed my mind.

859 Q. Now, referring to your millwork, you use white pine, do you, for exterior millwork solely?

A. Yes, sir; white pine and cypress.

Q. Yes; white pine and cypress. Is that white pine, Idaho white pine or northern white pine, or both?

A. Both, and sugar pine; California sugar pine.

Q. You use some California sugar pine for exterior finish, do you?

A. Quite a little; we use it mostly for sash and outdoor doors, outside doors, and things of that kind.

Q. Now, do you regard Idaho white pine as durable for uses where exposed to the weather?

A. Yes.

Q. Have you had any unfortunate experience with Idaho white pine for that purpose?

A. No.

Q. Could you use that for interior purposes?

A. Oh, I imagine.

Q. How long have you been using it for interior purposes?

A. Oh, about fifteen years.

Q. And that would be about the earliest, would it?

A. I might say that we could get this northern pine previous to fifteen years ago a lot easier than now.

Q. It was fully as cheap up to that time as white pine?

A. Not a great deal difference in price, comparing the
860 same grades.

Q. A little less freight on the northern white pine than on the Idaho?

A. Well, they always sell it delivered, so it didn't make much difference about that.

Q. Now, how long have you been using California sugar for exterior trim purposes?

A. Oh, probably twenty years.

Q. Do you recall any unfortunate experiences with that type of wood as to its durability where used when exposed to the weather?

A. No; I haven't. We don't use so much of that for exterior, except sash.

Q. And you regard it as durable for that purpose?

A. California sugar pine?

Q. Yes.

A. Yes.

Q. Where exposed to the weather?

A. Yes; I do.

Q. Now, is the so-called "California white pine" on the market handled by your competitors?

A. I don't know who sells it.

Q. I beg your pardon.

A. I don't know anything about our competitors, whether they sell California white pine or not.

861 Q. Well, has there been at any time that you know of confusion in the trade as regards the selling of California white pine under the trade name "white pine"?

A. There has been confusion.

Q. Did you ever say about four years ago, or do anything to try to clear up that confusion?

A. Yes; I did.

Mr. MATTHEW. I am going to object to the leading questions, Mr. Examiner.

Exam. SHEPPARD. A little leading, Mr. Burr.

Mr. BURR. Well, if you have made any effort to clear up the confusion which you say existed in the trade as regards the meaning of California white pine, will you state what you did?

Mr. MATTHEW. Now, I object to that. What he did does not go to the merits of this case, if the Commissioner please.

Mr. BURR. If the examiner please, there is no better circumstantial evidence.

Exam. SHEPPARD. I think I will let him answer your question.

Mr. BURR. Read the question.

(Question read.)

A. Based upon my experience personally and investigating the differential in the price of California so-called white pine or pondosa and genuine white pine, I sent out a lot of samples showing two woods. I believe the market price today, in a good

862 quality of lumber, between the pondosa or the so-called California white pine and the Pinus strobus, or genuine white pine, is somewhere around $20 a thousand in the cut cars of lumber.

Exam. SHEPPARD. You mean the difference in the price?

A. Yes; I believe it is about that. We have to use a pretty good grade of lumber in doors and sash; but, of course, there is nowheres near that much difference in the common grades that are used for cornices. Just what the differences in the common grades are, I don't know. I sent out samples and put a lot of propaganda out that I thought was necessary.

Q. Why?

A. Well, from the confusion in what was sold and named, misnamed, I got statistics from the Government showing different kinds of woods, especially in the different kinds of pine, and their statement as to the rot-resisting qualities of the different kinds of pines, thus—just based upon that, I put out a little propaganda regarding it, not very much.

Q. To whom did you sent that?

Mr. MATTHEW. Let it be understood that my objection goes to all the witnesses testifying to on that.

Exam. SHEPPARD. Yes; the objection is noted to all of that testimony.

By Mr. BURR:

Q. To whom did you send that?

A. Oh, I sent it to contractors and architects.

Q. Did you ever take it up with the retailers, this matter
863 of confusion at any of their meetings?

A. No.

Q. I beg your pardon?

A. I did not.

Q. Did it ever come up at any of these meetings or luncheons?

A. Not as I know of.

Q. Now, has there been any controversy in this city among architects and builders, and so forth, say about four years ago, on this subject of substitution of California white pine for genuine white pine?

A. I don't know.

Mr. MATTHEW. Just a minute. As far as the witness has stated now, I will offer no objection, but the question is objectionable as it stands.

Q. And have you written any articles of which appeared in the Detroit papers, or any of them, with regard to the confusion that existed at that time as to the California pine, California white pine and genuine white pine?

Mr. MATTHEW. I object to the question, if the Court please. It is absolutely immaterial to this proceeding whether the witness wrote articles for the newspapers or not. This is an inquiry into the facts, and upon those facts presumably the Commission will arrive at some conclusions.

Exam. SHEPPARD. That is true, Mr. Matthew.

Mr. BURR. If the Commission please, I am trying to show——

Exam. SHEPPARD. No, Mr. Matthews, I know what you
864 said was true, but at the same time the testimony along this line goes to substantiate the complaint and to show a public interest in this question, whether or not it is taken up by the contractors or by the wholesalers or the retailer or the jobbing dealers; it all goes to that paramount issue. I think that testimony is under the rule of evidence; it goes to this issue. I will let it go in and give you an exception.

Mr. MATTHEW. I think it is not only irrelevant, anything attempting to be stated in the articles, but it is purely self-serving.

Exam. SHEPPARD. I don't know anything about the newspaper article. Of course, if it is offered in evidence, that is a different proposition. I will pass on it at that time, but whether or not Mr. Burr is just inquiring of this witness now whether he did certain things——

Mr. MATTHEW. My objection may be recorded?
Exam. SHEPPARD. Yes.
Mr. BURR. Will you read the question?
(Question read.)
The WITNESS. I didn't write any articles.
Q. I beg your pardon?
A. I didn't write any articles.
Q. Did you make any addresses which were published in one of the Detroit papers on that subject?
Mr. MATTHEW. My objection still runs to this.
865 Examiner SHEPPARD. Yes; answer it.
A. I had a conversation with one of the reporters one time in reference to it.
Q. In reference to it?
A. Yes.

By Mr. BURR:

Q. Did that occasion any meeting on the subject on the part of the retail dealers?
A. I don't think it did.
Q. Did it occasion any meeting on the part of the architects of the city of Detroit on that subject?
A. I don't think it did.
Q. Was there a meeting of the architects in which they discussed that subject?
A. I don't know.
Q. You don't know? Do you know whether or not you have lost orders to competitors who were selling California white pine, so-called?
Mr. MATTHEW. The witness has said definitely he does not know anything about whether his competitors sell California white pine or not.
Mr. BURR. I didn't recall him so testifying.
Examiner SHEPPARD. Yes; he did.
Mr. BURR. Did he?
Examiner SHEPPARD. Yes. That is all.

866 Cross-examination by Mr. MATTHEW:

Q. Mr. Kotcher, from whom do you purchase your Idaho white pine?
A. Well, I don't know.
Q. You can't name any of the companies or producers from whom you obtain that lumber?
A. I don't buy it.
Q. How do you obtain your supplies of Idaho white pine?
A. Well, our purchasing agent buys it.
Q. From the wholesalers?
A. General producers.
Q. And you don't know from what companies he produces or purchases Idaho white pine?
A. No.

Q. Do you know from what company or companies he purchases northern white pine?

A. The customary rule of purchases made at the present time, I don't know. I don't do the buying.

Q. And you don't keep informed as to who the producers of your lumber may be.

A. Well, there are so many of them that it is pretty difficult unless you are in very close touch with them.

Q. Well, do you know whether you purchased the northern white pine or any Idaho pine of the warehouses interests?

A. I know we have. We bought considerable from them at
867 different times.

Q. Do you know where you obtain the pondosa pine?

A. No, sir.

Q. Do you know from what area you secure it? That is, whether it comes from the inland empire or some other section?

A. You refer now to pondosa?

Q. Yes.

A. I think it comes from the inland, from the northwestern section of the country. We usually say pondosam, and it is hardly worth while remembering about it.

Q. As I recall it, you stated that you had only small quantities and that was sheathing?

A. Sheathing.

Q. And you don't know from what concerns you obtain it?

A. I don't know from what concerns we obtain it.

Q. You don't know, except it comes down from the Pacific Northwest?

A. I don't know just where we get it.

Q. Do you buy it under the name of pondosa pine?

A. We may buy it under the name of western white pine. I don't know just what they call it.

Q. You don't know that the name "western white pine" passed out of use a few years ago?

A. Pardon me.

Q. You don't know that the name, the term "western white pine" passed out of use a few years ago, and the term "California white——

868 A. In California?

Q. The western white pine passed out of use some three or four years ago?

A. I think that they did discontinue calling it weste n white pine.

Q. Do you know that the lumber came from that particular area, the lumber coming from that particular area is now sold as pondosa pine?

A. Yes, sir; and advertised as such.

Q. Now, you spoke of this incident where some window sash constructed of western white pine had failed, and it was necessary to replace the sash. You said that that lumber had been purchased as western white pine?

A. Well, that is a long time ago, and I cannot say; I know it was——

Mr. BURR. You know it was what?

A. It was western pine.

By Mr. MATTHEW:

Q. Don't know where it was obtained?

A. I don't.

Q. Or under what name it was sold to you?

A. I don't.

Q. Now, you spoke of this outside door built for a residence for the officer of the Peerless Motor Car Company?

A. Peerless Motors.

Q. And you said it was found to be constructed of pondosa pine?

869 A. Yes.

Q. Do you know where that pondosa pine was obtained?

A. We bought the door already made.

Q. Where?

A. I don't know.

Q. You don't know whether the lumber which was used in building and constructing that door had been furnished as pondosa pine?

A. I don't know; bought it from some big producer of doors.

Mr. MATTHEW. I think that is all.

Redirect examination by Mr. BURR:

Q. That sash that counsel has just referred to, that was a pondosa sash I believe you testified, did you not?

A. Yes, sir.

Q. And you are not sure whether it was bought during the time pondosa was called western white pine or whether it is since they began to call it pondosa?

A. It was bought before they decided to call it pondosa pine, probably in the neighborhood of about twenty years ago.

Q. Do you know what the botanical name of pondosa is?

A. I know what the botanical name is; yes.

Q. What is it?

A. It is Pinus pondorosa.

Mr. BURR. That is all.

(Witness excused.)

870 FRED M. SIBLEY was thereupon called as a witness and, having been duly sworn, testified as follows:

Direct examination by Mr. BURR:

Examiner SHEPPARD. Mr. Fred M. Sibley.

Q. Mr. Sibley, you have had experience in the retail lumber trade here, have you, sir?

A. Yes, sir.

Q. And you have a factory also, have you?

A. Yes, sir.

Q. How long have you been in the retail lumber business?
A. 26 or 27 years.
Q. All of that time in Detroit?
A. Yes, sir.
Q. And have you been all during that entire period engaged in similar operations?
A. Yes, sir.
Q. In lumber?
A. Yes, sir.
Q. And have you studied wood technology at all?
A. Sir?
Q. Did you have anything to do with the lumber matters in—during the war?
A. Yes, sir.
Q. If so, what was your experience in that capacity, briefly?
871 A. I had charge of the airplane-propeller division, first in the Signal Corps and also in the Bureau of Aircraft Production, and I was largely interested in hardwoods—mahogany, walnut, and oak.
Q. And you looked after securing supplies, did you?
A. Only for propellers.
Q. Yes; that is what I mean, in that sphere?
A. Yes, sir.
Q. Now, referring to your retail business as distinguished from your milling operations, please state the various pines you employ?
A. You mean at the present time?
Q. Oh, yes; and over a period of the last few years, if there has been any difference, I would like to know how you have changed your supplies?
A. Well, for the past five years we have been selling only California sugar, Pinus pondosa, Pinus strobus.
Q. You have been using Pinus strobus, the sugar pine, and Pinus pondorosa?
A. Pinus pondosa and Pinus pondorosa are identical.
Q. Well, Pinus pondorosa is the botanical name?
A. There should not be any mistake as to either——
Mr. MATTHEW. I think the witness should confine himself.
Mr. BURR. Yes; strike out that last.
The WITNESS. In any event, I meant Pinus pondorosa.
872 Q. You meant Pinus pondorosa?
A. Yes.
Q. Under what trade name did you buy that when you bought Pinus pondorosa?
A. We still called it western pine.
Q. You still call it western pine?
A. Yes.
Q. How about Idaho white pine, do you deal in that?
A. Yes; I let that include the Idaho pine, the other pine that I included——

Q. That is western pine, too?

A. That goes—that is western, too.

Q. You still call the Pinus pondorosa lumber that you buy—you still call it western pine or western white pine?

A. Call it both ways, western white pine and western pine.

Q. Now, in buying lumber from any pondorosa dealer, do you buy any from California?

A. I am not prepared to answer.

Q. Do you buy any from the so-called "inland empire", do you know what that means?

A. Yes, sir.

Q. You do buy it there?

A. Yes, sir.

Q. And is that under the trade name of western white pine, or what is the trade name at the present time?

873 A. The trade name is Pinus pondosa.

Q. That is pondosa at the present time?

A. Yes.

Q. They don't use Pinus in the trade, do they?

A. No, sir.

Q. Now, do you recall from whom you bought such Pinus lumber as you carry, from whom you buy it now?

A. No, sir; I do not.

Q. Who looks after your buying for you?

A. Mr. Krug.

Q. Does it—he buy any of this class of wood from the Klamath Falls, Oregon?

Q. We have bought it from Klamath Falls. I don't know whether they buy it now or not.

Q. Is that pondosa that you buy from Klamath Falls, or what is the type of lumber?

A. Up to six years ago, I did the buying myself. Since that time Mr. Kurg has done the buying and I don't know what term he buys it under.

Q. Do you know whether it is pondorosa wood or not?

A. No, sir; I do not.

Q. Now, for the retail trade as distinguished again from your millwork, do you distinguish between the white pine and the pondorosa?

A. To a negligible extent, we handle only Idaho white pine.

874 Q. Only Idaho white?

A. Only Idaho white.

Q. Do you buy any northern white pine?

A. We haven't got any in quantities for four or five years.

Q. For how long a time have you had experience as to the character of Idaho white pine for uses where the lumber is to be exposed to the weather?

A. I should say eight or ten years.

Q. Have you had any experience indicating that it is of a short-lived quality?

A. You mean Idaho white?

Q. Yes.

A. My experience has shown me that the sapwood lasts about the same.

Q. As what?

A. As Pinus pondosa or even northern pine.

Mr. MATTHEW. I didn't get that.

Mr. BURR. Sapwood, he is talking about.

Mr. MATTHEW. Sapwood or what?

The WITNESS. Sapwood and Idaho white pine.

Mr. MATTHEW. Lasts as long as what?

A. Pondosa sapwood and northern white pine.

By Mr. BURR:

Q. I don't think there is much difference between the sapwood of the three species?

A. No, sir.

Q. Now, as regards hardwood, have you had any opportunity to compare these three types of lumber?

875 A. Yes, sir.

Q. What is the result of your experience?

A. The so-called "northern white pine or Pinus strobus" is much more long lived than either the Idaho white pine or the pondosa. The Idaho white pine is not as long lived as northern pine and is longer lived than the western—than the pondosa. You have to excuse me for use—for using the word pondosa—because when I bought it I bought it for western pine, or western white pine.

Q. When you mean pondosa you mean pondorosa, no matter how named?

A. That is right.

Mr. MATTHEW. He has not said that?

Mr. BURR. Yes.

The WITNESS. Well, I will so testify.

Mr. BURR. Have you had any experience with California white pine as to its durability? I am talking about pondorosa now, bought as California white pine, as distinguished from pondorosa bought as pondosa pine or was western white pine.

A. I haven't distinguished between the California white pine and the pondosa, not in my own mind.

Q. Well, now, have you had any experience with any lumber bought as California white pine?

A. No, sir.

Q. Have you had any experience with any lumber bought

876 as Arizona white pine or as New Mexico white pine?

A. No experience as to lasting qualities.

Q. As to durability?

A. No, sir.

Q. Have you ever bought Arizona or New Mexico white pine, so-called?

A. I cannot answer.

Q. You don't know, is that right?

A. No.

Q. Now, the confusion in the trade by referring—I am now referring to the retail-lumber trade—as to the difference between California white pine and pondosa, or the difference between California white pine and genuine white pine——

A. What do you mean by the trade?

Q. Well, you have competitors here in the retail trade?

A. Yes.

Q. Do they say California white—sell California white pine as white pine, do you know?

A. What testimony I can give would be hearsay.

Q. Well, do you have knowledge of what the trade conditions are as regards your competitors?

A. Yes, sir; very accurate.

Q. You know what their yards are carrying, do you?

A. No, sir.

Q. You don't know what their yards are carrying?

A. No, sir; we are still referring to any lumber, are we not?

877 Q. I beg your pardon?

A. We are still referring to any lumber.

Q. No; I am referring to your millwork. I am referring to your retail trade.

A. That is what I am speaking of.

Q. You might deal in better select, or something of that kind. I am referring to the entire retail situation.

A. When you made a question you suggestion something about lumber to be used for outside purposes?

Q. You are talking about that?

A. Yes.

Q. Now, do you have competition in the select grades which are used for outside work at all?

A. Of California white pine?

Q. Yes.

A. Yes, sir; outside you mean?

Q. Yes.

A. I don't know.

Q. Are the select grades of Idaho white pine and northern white pine used for outside work?

A. Well, there is very little lumber in the better grades used for outside work.

Q. Within the fire limits of Detroit, you mean, do you?

A. Well, I am speaking of our trade, to whom we sell.

Q. Do you have rural trade through the district outside of

878 Detroit?

A. Some. Well, in the suburbs?

Q. Yes.

A. But outside of the Detroit city limits.

Q. In the suburbs where they use frame for exterior purposes?

A. I was classifying frames, in the millwork heading.

Q. Well, now, do you sell select grades of genuine white pine for exterior work in the suburbs?

A. Practically none except for porches. The detail work around the tops of porches, columns.

Q. You sell any white pine for interior work?

A. You mean by any—what do you mean?

Q. Any lumber termed "white pine"?

A. White pine?

Q. For interior work?

A. We sell practically none.

Q. There would not be anything then but the millwork for exterior purposes; is that true?

Mr. MATTHEW. Just read that question.

(Question read.)

The WITNESS. I don't know what you mean by that.

Mr. BURR. Well, strike that question.

Q. What varieties of woodwork do you regard as genuine white pine; what varieties of wood?

A. Pinus strobus and Pinus monticola.

Q. Pinus monticola?

879 A. Yes.

Q. Do you regard California sugar pine as genuine white pine or not?

A. No, sir.

Q. Do you regard the pondorosa as genuine white pine?

A. No, sir.

Q. Now, then, do you distinguish between genuine white pine and pondoroso for outside purposes, and, if so, which do you recommend?

A. White pine.

Q. Do you recommend Idaho or northern white pines interchangeably for outside work?

A. I don't consider Idaho pine as good as northern white pine. The Idaho white pine.

Q. Do you ever offer Idaho white pine when orders come in for white pine?

A. Yes, sir.

Q. Do you have orders for northern white pine occasionally, mentioning the word "northern"?

A. No, sir.

Q. Do you have orders occasionally for white pine, with the word strobus, the botanical name, used?

A. No.

Q. Did you ever have orders using the botanical name for any of these?

A. Not to my knowledge, no.

880 Q. Now, how about the cornice lumber, which do you prefer for that purpose?

A. Northern white pine.

Q. As first choice?

A. Yes, sir.

Q. Do you make cornices out of Idaho white pine?

A. No, sir—oh, out of Idaho pine, yes.

Q. Do you make them out of pondorosa?

A. Practically none.

Q. Now, you have patrons in the millwork business that use California white pine for exterior trim?

A. I can't say, it would be hearsay.

Q. I beg your pardon.

A. It would only be hearsay.

Q. You don't know from your own knowledge what the trade does?

A. I know what the trade is doing, but I haven't actually gone to any particular job, and looked at the wood and identified it as California white pine.

Q. Do you know through reports made in the course of your business, in the ordinary course of business from your subordinates as to whether they favor the use of California white pine for exterior finish?

Mr. MATTHEW. I object. That is hearsay.

Examiner SHEPPARD. Yes. I don't think he should testify.

Mr. BURR. He can testify upon what he knows in the reg-

881 ular course of his business through his subordinates.

Mr. MATTHEW. How does he know?

Examiner SHEPPARD. You have to distinguish between what a man knows and what a man hears. The witness himself seems to have a pretty good knowledge of the hearsay rule.

Mr. MATTHEW. I understand the objection is sustained and I think the answer should be stricken.

Examiner SHEPPARD. I don't think he answered at all.

Mr. BURR. He has not answered. I am going to take exception to the examiner's ruling.

Examiner SHEPPARD. Off the record.

(Discussion off the record.)

By Mr. BURR:

Q. Now, when you sell wood made from pondorosa—strike that question.

Do you ever have calls for California white pine, using the word "California"?

A. No, sir.

Q. Do you ever sell any of the pondorosa lumber as white pine, to fill any orders for white pine?

A. Yes, sir.

Q. You have done that?
A. Yes, sir.
Q. How recently?
A. Every day.
Q. Every day. Is that the general practice in this community?
882 A. I think so.
Mr. MATTHEW. Well, now, if he knows.
Examiner SHEPPARD. I understand that is something of your own knowledge, Mr. Witness?
A. Yes, sir.
Mr. MATTHEW. The practice of the trade?
The WITNESS. Yes, sir.
Mr. BURR. Are you one of the large dealers of lumber in this city?
A. Yes, sir.
Q. Can you mention any other dealers that has a larger trade than yourself?
A. I don't know.
Q. Now, have you ever had any experience with the durability of frames and sash on common lumber, that was sold by your firm, as to durability?
A. Only in a very general way.
Q. Have you ever found it necessary to replace sash or window frames or the setting for doors that were put in from pondosa?
A. Yes, sir.
Q. Weill you tell the examiner about such instances?
A. Well, my knowledge is general. I know we have on different occasions had sash come in that had rotted at the joints, used on houses perhaps that we had delivered a number of years previous, and we had to replace them.
883 Q. Can you recall any other specific instances?
A. No, sir.

By Mr. MATTHEW:

Q. Do you know that the lumber was pondosa?
A. Yes, sir.
Q. And you replaced it with genuine pine?
A. I beg your pardon?
Q. You replaced it with what sort of wood?
A. Same wood.
Q. The same wood?
A. Yes, sir; same wood, or California sugar.

By Mr. BURR:

Q. I beg your pardon?
A. The same wood, of California sugar; yes.
Q. What is a pergola; is that outside finish?
A. That is a part of the appurtenances of a house.
Q. Outside, exterior?
A. Yes, sir.

Q. Did you ever furnish that in pondosa pine and have it fail to stand up?

A. I have only in my own home.

Q. Well, what is the condition of that?

A. It is decaying.

Q. When was it put in?

A. About six years ago.

Q. Do you remember where you bought that lumber?

A. From my own company.

884 Q. Do you remember where your company bought it?

A. No, sir.

Q. Do you know whether it was pondorosa pine or not?

A. It was pondorosa pine.

Q. Did you furnish any of the outside trim for Dr. Herman Hoodler?

A. Yes.

Q. All of it?

A. Yes, sir.

Q. How is it standing up?

A. I am not certain, but I think it is cypress, most of it.

Q. Most of it cypress. You saw the frames and sash?

A. I cannot answer.

Q. Did you ever have to replace the frames and sash in that building?

A. Not to my knowledge.

Q. Not to your knowledge. I think that is all.

Cross-examination by Mr. MATTHEW:

Q. You stated that you sometimes furnished pondosa pine upon orders for white pine?

A. Yes, sir.

Q. Is that quite common practice with you?

A. For sash and shop work.

885 Q. Well, may I ask for what reason you furnished pondosa pine upon orders that call for white pine, if as you stated there is a recognized difference between white pine and pondosa pine?

A. Because from my business experience that is what our competitors do, and we have only to meet the price, we have to buy cheap, cheap lumber, in order to meet the price.

Q. That is the only reason for your furnishing pondosa in response to orders for white pine?

A. Yes, sir.

Q. Do your customers understand what they are getting? I am assuming you are not constantly deceiving them at all?

A. I believe 75 to 85 percent do.

Exam. SHEPPARD. Well, Mr. Sibley, I want to understand you. You mean to say that when the pondorosa or pondosa as you call it, is sold for a specification calling for white pine, that 75 to 85 percent of the customers know that they are not getting white pine?

A. That is true; the builders.

By Mr. MATTHEW:

Q. Now, in a certain instance you were compelled to replace some frames and sash which were manufactured of pondosa pine, and which were rotted at the joints, and you say you replaced them with either the same wood or California sugar pine?

A. Yes, sir.

886 Q. Can you tell us which it was, was the pondorosa white pine what you used for California sugar?

A. My answer to that would be that we carry a very, very small amount of genuine white pine, stock lumber, and I don't—I would not have the stock to use.

Q. Do you carry much California sugar pine in stock?

A. Not so much now. We did formerly carry a great deal.

Q. Why have you discontinued the sugar pine? Why has your stock diminished?

A. The price.

Q. That is purely a trade condition?

A. Yes, sir.

Q. The price is too high to make it worth while to carry it?

A. Yes, sir.

Q. Do you know whether these frames and sash which you say became rotted at the joints were made of sapwood or hartwood?

A. I cannot say at this time.

Q. Of course, you would not recommend sapwood for exterior finish, I take it?

A. No, sir.

Q. Of any variety of pine?

A. No.

Q. Did it appear that these joints had been properly protected by paint or otherwise?

A. Yes, sir.

887 Q. When you replaced them, why did you not use northern white or Idaho white?

A. I think I answered that question. I said because we carried such a small stock of white pine that we made that replacement out of our regular stock.

Q. Then I misunderstood you. Did *d*you likewise testify that you were carrying less of northern white pine and more of Idaho white than formerly?

A. We are carrying practically no northern white pine. All of our common lumber is Idaho pine.

Q. And you are discontinuing the northern white because of the price?

A. Difficulty in getting it and price.

Q. It is quite difficult to get it?

A. Very difficult to get it in sufficient quantities for our trade.

Q. You are practically compelled to rely upon Idaho white, upon pondosa pine for your purposes?

A. Yes, sir.

Q. You were asked about a pergola that had been constructed at your residence some years ago?

A. Yes, sir.

Q. Do you know where you obtained the lumber used in the pergola, in connection with the pergola?

A. No, sir.

Q. I assume that the rotting took place at the point where
888 the woods went in the ground or in contact with the ground?

A. Not necessarily; the whole pergola seems to be rotting, even the posts, the upright and top of the posts.

Q. Are those of sapwood or h'artwood?

A. Started with sapwood and has reached into the h'artwood now.

Q. Is the pergola painted?

A. It has been painted twice, three coats in six years.

Q. Painted originally as soon as it was put in?

A. Yes.

Q. Those timbers were in part of h'artwood and sapwood?

A. No timbers in it; it is made of posts and boards.

Q. Were the b'ards of h'art or sapwood, partly h'art and partly sapwood?

A. Yes.

Q. And when you got northern white pine, when you get that, is it largely sapwood?

A. Sap.

Q. And it has not changed in that condition then within the past few years in the period of time that we are making inquiry about?

A. Formerly twelve or fifteen years ago we purchased practically our entire requirements in white pine in what is known as northern white pine. I am speaking now of exterior lumber. We
889 found that northern, gotten up in central Canada, we had to buy stocks coming from smaller trees, which gave us a larger percentage of sapwood, and it was not as satisfactory from a longevity standard as the old original big timber white pine.

Q. The old original big timber white pine, as you characterize it, is largely heartwood?

A. Heartwood and some sap.

Q. The relative amount of sap was less than in the white pine you were getting in recent years?

A. Yes, considerably.

Q. That change has been throughout the market in the last fourteen or fifteen years?

A. Yes, sir; I say for the past five years we have handled practically no northern white pine.

Q. Is that condition rather general in the lumber trade in this area, or are you familiar with it?

A. I think it is general with the exception of one or two lumber dealers who particularly try to deal in the northern white pine.

Q. With those one or two exceptions has white pine noticeably declined in this market as far as volume is concerned?

A. Very much.

Q. And is being replaced to a great extent with Idaho white pine and with pondosa pine?

A. Yes, sir.

Q. In fact, it would be impossible to fill the requirements
890 of the trade if you had to rely on the northern white pine alone?

A. Yes, sir.

Q. Are you sufficiently informed as to the condition of the industry here generally to state whether or not the supply of sugar pine has declined or decreased in this market?

A. No, sir; I am not.

Q. Well, apart from shop grades do you carry much sugar pine?

A. I don't think we carry any of the common grades.

Q. Did you at any time?

A. I don't believe so. If my memory serves me there was a serious differentiation in the price and we bought the other lumber because it was as good in our opinion and cheaper.

Q. What other lumber do you mean?

A. Pondosa.

Q. You have been buying pondosa pine in preference to sugar pine because in *because in* your opinion it was as good and cheaper?

A. Yes, sir.

Exam. SHEPPARD. That was for interior work?

A. No, I am speaking of exterior.

Mr. BURR. Read that question.

(Question read.)

The WITNESS. For exterior work.

Mr. MATTHEW. The witness says for exterior work.

Q. At one time, you were buying this pondosa pine under
891 the name of western white pine?

A. Yes, sir.

Q. Or western pine?

A. Yes, sir.

Q. And you said you still frequently refer to it as western pine and western white pine?

A. Yes.

Q. Has there been any change in your practice or in the use made of this lumber since that name was changed from western white pine to pondosa pine? Perhaps my question is not clear.

A. No—your question is clear. The lumbermen use the term pondosa pine, but the buying trade still considers it as pine.

Q. That was always the practice of the buying trade, was it not?

A. I do not think the change in the name has affected the sale of the material.

Q. That is, this lumber then finds its way into the trade and into use in about the same fashion that it did before it was changed?

A. Yes, sir.

Q. Do you purchase any of your lumber from the warehouses interest?

A. Yes; a great deal of it; most of it.

Q. You buy Idaho white pine largely purchased of them?

A. I believe we buy 75 percent of our white pine—Idaho white pine—from warehouses.

892 Q. Do you buy Idaho pondosa pine from or through Weyerhauser?

A. Very little.

Q. Where do you obtain it?

A. I don't know; from a great many different sources.

Q. I want to ask one further question about the pines. You said in answer to a question of counsel for the Commission that you regard the northern pine, Pinus strobus, and the Idaho white pine, Pinus monticola, as white pines?

A. Yes.

Q. And I think you also said that you felt free to furnish either of those varieties of lumber upon orders for white pine?

A. Yes.

Q. I think you likewise stated that you would not regard sugar pine as a true white pine?

A. Yes, sir.

Q. By that we understand—are we to understand that it is not your practice and you would not ordinarily feel free to furnish sugar pine upon orders which call for true white pine, as you understand it?

A. In the shop we would furnish sugar pine; in the shop work we would furnish sugar pine for white pine.

Q. Just use the pondosa pine in the shop?

A. Yes.

Q. That is the only one?

A. But exterior work, for outside work, we would not be
893 confronted with the decision, because the grade of the lumber and type of it is such that it would not be satisfactory.

Q. Why is that?

A. Well, we like a small, sound, knotted type of lumber.

Q. And the cheaper kinds—do not answer the requirements in that respect?

A. No.

Mr. MATTHEW. That is all.

Redirect examination by Mr. BURR:

Q. Do you frequently take up with your customers the character of the material that you are furnishing and tell them that it is not a genuine white pine?

A. I have done it.

Q. You have done it?

A. In the past and found it didn't avail me much, so discontinued it.

Q. What do you mean by that?

A. I mean that the contractor or builder who buys lumber is not particularly interested in the longevity of the wood. He is more interested in a smooth, good-appearing lumber at a low price than he is in its lasting quality.

Q. Well—did I interrupt you?

A. More interested in the good-appearing lumber for a low
894 price than he is in its lasting quality.

Q. Do you have much building for speculative immediate sales purposes in this community?

A. Well, it is the practice for immediate sale.

Q. In other words, do you call it ordinarily speculative?

A. We have speculative contract buildings, the classification——

Q. Contract building is a building on architect specifications?

A. Yes.

Q. Do you ever in your trade see the architect's specifications for this class of work?

A. Yes.

Q. For your millwork or your general retail work?

(No response.)

Mr. MATTHEW. Mr. Burr, I don't want to seem to be technical; that is not proper redirect.

Mr. BURR. If the examiner please, I think the examiner will permit this witness to be recalled after a week's continuance to go on the stand again. And I think that is a technical position——

Mr. MATTHEW. I will not press my objection. But let us go on.

Mr. BURR. Read the question.

(Question read.)

A. Yes.

Q. Now, where you get it on architect's specification do you
895 find that there is less substitution or more substitution for other wood for white pine?

Mr. MATTHEW. I don't know whether I understand that question.

The WITNESS. I don't know as I quite understand. Do you mean by that that the woods may be optional?

Q. Yes.

A. Several woods may be optional.

By Mr. BURR:

Q. So that all the woods, the alternative which is really furnished upon specifications of the architect, you are more apt to have a substitution or less apt?

A. It would be white pine or cypress.

Q. When the architect specifies?

A. Yes; speaking now for outside work.

Q. Yes; and then when you get it on architect's specifications and there is an alternative given, or possibility to substitute some variety of pine that is not a genuine white pine——

Mr. MATTHEW. Well, I don't understand. I don't know as I understand. Is it a purely speculative question?

Exam. SHEPPARD. I think so.

Mr. BURR. Well, I will withdraw it. I don't want to be captious at all.

Q. Do you ever find that you are unable to supply the wood called for by the specification, and then ask for permission to substitute?

896 A. Yes, sir.

Q. Does that ever occur when you are called upon for white pine?

A. Are you still talking about the architects' specifications or general trade?

Q. Well, let's make it general.

A. I would like to answer that separately.

Q. All right; first as to the architects' specifications?

A. Yes.

Q. You take it up and substitute at times, do you?

A. In less than fifty percent of the cases.

Q. Would it happen to some of the 75 percent of the cases which you testified on direct examination that the dealer knows that he is getting a variety of lumber, not genuine white pine on occasions when he asks for white pine?

A. Yes.

Q. That was on cross-examination, was it?

A. Yes.

Q. Have you seen any of the white pine, northern white pine, coming into the market in the last five years?

A. No, sir.

Q. You don't know whether the virgin forests are furnishing large white pine lumber still from Canada—or from Minnesota or not, do you?

A. I know a very small amount is being furnished.

897 Q. Of the large size northern white pine?

A. Yes.

Q. How much Canadian do you come in contact with; enough so that you would know Canadian white pine?

A. Yes; a small amount is being furnished.

Q. That is virgin white pine, is it?

A. Yes; a very small amount.

Q. Now, will you state whether or not the difficulty that you experience is a difficulty in getting northern white pine or is the difficulty that of getting it at a satisfactory price, or is it absolutely difficult?

A. We handle a very large quantity of white pine and we have to buy it according to certain specifications, as to width, thicknesses,

and we find it extremely difficult to get the proper amounts of the sizes that we wish. That coupled with the higher price has made us switch over to the western pine.

Q. Have you tried within the last five years, or did you say you have?

A. Yes, sir.

Q. You have tried but you haven't bought any for five years?

A. I said we bought a little.

Q. I thought you said you had not bought any?

A. I said a little.

Q. Now, Idaho white pine you buy for mill work; you testi-
898 fied on cross-examination, that was composed of part sap wood?

A. I don't think I testified that we bought any Idaho white pine for mill work.

Q. Is all your mill work made from pondosa?

A. All from the pondorosa or sugar.

Q. What are the proportions?

A. I estimate 85 percent pondorosa.

Q. And for what purposes in your mill work do you get the sugar pine?

A. We will find a job occasionally for an architect that does not specify the harder coarser texture of the pondosa, and we, while he perhaps wants the old white pine, not carrying that, we will sell him on the California sugar as being a good substitute from the standpoint of softness and good to take paint nicely.

Q. Do you regard that as more durable or less durable than the pondosa for outside uses?

A. Well, I haven't had any exact experience.

Q. You would not be able to state on that?

A. No, sir.

Q. Is sugar pine a little higher in price than the pondosa pine?

A. The last I knew it was. I haven't familiarized myself very lately on it.

Q. How wide is your trade in millwork? Do you ship that
899 to a great distance or is it local?

A. Within a radius of forty miles of Detroit.

Q. How much of it is made up on order and how much is stock?

A. I haven't the exact figures. But my estimate would be 80 percent stock and 20 percent from orders.

Q. Do you have competitors upon the Mississippi Valley and elsewhere for the exterior trim that you make in your mill?

A. Yes, sir.

Q. They compete with the Anderson firm from Minnesota?

A. I don't believe they sell there.

Q. I beg your pardon.

A. I don't believe they sell there.

Q. Do you know whether or not you compete with those firms in order to sell these different dealers?

Do you know whether Anderson firm comes into this market?

A. They did come in a short time ago. But I don't know this exact moment.

Mr. BURR. That is all.

Re-cross-examination by Mr. MATTHEWS:

Q. What—why do you use no Idaho white pine for millwork?

A. Price.

Q. Is the price of Idaho white pine in excess of the price for
900 sugar pine?

A. I should be able to answer that, but I will say I am not familiar with the prices lately, I don't think so.

Q. Does Idaho white pine come in substantially in what are cheap grades?

A. Well, in the north such of it as is sold is pondosa.

Q. Then pondosa largely takes the market, as far as used for millwork is concerned?

A. Yes, sir.

Q. How long has that been the situation?

A. I think always since the wood has been in use.

Q. Every since the market declined so noticeably in supply of northern white pine?

A. Well, my own feeling is that as we switched to the western woods about the same percentage has been maintained in the cheap grades, so far as Detroit is concerned for Idaho pondosa as it now exists.

Q. That is, it has been about the same percentage with relation to the Idaho white pine and the pondosa for the past fifteen years or so, is that right?

A. Yes; twelve or fifteen years.

Q. Twelve or fifteen years, you noticed no change in the relative percentage of pondosa pine and Idaho white pine when the pondosa replaced the western white, is that the situation?

A. No; I say about the same.

901 Q. About the same. This change in the use of woods during the past twelve or fifteen years is virtually responsible, primarily responsible, for the economic conditions which have obtained in the industry?

A. Absolutely.

Q. I am not quite clear on this question of substitution.

A. If the examiner will permit, I can perhaps tell it in my own words.

Q. First, let me ask this question. If it is not entirely clear, then I will be very glad to have you supplement in your own way.

As I understand it, you say in less than fifty percent of the cases is any substitution upon architect's specification, and in those instances you take the matter up with the architect or the responsible party and see just whether the substitution may be permitted?

A. Fifty percent of the cases where the use of white pine or cypress is not optional. If the specification requires white pine or cypress, we usually substitute cypress.

Q. Why is that? Is cypress so much cheaper than white pine?

A. No; I think rather it is notice to us that the architect knows what he is doing, and we feel that we will perhaps meet with difficulty if we substitute the Idaho white pine or the pondosa under those circumstances, and we think it is safer, since we put so much labor into the products, to use cypress.

902 Q. Then when you refer to such substitution you mean a substitution in the event that you take advantage of the alternative between the two woods specified?

A. I mean of the fifty percent where it is not optional, a certain percentage of those cases even, we would substitute western white pine or Idaho. It is a matter of personal element largely, depending on the architect himself. I might illustrate the point by saying that we at one time had an order for a large building for an architect here in Detroit and we got out some two or three hundred frames and we got them out of Idaho white pine and we—he called for genuine pine.

Q. Called for white pine?

A. He called for white pine.

Mr. BURR. Called for genuine white pine?

A. No; using the word "white pine." I might say I am using it to differentiate here. When we carried Idaho white pine in the common grades we were forced to carry one grade lower than the grade that was being sold in western pine because of the price. In other words, a number three Idaho pine costs a trifle more in number three grade, because—it costs a trifle more than a number two western pine, and we carried the Idaho because we thought it better for exterior purposes. In this particular case we made plain frames out of number three Idaho white pine and they were rejected. We
903 have a thousand dollars or more in them, and they were worthless for any other use, so our man tried to sell the architect on the proposition that it was better, longer-lived lumber, and I finally personally went to him and told him about it, but he said he didn't care about that, what he wanted was better-looking lumber, it didn't make any difference to him particularly as long as it was smooth appearing, and we had to destroy the frames and replace them with pondosa.

Exam. SHEPPARD. At a cheaper figure?

A. No; at the same figure.

Q. The same figure?

Mr. MATTHEW. Now, his specification called for a certain grade.

A. We used a grade better.

Q. The specifications called for white pine, and you furnished Idaho white pine and he rejected it, and you were compelled to replace the frames with frame made out of pondosa pine?

A. He objected on the basis of grade.

Q. But he was willing to accept the frames made from pondosa pine?

A. That is right. Now, when we got that architect's specifications again we figured, we disregarded his term of white pine, because we know he does not mean it. That is what I meant.

Q. That is a matter of personal equasion?

A. A matter of personal equasion.

Q. And your problem is to satisfy your particular customer?

904 A. It is.

Mr. MATTHEW. That is all.

Redirect examination by Mr. BURR:

Q. Now, when you refer to genuine pine as you did a moment ago, what do you mean by genuine pine?

A. Well, my father was raised in the white-pine country, and I presume it is just a matter of training that I think of the old Michigan white pine, call it genuine white pine—Canadian pine.

Q. Genuine pine, you say, is the white pine?

A. It is the old Pinus strobus such as we had twenty-five years ago.

Mr. BURR. That is all.

(Witness excused.)

RICHARD H. MARR was thereupon called as a witness and, having been duly sworn, testified as follows:

Exam. SHEPPARD. Mr. Richard H. Marr.

Direct examination by Mr. BURR:

Q. Are you an architect, Mr. Marr?

A. Yes, sir.

Q. How long have you been an architect?

905 A. About twenty-five years.

Q. Have been located in Detroit?

A. Yes.

Q. Been here all of that length of time?

A. Except two or three years; three years, I believe.

Q. Do you have occasion to specify pine for your clients for construction purposes?

A. Yes; I specify some pine.

Q. Do you do residence work for people who use wood for exterior purposes?

A. Yes, in some degree; a small degree, I would say.

Q. What kind of wood do you specify for exterior use, what kind of pine, I would say?

A. Well, I limit the pine usually to frames. It happens that most of my practice is the type that requires wood which can be set such as oak or cypress and we usually use the pine for colonial work where it is painted and for sash and other mill painted work, practically all of it is interior.

Q. How much of it is exterior?

A. Practically all of it is interior.

Q. And how do you specify white pine, what language do you use, what do you say?

A. We usually, always say merely white pine, and then I do recall just once it occurred, but there was a great deal of activity, I think two or three years ago on the substitutes for white pine coming in, and we have been called on by representatives of a good many different bureaus—pondosa or white pine, and so on—each claiming the merits for the various woods, and at one time I believe they said the genuine white pine was gone. Then we asked for it because there seemed to be a difference of opinion of what the genuine white pine really was. It didn't help us any, and we now merely substitute white pine, if it is a building of any importance, I mean, and the wood has to be long lived, and the very best we try to find, say it is a northern white pine; because the term "old white pine," as I understand, is rather scarce and expensive. In fact, we happen to have people like that where money was not any particular object and where longevity was the principal consideration; we do find the old type of pine.

906

Q. You do, you say?

A. I think we did, but where they got it or how they got it I don't know, but my experience is we substituted that for the old type of pine. But the balance, I am frank to admit, I don't know just what kind of pine goes in in all cases.

Q. Do you differentiate between California white pine and genuine white pine?

A. We haven't; no.

Q. You haven't. Do you know whether you have accepted California white pine for exterior use?

A. I cannot say. I don't think we would know whether it went in or not. There is such a confusion on it, the white pine is claimed to be of certain quality, but one branch of the lumber industry denies it and another branch recommends it. We are simply at sea on the whole white-pine situation.

907

Q. Do you regard the Idaho white pine as genuine white pine or don't you?

A. I don't know.

Q. Is the same true of California sugar pine?

A. Yes. I might say that the only wood which is really, has really been called to our particular attention as not a worthy substitute, has been called pondosa; isn't that the name pondoso?

Q. Well, I will say for the benefit of the witness that the species known as Pinus pondorosa, the lumber made from it, as you know the trade name is pondosa, comes from the inland empire for the past five years, last past, and before that time it was western white pine. It is also sold as Arizona, California, and New Mexico white pine.

A. Well, we know it as pondosa pine. We have been led to believe that it is not the equal of the other pines. In cases occasionally I

recall in one specific case it has been inserted that no pondosa pine is permitted; in the average specification we don't make any additional classification; we simply use the white pine.

Q. When you say you have been led to understand the pondosa pine is not as good as the other pine, you refer to what particular pine?

908 A. Well, like the former witness, we always thought of pine as northern pine.

Q. Not the equal of northern pine?

A. No.

Mr. BURR. That is all.

Cross-examination by Mr. MATTHEW:

Q. Do you know of any case, Mr. Marr, any case within your experience, where California white pine has been furnished on specifications calling for white pine?

A. Yes; it is.

Q. California white pine?

A. Pondosa pine.

Q. I am asking about California white pine?

A. I don't know of that.

Q. You don't know. That is all.

(Witness excused.)

Mr. BURR. I move we adjourn until two o'clock.

Exam. SHEPPARD. We will adjourn until two o'clock.

(Whereupon an adjournment was taken until two o'clock, October 14, 1929.)

909 Docket Nos. 1620–1669, inc.

DETROIT, *October 14, 1929—2:00 o'clock p.m.*

Exam. SHEPPARD. All right, we will proceed.

C. E. DAY was thereupon called as a witness and, having been duly sworn, testified as follows:

Direct examination by Mr. BURR:

Q. You are an architect, are you?

A. Yes, sir.

Q. How long have you been an architect?

A. About 16 years.

Q. What—all the time in Detroit?

A. Yes, sir.

Q. You are an architect on residences, residential work, chiefly, are you?

A. Almost entirely.

Q. Have you ever, for residential purposes, have you ever had occasion to specify the furnishing of pine lumber?

A. Some.

Q. Some for exterior purposes?

A. Certain classes of work; yes.

Q. What classes of work would you say?

910 A. Colonial work and Georgian work.

Q. Some exterior trim on most any building?

A. Yes; a certain amount of pine used in any building.

Q. Cornice and things of that kind?

A. Yes.

Q. Now, in your specifications do you on occasion call for white pine?

A. Yes.

Q. Do you regard Idaho white pine as a compliance with that specification?

A. Well, we have considered it as such. Of course, it is not from the standpoint of botany, I suppose, a true white pine; but we have used it, and it has been in the market and used as white pine.

Q. Do you accept it as a compliance with that specification of California white pine?

A. Well, to tell the truth, I don't always know, and we don't always know what we get. We specify white pine because on the job, the white pine, your carpenter superintendent or foreman will tell you it is this, or it is not that, and we use it in the building as long as it is a good lumber.

Q. Well, if you were told that certain lumber which you had asked for as white pine was California white pine, would you accept it?

A. I think I would; yes.

911 Q. Now, have you ever come in contact with the so-called "Arizona" and "New Mexico" white pine?

A. Have I heard of Government contact——

Q. Now, have you come in contact with it?

A. More or less; I would not say that I could definitely say yes.

Q. You would think that lumber that appeared satisfactory to the eye if it was Arizona or New Mexico white pine, in compliance with your specifications, you would consider that?

A. Well, I think that our white pine of Mexico and Minnesota, as it is accepted around here, is sufficient for those purposes; I think there is no doubt about it.

Q. You would accept this?

A. Yes; because I say it is hard to get and hard to get in this market, and as I understand that is what the lumbermen tell me. I would accept it.

Q. You would take it irrespective of whether the Idaho white pine or the California white pine or Arizona or New Mexico white pine——

A. Yes, sir.

Q. Without any distinction between those?

A. Yes; without any distinction at all.

Q. Now, do you occasionally have pondosa pine delivered?

A. Yes.

Q. You would take that as a compliance with the specification for white pine?

912 A. Well, we have right along.

Q. You have?

A. Yes, sir. I don't know that it is upheld to us as such. Probably just called white pine or on our billings; I don't know that we are informed that we are getting a substitute when it is delivered, but it comes on the job. Now, it is good lumber, as long as it is not shaky; it is a good strong lumber and we don't raise much question with regard to it.

Q. Now, do you regard white pine as the—being of great durability where it is exposed to weather—greater than other kinds, or don't you make any distinction?

A. If I had known before coming down here, I would have found out a little bit about it, if I had known what I was going to testify to. I would have refreshed my recollection a little bit.

Q. I am glad you didn't. What we are trying to get at is the situation and understanding among the architects and what the condition is rather than what they might believe it to be if they made a study of it. So your testimony is more valuable than if you had known about this beforehand and could have posted yourself.

A. This western coast pine, as I understand it, it is a good material, pretty free from defects; in fact, much more so than the pine we get in the localities down here, which now comes pretty knotted on account of this scarcity.

913 But so far as tensile strength of the two lumbers, I would not be prepared to say; I imagine there was not an awful lot of difference.

Q. For strength you would rather have the yellow pine?

A. Yes.

Q. I am not talking about tensile strength; I am more as to the acceptance of the two woods?

A. You are talking about building and the life of the wood?

Q. I am talking about the building, where it is used on the outside.

A. I don't suppose anything could beat the ordinary old white pine.

Q. You mean northern white pine?

A. Yes.

Q. Now, as regards those western woods which were mentioned, Idaho white pine, California white pine, Arizona and New Mexico white pine, do you distinguish at all between those as to durability?

A. No.

Q. One equals the other, is that what you mean?

A. Yes.

Q. Now, do you think that is true of your fellow architects?

A. Well, I cannot say as to that. It all depends. I am talking from the standpoint from which I use it. I might also say that the white pine that goes in certain types of residences

914 you can also almost carry around in your hip pocket. For instance, the English, Spanish, and Italian would not use it at all.

Q. Would not use it on the outside?
A. On the outside because it does not take stain.
Mr. BURR. That is all.
Exam. SHEPPARD. Any cross?
Mr. MATTHEW. No.
(Witness excused.)

CHARLES F. MEAGHER was thereupon called as a witness and, having been duly sworn, testified as follows:

Exam. SHEPPARD. Mr. Charles F. Meagher.

Direct examination by Mr. BURR:

Q. Mr. Meagher, you are in what business or profession?
A. Retail lumber business.
Q. You are here in Detroit?
A. Yes.
Q. For how long a period have you been in the retail lumber business?
A. 33 years.
Q. All of that time here?
A. Yes.
Q. What varieties of pine do you deal in?
915 Q. Besides the southern yellow pine, do you deal in that in any amount, the southern yellow pine?
A. White pine, yellow pine, what we call pondosa pine, California pine, Idaho pine—those are the principal ones.
Q. Now, for white pine, what varieties do you include?
A. There are a number that they call by the name of white pine, although different varieties. When we specify white pine, we are careful to specify the kind of white pine we require.
Q. When you say "we" do you mean yourself?
A. Yes, sir.
Q. Do you ever call white pine anything else? Arizona white pine or New Mexico white pine?
A. Yes.
Q. Both of them?
A. Both of them.
Q. With what concerns have you dealt in Arizona that sell the Arizona white pine?
A. The Albuquerque Lumber Company, of Albuquerque, New Mexico.
Q. Do you deal with the Arizona Lumber and Timber Company?
A. No.
Q. Do you deal with Cady Lumber Company? Of Albuquerque?
A. Not in recent years. We have some little time ago.
Q. Now, when you have calls for white pine but without specifications, specifying any particular State or locality, do you regard
916 that as being a compliance when you furnish California white pine, or how do you handle it?

A. Yes. If a man specifies white pine simply, without stating the district from which it should come, we consider that for the fine buildings, why, we give him Michigan white pine, Canadian white, or Idaho white pine; for the cheaper kinds of buildings we might have given him Oregon white pine or Montana white pine.

Q. I see. Well, now, do you yourself distinguish between such varieties so-called "white pine" that are genuine white pine and others that are not genuine white pine? Do you draw any distinction in your own office on that subject?

A. Yes; we consider the kind of pine we used to get from Michigan to be the genuine Michigan cork white pine. We consider the Canadian white pine to be equal to the old Michigan white pine and the Wisconsin pine somewhat similar to it, although we have never considered the Wisconsin to be as good as the old Michigan white pine. I also consider the Idaho white pine to be as good as Michigan white pine, and the other so-called "white pine" I don't consider to be of the same value as the Idaho and Michigan pine.

Q. Now, if somebody ordered white pine you would think that you were complying with his order if you furnished pondosa pine?

A. It depends upon the type of building. If it were a high type of building I would ask him whether pondosa pine would be
917 satisfactory. If it were a building of ordinary construction, I mean a building that costs five or six thousand dollars, I would feel that pondosa pine would be furnished without any question. In my own mind I don't consider pondosa pine quite the equal of Idaho white pine or the Michigan pine or the Canadian.

Q. Do you regard the California as the equal of the Oregon white pine?

A. I consider it equal to the Arizona and New Mexico pine. I consider the California white pine from one section to be superior to the pondosa.

Q. Which section?

A. Northern.

Q. How about Klamath Falls, Oregon? And the California white pine?

A. It is a very good district. I would consider it quite satisfactory pine from that district. The California pine that I don't like so well is that that comes from the southern part, where the knots in the pine are apt to be larger. They are not so suitable for the purpose that we use it for ourselves.

Q. Have you noticed any difference between the California white pine and the pines that you regard as the genuine white pines, and as regards to the ability of the knots to stay in place?

A. The California white pine that comes from the north-
918 ern part the State ordinarily has smaller, tighter, sounder knots than those which come from the southern part of the State, and the knots, as I have said, are smaller and for that reason more solid.

Q. How about their durability and their working loose? Do you find any difference between the various types in how much the knots work loose and leak?

A. If they are unsound, of course, they will work loose. If they are sound, they are all right.

Q. Do you ever furnish pondosa pine as a compliance with an order for white pine, without notifying your customer that you are substituting?

A. Yes; we frequently do for buildings of the less costly type.

Q. Of the type you described a moment ago?

A. Yes; what I mentioned a moment ago.

Examiner SHEPPARD. Is that a sort of trade custom? Do you know anything about that condition at all? Is that something that a great many lumber dealers do, the lumber retailers?

A. I believe it is frequently done.

Q. You know that of your own knowledge?

A. Yes.

Q. To give white, California white pine on specifications calling for white pine?

A. Yes.

Examiner SHEPPARD. All right.

919 By Mr. BURR:

Q. Have you had any experience as to the durability or lack of durability in cases of California white pine where exposed to the weather?

A. I believe that any of the white pines that have been mentioned are good so far as durability is concerned, if they are properly protected by paint.

Q. Now, have you had any experience with durability of California white pine where not protected by paint?

A. No.

Exam. SHEPPARD. I think that is all.

Cross-examination by Mr. MATTHEW:

Q. When you were first engaged in the lumber business, what was meant by the term "white pine"?

A. It was meant a pine that came from Michigan, largely the Lower Peninsula of Michigan. That was the only kind we were familiar with at that time.

Q. Then more recently that term has been broadened to include the Idaho white pine, for example?

A. Yes; the next pine that came within our knowledge was the Wisconsin pine and the Minnesota pine, and then more recently the Canadian pine and then the Idaho pine and the other western pines. As the source of supply here in Michigan, in our im-
920 mediate neighborhood diminished; then we made use of this that came from greater distances.

Q. This term "white pine" has acquired a broader meaning in the lumber trade than it had 33 years back?

A. Yes, sir.

Q. I think you said in answer to a question by the examiner or counsel for the Commission that upon occasion you feel entirely free to furnish pondosa pine upon orders calling for white pine?

A. Yes; for the less costly type of building.

Q. Yes; and you make no distinction between pondosa pine and California white pine in that respect. That is to say, it does not make any difference what name it has, you are trying to furnish what you understand is suitable and will be suitable?

A. Well, I don't know that I would not make any distinction personally; I like the California white pine from the northern part of the State a little better than I do the pondosa pine. My reason for that is that frequently pondosa pine has a crack across the base of the knot, and that does not cover up very well with the paint; it does not look very well.

Q. Then it is that belief in the superiority of this particular California white-pine lumber that leads you to offer that a little more freely than you offer the pondosa pine?

A. Yes.

Q. It is not a case of the name; it is a case of the quality of the lumber.

921 A. It is the quality of the lumber that I am talking about consistently when I offer it to a customer.

Q. At the present time is there any depreciable use in the northern white pine in the Detroit territory?

A. You mean by that white pine from Michigan, the interior, and so forth?

Q. Yes; what we call the original northern white pine anywhere from Michigan, Wisconsin, Minnesota, Canada, if you please?

A. There is some of it used, but not anywhere near the quantity that there is of the western pines.

Q. Could you approximate the percentage of the total?

A. That is a little difficult to say with any degree of accuracy.

Q. Is there more Idaho white pine in the market in the Detroit territory than northern white pine?

A. I would think so.

Q. What lumber takes the bulk of the white-pine trade here?

A. I would say the Idaho pine and the pondosa pine.

Q. Is it in about equal parts?

A. No; from my own experience I would say that there is more pondosa pine used than Idaho. One of the chief reasons for that is that the Idaho is used, usually more costly than the pondosa.

Q. By the pondosa are you including the white pine?

A. No.

Q. Pondosa alone?

922 A. Pondosa alone.

Q. Referring to the pondosa pine, you mean the pine that is actually introduced to the trade under that name?

A. Yes.

Q. Then you will say that the pondosa pine represents the largest consumption of white pine in this territory?

A. So far as my knowledge goes; yes.

Q. What lumber would come next?

A. You mean by that the pine?

Q. Yes.

A. I would say first, pondosa, second Idaho, then possibly the so-called "northern pines," coming from the interior of Michigan, Wisconsin, and Minnesota. I would say in about that order. I am speaking now of the retail lumber trade.

Q. Where would you put the California white pine?

A. California white pine, I would say, would come next.

Q. Next to what?

A. Next to the northern pines.

Q. Then there is a far greater trade in pondosa pine here than the California white pine?

A. I would say so; yes.

Q. Has the use of the pondosa pine been steadily increasing during the period of your experience in the lumber trade?

A. Yes.

Q. You are familiar with the fact that at one time the
923 lumber which is now marketed as pondosa pine had a different name, a different trade name?

A. It used to be called simply western white pine. We simply called all pines of the West "western white pine." After a little time they produced the so-called pondosa pine in order to distinguish others from the California pine, and in fact gave it that trade name.

Q. When the change in the name took place, did any change take place in the practice of the trade as to using this lumber as concerning selling it to customers?

A. I don't think so. I think that is very largely a matter of the knowledge of the producer. It was known to all of us who had made a study of it that there were different kinds of pine in the West, and we would order according to the location of the mill, and the location of the growth of the timber.

Q. I take it from the testimony that these several pines sold upon their merit, of course, keeping in mind such elements as price and differentials?

A. Yes.

Q. I assume that the manufacturers of pondosa pine have not made any representation to you as to whether or not it could be supplied or should be supplied upon orders for white pine?

A. I beg your pardon.

Q. I am assuming that the manufacturers of pondosa pine have not made any representations to you as to whether or not it
924 should be supplied upon orders for white pine?

A. Oh, no, no; they have not.

Q. It is entirely left with you?
A. Yes.
Q. Do you handle any California sugar pine?
A. No; I do not.
Q. Never have?
A. No.
Q. You have got some California white pine?
A. Yes.
Q. And you understand that botanically it is identical with the pondosa pine—that is, the lumber that comes from some species of trees, or are you interested?
A. I am interested in the botanical phase of it, but I am not familiar with that phase of it.
Q. I take it that you are interested in the quality and the utility of the lumber in each instance?
A. Yes.
Q. Your study is confined to that?
A. Yes.
Q. It does not make any difference what the particular name is, your interest is in the use that can be made of the lumber?
A. Yes.
Q. Are you in a position to state whether the trade in the pondosa pine in the Detroit territory has increased any great
925 measure, in any greater measure than the trade in California white pine?
A. From my own experience, I would say yes.
Mr. MATTHEW. That is all.

Redirect examination by Mr. BURR:

Exam. SHEPPARD. Now, you say these various varieties of lumber sell on their merits?
A. Yes.
Q. And you say that the durability, would you, is a merit of lumber?
A. Yes; indeed it is.
Mr. MATTHEW. Pardon me, if the Court please, but he also stated in connection with that same question that he took into consideration the question of price and differential. I think that was in my question.
Mr. BURR. Yes.
Q. Now, the average purchaser of lumber is able to give durability a proper value in connection with the purchase of lumber?
A. To a very large extent they rely on our judgment of it.
Q. As to which wood is durable?
A. Yes; and I seel them according to my judgment of their needs.
Q. Do you find that there is, then, in the Detroit field a considerable number of buyers who are buying for erecting purposes
926 for early sale, as early sale as possible, merely speculative buyers?
A. Oh, yes.

Q. Now, I wish you would say whether you regard buyers of that description as giving proper emphasis to the durability of the material used?

A. They don't always do it.

Q. Then when you say that the buyers are selecting their various types of lumber upon merits you would make a qualification as regards the durability of the speculative buyer?

A. I have said that so far as the selection of the woods, according to their merits, is concerned, that many of our customers accept our judgment in that matter.

Q. Now, I think you also testified that these various types of lumber were sold upon their merits in this market?

A. Yes.

Q. Now, I want to ask further whether the merit of durability is given proper emphasis by this class of buyers for speculative building purposes?

A. I am afraid the merit of the low price is frequently given preference.

Q. Preference to durability?

A. Yes.

Q. Is durability given its proper weight in the purchase of these goods on their supposed merits?

A. I don't know that. I can answer you in a general way,
927 because there is a difference in builders.

Q. I am talking about the speculative buyer.

A. Even with the speculative buyer there is a difference between in the requirements. Some care nothing for anything except price. Others are conscientious about it and want to get the best pine that they can for the purposes they have in mind. If a man wants the cheapest white pine that he can get, then I sell pondosa pine because I am able to do that, to buy it for less money than the sugar or Idaho pine. If he wants white pine and wants a smaller, tighter, solid stock, solid knot, then I am glad to get him the Idaho pine or the Canadian pine and I have to charge a higher price for it.

Q. Now, once more in saying that your customer buys lumber on its merits, isn't there a qualification as regards the weight given to the durability of the various types of lumber?

A. There is, because there is a certain class of speculative buyers, as I said a moment ago, who care more for price than he does for anything else, and such a man as that would buy the cheapest kind of white pine.

Q. Instead of buying on their merits?

A. Yes; he considers the cheapness a merit.

Mr. BURR. I think that is all.

Re-cross-examination by Mr. MATTHEW:

Q. Mr. Meagher, let's deal with this question a moment
928 longer. If the name of California white pine, which is now in use, were replaced by some other name, would that have any

effect upon the operation of a speculative buyer and builder, so far as the purchase and use of this California white pine lumber is concerned.

Mr. BURR. I am going to object to that question.

Mr. MATTHEW. Well, let me reframe my question. We will go back a bit.

Q. If the name California white pine was changed to "California pondosa pine" would that, in your opinion, have any effect upon the purchase of this lumber by the speculative buyer for buildings?

A. I don't think so.

Q. Would he give any more weight to this element of durability in purchasing lumber than he did to it today?

Mr. BURR. You mean if it is named that substitute that you speak of?

Mr. MATTHEW. Yes.

The WITNESS. I don't think so.

Q. In other words, the name is not material there?

A. As between the California white pine and pondosa pine, I don't think so. I think most of them recognize that usually Michigan white pine carries a certain prestige with it, and I believe most of them feel if they had Michigan white pine or its equal
929 they would be getting the best pine obtainable. I think that the majority of them have agreed to class the western white pines in the same class. They don't so much distinguish between the various kinds of western white pines. I am speaking now in the ordinary customer, who has no thought of the name attached to the different kinds of white pine.

Mr. MATTHEW. That is all.

Examiner SHEPPARD. Mr. Meagher, if you had an order for white pine from a customer you would deliver to him California white pine and consider that you had delivered under the specifications?

A. Unless he particularly specified some different kind of white pine I would consider California white pine would fill the bill. That would be the kind of California white pine that I said I am willing to sell. That is a hard California white pine from the northern part of the State that has the small sound type knots.

Examiner SHEPPARD. That is all.

Q. (By Mr. BURR.) You consider, would you, that furnishing the pondosa would be a compliance with that order for white pine?

A. Only for the less costly types of buildings.

Mr. BURR. That is all.

(Witness excused.)

930 RAYMOND CAREY was thereupon called as a witness and, having been duly sworn, testified as follows:

Examiner SHEPPARD. Mr. Raymond Carey.

Direct examination by Mr. BURR:

Q. Your are an architect are you, Mr. Cary?

A. Yes.

Q. How long a period have you been such?
A. About 24 years.
Q. Located in Detroit?
A. Yes.
Q. Of—for how long a time?
A. About 7 years.
Q. And where were you prior to that?
A. Canada.
Q. Canada?
A. Yes.
Q. And your work is largely residential, is it?
A. Well, mostly at the present time.
Q. In your specifications, with regard to them, do you have occasion to call for pine of some description?
A. Yes.
Q. What do you generally specify for exterior purposes, cornices, and the like?
A. White pine.
931 Q. What kind of white pine, if any, other than the northern white pine, do you regard as a compliance with such specifications?
A. Well, I don't know. It is pretty hard to say. It is very difficult to tell one pine from another, only from hearsay. My experience of other places, experience with pines, certain pines that discolor and sap pine, all of that sort of thing—I really like to get the Michigan pine or the northern pine.
Q. Well, suppose you find out that what you have been actually furnishing was pine, under the trade term, California white pine, would you regard that as a compliance with the specifications if in other respects it was up to specification?
A. No, I don't think I would.
Q. You don't think you would?
A. No, because my experience is, from what I have heard about it, I have never had it so far as I know.
Q. You have never used it?
A. So far as I know, but the stuff I have used has always held up. Now, it may have been southern pine, I don't know.
Q. It may have been what?
A. It may have been southern pine.
Q. It may have been?
A. Yes.
Q. Are you in shape to distinguish in any strict technical sense between the different varieties of pine so as to be able to say
932 this is white pine and this other is some other variety of pine?
A. No. I think I should make a guess of it. I think I can tell from certain characteristics.
Q. Now, if you specified white pine and find that the supply men have given you Idaho white pine, would you regard that as a compliance with your specifications if in other respects it measured up?

A. Yes, Idaho.

Q. Idaho, and would you if the California pine, you would not consider that true?

A. The only way that I can find out is that the California pine discolors.

Q. I didn't get that.

A. If in that sense; if it discolors or anything like that, it becomes discolored.

Q. Which variety is that that discolors?

A. Southern.

Q. Southern?

A. I mean the California.

Q. When you said southern pine a moment ago, you meant California?

A. California.

Q. The southern pine from California?

A. Yes.

933 Q. Now, the yellow pine from the South——

A. No.

Q. All right. Now here do you specify white pine for exterior uses?

A. I think I just follow everybody else. I have always been told that white pine is being quite steadily used.

Q. Has white pine a high reputation for durability in this market?

A. I think so, yes.

Q. Would you accept Idaho and northern white pine interchangeably?

A. Well, I have done so.

Q. Is there any other variety—did I interrupt you?

A. No, no.

Q. Is there any other variety, so-called "white pine", that you would accept interchangeably with Idaho and northern white pines?

A. Well, I have known of a case when finally I used spruce, but I didn't know it.

Q. You didn't know it?

A. I was being candid with you, that is all I know.

Q. Would you accept sugar pine as genuine white pine on specifications white pine?

A. No, I don't think I would.

Q. Yes; I see.

934 A. I don't really know. I simply go to a good place and except to get what I specify. If anything goes wrong with it——

Q. You are relying on the contractor?

A. Yes.

Q. For all you know, he may have substituted various other pines for white pines at various times?

A. If it goes wrong, then I find it out and make him replace it.

Q. And that has happened in cases, has it?

A. Well, one case where I had cypress in the pine panel that I put in and didn't know it.

Mr. BURR. You may cross-examine.

Cross-examination by Mr. MATTHEW:

Q. You spoke of the possible discoloration of lumber, Mr. Carey; does that come under your observation?

A. No.

Q. You don't know what particular type of lumber it is that may discolor under certain conditions?

A. No, but I have always heard——

Q. I don't care about the hearsay, if you please. I mean so for as your yersonal knowledge or experience goes.

A. I don't know.

Q. You don't know whether it is sugar pine or California pine or what it may be?

935 A. Well, you see I don't know—no, not from my own observation.

Mr. MATTHEW. That is all.

By Mr. BURR:

Q. As regards that specification for white pine, you intend to secure genuine white pine, do you?

A. Yes.

Q. Because you would not know you have been furnished with anything else but genuine white pine, except this one occasion when you told that experience?

A. Yes, but, if I remember, they were told about it.

Q. And that is the only case where there has been any substitution in your personal experience?

A. Yes.

Q. And that was your own experience?

A. Yes.

Mr BURR: Q. You are not sure how many other cases might have been specified and you did not detect?

Mr. MATTHEW. I object, purely speculative.

Exam. SHEPPARD. Purely speculative. It don't make any difference.

Mr. BURR. All right.

(Witness excused.)

936 CHARLES J. MOLITOR was thereupon called as a witness, having been duly sworn, testified as follows:

Direct examination by Mr. BURR:

Exam. SHEPPARD. Mr. Charles J. Molitor.

Q. Your line of business is what, Mr. Molitor?

A. Screens and doors, window screens and doors.

Q. You have a mill and manufacture those?

A. Yes.

Q. You sell them, in a general way?
A. Yes.
Q. You sell common lumber?
A. No, just screens.
Q. Just screens only; is that true?
A. Yes, sir.
Q. Who are your principal competitors in that line of work?
A. You mean in the city here?
Q. Yes, in the city and elsewhere. Right here in Detroit?
A. The Fly Tight Screen Company for one, the Hollywood for another, Johnson for another.
Q. Where is Johnson?
A. Johnson is on Puritan.
Q. Here in Detroit?
A. Yes, I am giving the local manufacturers.
937 Q. These are all local?
A. Yes. Of course, the big concerns are Burrows & Higgins, and Watson. They are out-of-town competitors. There are five very large screen concerns in the United States and they are all located here in competition with us.
Q. Is Brennan one of your competitors?
A. Yes. That is the "Fly Tight."
Q. How long have you been in business here in Detroit?
A. That is the—about fifteen years.
Q. What were you doing prior to that?
A. I was in the grocery business.
Q. What variety of lumber do you buy for screens?
A. White pine only.
Q. White pine only?
A. Yes.
Q. From what section?
A. Idaho.
Q. Have you used any northern white pine during that 15 year period?
A. Yes, I have; I used to use Michigan white pine.
Q. You still can supply yourself from the northern territory, can you?
A. Yes, I can.
Q. It that higher priced a little?
A. I don't believe so. We had to stop using Michigan pine
938 on account of its being shaky and knotty.
Q. Too knotty?
A. Yes. I understand the Michigan trees are now standing alone and they are slightly shaky.
Q. Do you understand there is still virgin forest being cut out of the northern white pine in Canada?
A. Yes, I don't remember ever using any Canadian pine, although we have used some northern.

Q. How about Minnesota?

A. I couldn't tell you about that. I suppose there is some, but I don't know nothing about it, today; don't know enough about it to say.

Q. For how long a period have you been using the Idaho white pine practically exclusively?

A. Four or five years.

Q. Have you any California white pine?

A. Very little.

Q. Do you ever use California white pine?

A. Not to my knowledge; I don't know of it.

Q. How much sugar pine—how about the sugar pine; was that satisfactory?

A. Very fine.

Q. Have you ever used pondosa pine?

A. Very little.

Q. Very little?

939 A. Yes.

Q. And why do you omit to use that type of lumber?

A. I consider it inferior lumber.

Q. In what respect?

A. It does not stay good, does not mill as well, and does not hold paint so well, does not work up so clear.

Q. What is your experience with California white pine?

A. I never had occasion to give any authoritative statements.

Q. Did you ever use Arizona or New Mexico white pine?

A. Not to my knowledge. I might have bought some small shipment from local dealers.

Q. Do you regard Idaho white pine as having superior or inferior utility as regards durability, where exposed to weather, to California white pine?

A. I don't known anything about California white pine to tell the difference, if there was a difference.

Q. I see.

A. I only know about Michigan pine and Idaho pine, or pondosa pine as you call it. I don't know nothing about the other because I have constantly avoided buying it.

Q. Avoided buying California white pine?

A. There never has been occasion for me to buy California white pine, and I have avoided buying pondosa.

Q. Now, do your competitors use Idaho white pine or northern white pine?

940 A. I cannot say whether they do or not.

Q. You don't known what your competitors use?

A. I am not well enough up to say whether they do or not. I hope they are using white pine.

Q. You haven't examined their mills?

A. No; never have occasion, but I know that in some cases we have pondosa and some cases we have to go out and buy it ourselves.

That may be for just one job, or something like that. I don't know what my competitors are using.

Q. Is Idaho white pine higher in price, a higher-priced commodity in this market, than ponderosa?

A. Yes, sir.

Exam. SHEPPARD. Cross-examine.

Cross-examination by Mr. MATTHEW:

Q. Do you buy white pine from the Weyerhauser interests?

A. Yes.

Q. All of it or most of it?

A. All except what we have to buy for special work. I would say 85 percent from Weyerhauser to 95 percent.

Mr. MATTHEW. That is all.

(Witness excused.)

941 D. H. BARTLETT was thereupon called as a witness and, having been duly sworn, testified as follows:

Direct examination by Mr. BURR:

Q. Mr. Bartlett, your business is what?

A. Service manager for the Weyerhauser forest products.

Q. Mr. Bartlett, your headquarters are where?

A. St. Paul.

Q. For how long a time have you held that position?

A. Ten years.

Q. Have you had any experience in the forests? If so, please state briefly what it has been.

A. Started in 1907, and in Bloomington, N. Car.; left there in 1909 and went Cloquet, Minn. My experience in the South was in the mills. In Cloquet I worked in the mills, started in the Red Seal Lumber and up to 1910, stayed with the Cloquet Lumber Company until 1916, and went with the company when it was organized. Went with them for a year and a half—the Weyerhauser Sales Company I am speaking of—and then was sent to Coeur d' Alene, Idaho, as sales manager for the Rutledge Lumber Company. Was there for two years and then came back in Minnesota in charge of the Cedar Falls sales, for the Weyerhauser sales company, for one year and was then transferred to the Weyerhauser forest products in charge of the service research.

942 Q. You did work in North Carolina; that was for the Weyerhauser Company?

A. No.

Q. The point you have mentioned other than in the North and throughout the South were for Weyerhauser interest, were they, one or the other of them?

A. Entirely.

Q. Now, are you familiar with the northern white pine, Pinus strobus, in the woods in Minnesota?

A. Enough to distinguish it. My experience has been mostly in the manufacturing end.

Q. Can you state whether that is large virgin forest timbers?

A. Yes, there is a lot of virgin timber in Minnesota.

Q. Is it virgin timber which the Weyerhauser interest have, Pinus strobus, if you know?

A. It is mostly.

Exam. SHEPPARD. Minnesota.

A. Yes, sir.

By Mr. BURR:

Q. Now, turning to your—coming to your research work, I wish you would state what is the nature of the work you do?

A. It is largely trade inspection, trade-promotion work. The investigation of old markets that may be slipping, and that is of new markets that may hold some potential possibilities for the sale
943 of our woods; in addition to that, it involves working with the sales division on any problem in which the right use of lumber is concerned or in which the use of the most practical or valuable species for any specific use may be concerned.

Q. What is the reason for your studying the adaptability of the various species of lumber to various purposes?

A. It is based upon our belief that the lumber industry must take the lead in establishing the uses for which woods are best suited; that, generally speaking, among the trades using lumber there is a little information of the right kind and the character available to enable them to properly designate or specify the woods that they must get in order to get the greatest service from the lumber that they use. Therefore our research work has carried us into the study of the characteristics of the various woods, their adaptability for certain specific purposes, and, further than that, the recognizing of the use of the wood that in our opinion, based upon our studies, that would best serve the purposes and recommending woods to give the greatest service to the user.

Q. Now, do you carry that to the extent of recommending woods that you don't yourself manufacture?

A. We do.

Q. In what way?

A. For example, we will have to recommend the use of cypress for purposes such as greenhouse construction.

Q. Greenhouses?

944 A. Greenhouses, where it is subjected to extreme of wet and dry conditions. Cypress has proven to be one of the most satisfactory wood for that purpose. As another example with the manufacture of sugar pine, we have specifically recommended the use of California pine for piano keys as a use for which it is best suited. We have gone further than that. We have a grading service which is available to manufacturers to help them get the best grades for any specific purposes. It frequently involves the recommendation of the woods that will be most suitable for that purpose.

We have often gone so far as to recommend fiber board for purposes for which fiber board is much better suited than lumber.

Q. Do you manufacture fiber board?

A. We do not.

Q. Do you manufacture cypress?

A. We do not.

Q. Have you any cypress holdings at all?

A. Not that I know of.

Q. All right. Any other instance that you think of?

A. Not that I can state right now.

Q. In connection with your work do you consider the advertising value of the use of trade terms?

A. We do.

Q. Of what interest is it to your position to do so? Why should it be a part of your business to make that study?

945 A. Well, specifically white pine is a trade name and that because of the centuries of experience with the old white pine of New England has come to be accepted by architects and builders as they would combining fine working qualities with great durability, and as a result we believe that the name "white pine" carries with it assurance of durability and workability.

Q. Does it still carry that reputation generally throughout the country?

A. It does with the architects and builders.

Q. How about the entrance into the trade of California white pine in various localities? Has that interferred with the reputation of white pine as a commodity?

A. It has caused confusion, and by reason of the failure of ponderosa pine it has to some extent, in my opinion, caused confusion in the name of white pine.

Q. Has your company engaged or is it about to engage in Klamath Falls section in Oregon?

A. They are.

Q. Are you planning to "mill the timber you locate from that district," do you know?

A. I don't know.

Q. Don't know as to that?

A. No, sir.

Q. Do you know what prospects are for the next five years?

946 Say the next five years as to the protection of northern white pine by your company?

A. They will remain about the same.

Q. About the same as at present?

A. Yes.

Q. Can you tell me how much that is in million feet?

A. Around 135 million feet.

Q. About 135 million is the present production of your company?

A. Yes, sir.

Exam. SHEPPARD. Per annum?

A. Per annum.

Q. (By Mr. BURR.) Can you state how much of that is virgin timber?

A. It is practically all virgin timber.

Exam. SHEPPARD. That is in Minnesota? I believe so.

A. Yes.

Q. (By Mr. BURR.) Have you any Canadian holdings as far as you know?

A. Not that I know of.

Exam. SHEPPARD. Q. Mr. Bartlett, so far as your production goes of this 135 million feet per year, is that a big amount or a medium amount or is it a small amount?

A. It is a large production for one mill; it is practically one seventh of the white-pine production.

Q. (By Mr. BURR.) Now, when you say one seventh of the white-pine production, you are including the Idaho white pine and
947 northern both?

A. I am.

Q. Are you including the sugar pine with that?

A. May I answer that this way?

Q. Let's get the facts, whichever way you can answer it best.

A. The figures on white-pine production, the last that I have had access to, and which I think cover the year 1926 or 1927, give the production at approximately 800 million feet.

Q. Of what, both?

A. Of white pine, Pinus strobus and monticola.

Q. That is two varieties?

A. The two varieties. I am entirely familiar—not entirely familiar with what production of sugar pine, not familiar with the production of sugar pine, but I believe it is in the neighborhood of 250 or 300 million feet per year.

Q. Additional, you mean?

A. Additional.

Q. Now, do you anticipate or does the company plan for an increased production of Idaho white pine in the next few years?

A. Not beyond the present production.

Q. Is that true of the production of white pine generally?

Q. Is that true of the production of white pine generally? Do you anticipate it will be about in—uniform or other producers are increasing?

A. If you include California sugar pine as a genuine white pine, the production of genuine white pine in the next five years
948 should be greater than for the past five years.

Q. That increase, however, as to sugar pine rather than of the Idaho white pine or the Northern, is that true now?

A. That is correct.

Mr. BURR. You may cross-examine.

Cross-examination by Mr. MATTHEW:

Q. Mr. Bartlett, when you gave us the figures of the annual cut of 135 million feet of white pine in northern Minnesota, were you speaking of the production of a single mill or of all the mills of the particular company?

A. The Northwest Paper Company, Coquet, Minnesota.

Q. You made some reference to the Northern Lumber Company. What is that company?

A. The Northern Lumber Company are consolidated, were consolidated recently into the Northwest Paper Company.

Q. Were there other lumber companies which were likewise consolidated in the Northwest Paper?

A. Cloquet Lumber Company and the Johnson-Wentworth Company.

Q. Three lumber companies were amalgated to make——

A. Combined with the Northwest Paper Company, which was already a going concern.

Q. All of them Weyerhauser Company before the consolidation?

A. So-called, yes, sir.

949 Q. Does the cut of the present Northwest Paper Company represent the principal cut of strobus pine in Minnesota?

A. No, sir.

Q. There are other companies operating?

A. There are.

Q. Could you name the principal companies?

A. The Virginia—Raney Lake, Virginia——

Q. Do you know what the annual cut is?

A. Around 200 million. The International Falls Lumber Company.

Q. The annual cut of that company?

A. About 150 million. That is a guess; I am not at all sure.

Q. I will take your best judgment. It does not have to be accurate?

A. Those are the large remaining competitors in Minnesota.

Q. You stated, I believe, that you expect that cut to remain approximately constant for five years to come?

A. The Northwest Paper cut, yes.

Q. Yes.

A. I know nothing about the others.

Q. You don't know whether their cut has declined or whether there is a prospect of the company increasing in the near future?

A. Not of my own knowledge.

Q. Hasn't your investigation carried you far enough so that you can give us any opinion on that?

A. No, it has not.

950 Q. What I want to get at is simply this, whether we are to anticipate a decline in the cut of strobus pine within the next five or ten years. You can't help us on that particular point?

A. Not of my own knowledge, no, sir.

Q. Well, such knowledge as you have gained through general investigation, if you feel that you are in a position——

A. I don't think I am competent to answer.

Q. You have no impression one way or the other on that?

A. I have not.

By Mr. BURR:

Q. I don't think we ought to ask for impression exactly?

A. Ordinarily the information about the cut out of a mill is not widespread.

By Mr. MATTHEW:

Q. If you haven't got it in tangible form I don't want you to do any speculating about it?

A. I haven't.

Q. After the five years to come, do you expect the cut of the Northwest Paper Company to decline?

A. The Northwest Paper Company is now operating upon what they expect to be a perpetual basis.

Q. That is, 135 million feet cut is expected to be a permanent cut?

A. Yes.

Q. You say that is of virgin timber?

951 A. That is virgin timber.

Q. Does it consist of trees of large growth?

A. Well, in any growth, any virgin growth in Minnesota that is both, one tract may be very large and the adjoining tract may be rather small.

Q. How would you characterize it generally?

A. I would say it was slightly below the average of the old stand of Minnesota timber, which has been cut up in the past year.

Q. Is this the second growth?

A. No, this is virgin growth as distinguished from second.

Exam. SHEPPARD. I thought it was all second.

A. My definition of second growth is land that is cut over and then in allowing the timber to grow a second time, and that is when it has been cut over.

Q. That is the original timber?

A. Yes.

Mr. MATTHEW:

Q. But now in the far north, going into the far north you have no small trees in the tracts of second?

A. I am not prepared to answer that. I presume it is in some tracts.

Q. Is the cut of Michigan pine declining?

A. I am not prepared to answer.

Q. You are not informed on that?

A. No, I am not as to Michigan.

952 Q. Pardon me.

A. I cannot answer as to Michigan.

Q. Or Wisconsin?

A. Wisconsin has held practically stationary for the last five years.

Q. You anticipate no particular change in there?

A. No.

Mr. MATTHEW. I think that is all, Mr. Bartlett; thank you.

Exam. SHEPPARD. Now, this Virginia Rainy Lakes Company that is not a Weyerhouser company, is it?

A. I understand the Weyerhauser's have an interest in it.

Q. Is that included within the 155 million board feet of cut that you mentioned awhile ago?

A. No, sir.

Q. Then that is not like the rest of the Weyerhausers?

A. They are interested in Weyerhauser Sales Company, not the Weyerhauser products.

Q. Now, you didn't include that in your figure?

A. No.

Q. How about the International Falls Company?

A. No, sir, that is a Backus.

Exam. SHEPPARD. That is all.

Mr. BURR. All right.

(Witness excused.)

953 HUGH T. KEYES, was thereupon called as a witness, and having been duly sworn, testified as follows:

Mr. BURR: I would like to recall Mr. Bartlett, just a moment.

(Witness withdrawn.)

D. H. BARTLETT, having been previously duly sworn, was recalled and testified as follows:

By Mr. BURR:

Q. Have you had occasion to note in your experience as to pattern stock in connection with your work?

A. I have.

Q. Will you be kind enough to state what type of lumber you like for patterns?

A. Genuine white pine.

Q. None of the other varieties of genuine white pine?

A. Yes.

Q. Now, have you had any experience with the filler and as regards pattern stock made from some other description of lumber?

A. I have.

Q. Will you be kind enough to state what experience you have had on that point?

A. At the General Electric Company in Pittsville, Mass., in 1916, part of my work has been to investigate the uses of lumber for pattern purposes, and it was in pursuance of that work I called on the General Electric Company at Pittsville, Mass., called on

954 their pattern foreman and talked about white pines, and the genuine white pines, and he took me out into the yard

and showed me two piles of lumber which had on these piles a sign, "Do not use." He asked me what I thought they were and I identified them as pondorosa pine. He then told me that they had been shipped as white pine.

Mr. MATTHEW. I object to the hearsay part of this. I am not in position to criticize the witness as to whether they were shipped as white pine or not. I think that part should go out. I have no objection to his telling anything within his knowledge or observation.

Exam. SHEPPARD. Yes, I don't want to hear what he told him.

Q. (By Mr. BURR.) All right. Strike that part of the answer then.

A. May I say that I could identify that as pondorosa pine?

Exam. SHEPPARD. You saw it yourself?

A. I saw the stock; yes, sir.

Mr. BURR. Yes, sir.

Mr. MATTHEW. That is all.

(Witness excused.)

HUGH T. KEYES, having been previously duly sworn, and was recalled, testifying as follows:

Direct examination by Mr. BURR:

Q. You are an architect, are you, Mr. Keyes?

955 A. Yes.

Q. Located in Detroit?

A. Yes.

Q. For how long a time have you been located here?

A. I have been in business 8 years.

Q. All of that time here?

A. Yes.

Q. Now, your work is largely with regard to residences of what type of construction?

A. Mostly residences.

Q. In connection with that work, do you have occasion to require in your specifications the use of pine?

A. Yes.

Q. What pine do you specify for exterior purposes?

A. Well, I have specified white pine up until about a year ago, I learned it was—I learned that there was several kinds of white pine and on inquiry from a mill they told me if I specified Pinus strobus that I would get what I had thought I was getting as white pine, that was the true name of Michigan white pine; and we had always been told, and my experience understood it as being a wood of long life and long endurance. I started that practice then, and put in "Pinus strobus" and I soon found out that it didn't make any difference, that I was still getting what I discovered was Idaho pine, more commonly known as Western pine.

Q. Commonly known as Western pine?

956 A. Commonly known as Western pine. Men who were not experts in the mill and men who were foreman, men who came in contact with us told us that it was Western pine and then it seems to me that most of this is comparative recent. It is common—that is common information I received anyway, and we talked that it was Idaho pine that most of the pine we are getting is Idaho pine.

Q. Was that Idaho pine, or was that Idaho pondosa pine?

A. Idaho white pine.

Q. Idaho white pine?

A. That was our understanding.

Q. That is what you have been getting instead of the Northern white pine?

A. Instead of the old time cork pine, and in occasions where it would be a custom job, knowing that the wood that went into this custom job had to be of a very good quality, because even the best wood would be not any too good for that location, I have specified and tried very hard to the best of my ability, tried to get Michigan cork pine, which, of course, I supposed to be almost nonexistant now. They tell us that it is prohibitive in price and almost nonexistant, that is the Michigan cork pine.

Q. Now, have you had any experience in getting California white pine under specifications for white pine?

957 A. I don't believe I have had any of it on my jobs, although I just know this in a general way.

Mr. MATTHEW: Well, if this is your personal experience, I have no objection. I understood you to say that you had not received any California white pine on your jobs?

A. Well, I don't know. I would not say that. I would not say that I haven't but I don't believe I have. But I have been warned against it in that it is a very soft material.

Q. I am merely objecting to the hearsay Mr. Keyes, that is all.

Q. (By Mr. BURR.) Well, is the reputation California white pine that of a wood with less durability than genuine white pine?

A. Very much so. I would like to make this statement about it. I think there is a great deal of confusion.

Mr. MATTHEW: I don't think the witness should volunteer.

Exam. SHEPPARD: No.

Mr. BURR: Do you regard the terminology of the pines as a confusion condition here in this market?

A. Very much so.

Q. In what respect?

A. Well, we were to specify white pine, due to the similarity of the appearance of the woods we have difficulty in knowing whether we are getting California pine or just soft pine; I think they are both pondosa or sugar pine, and we really don't know whether we are getting that or whether we are getting a more durable pine

958 like the Idaho pine. I understand that is a very durable pine.

Q. Do you as architects have any means of inquiring or acquiring the technical knowledge for the purpose of checking up as to what species of pine is being furnished?

A. Well, we could have probably. I am afraid that this market condition of pine is one that we are just beginning to appreciate some of its difficulties and along with that I might say that we are—some of that pine is really like a great many other materials we deal with. We deal with a very high class of people and we get the best the market affords. Now, as to take three or four pieces of wood and my passing upon which was one and which was another I would only have an opinion, I would not feel as to that that I had the ability to tell the difference, except that I know the difference between a material that has a lot of soft grain in it against a material that is free from that. I think I would know the difference between sugar pine and Idaho pine.

Q. You would be able to tell whether the shipment of lumber delivered at one of your shops was California white pine or whether it was Idaho white pine?

A. I have always felt that I would.

Q. You think you would be able to tell the difference between the two, would you?

A. Well, I have felt that way. Well, I don't know, I do feel that I would know the difference, but I am not any too sure about it.

959 Mr. BURR. All right. You may cross-examine.

Cross-examination by Mr. MATTHEW:

Q. Now, Mr. Keyes, when you specify Pinus strobus, I understand that it was your desire to get true northern white pine, and such specifications were not satisfying in your opinion?

A. Yes, sir.

Q. And you received Idaho white pine?

A. Yes, we did; we received Idaho white pine.

Q. But that did not satisfy your desire?

A. No.

Q. And similarly you would not be satisfied if you were to furnish that sugar pine upon specifications in response to such specifications?

A. No, sir.

Q. But your white pine may still mean and should mean the original white pine that you now specify as Pinus strobus?

A. I have come to feel that there is a white pine that comes from some Western States like Idaho which is a very durable wood, known as white pine, and I have come to acknowledge that that is a white pine, but that is about——well, it is not over a year?

Q. I undestand your testimony on that particular, but when you were specifying for these several years prior to a year ago, you had in mind——

A. The original white pine.

960 Q. Original white pine. That is all. Thank you.

By Exam. SHEPPARD:

Q. Mr. Keyes, I would like to know if you find any difference between the pine that you characterize as the old time white pine, the old time white northern pine or the other known as the Idaho pine that you get from the West?

A. Well, no; I have not any experience with this Idaho pine, it being an inferior wood to white pine, but that might come in Michigan.

Q. Would you accept Idaho white pine under specifications calling for Pinus strobus?

A. No, sir.

Q. You would not?

A. No, sir.

Exam. SHEPPARD. All right. You may be excused.

(Witness excused.)

JOHN LESINSKI was thereupon called as a witness, and, having been duly sworn, testified as follows:

Direct examination by Mr. BURR:

Q. Mr Lesinski, you are engaged in what business?

A. Retail lumber.

Q. How long have you been in that business?

A. Sixteen years.

961 Q. Where are you located?

A. 2410 Dentron Avenue, main office.

Q. That is Detroit.

A. Hamtramck.

Q. How far is that from here?

A. About 4½ miles. That is inside of Detroit.

Q. Inside of the city limits?

A. Same as Highland Park is.

Q. Now, you have occasion, do you to sell on specifications for white pine?

A. Yes, sir.

Q. Do you handle California and Idaho white pine both?

A. Mostly western.

Q. Western?

A. Western and some northern Canadian.

Q. Well, northern Canadian?

A. Well, western white pine.

Q. Is that the same as pondosa?

A. Pondosa.

Q. They bill it to you as pondosa rather than western white?

A. Pondosa rather than western white, yes.

Q. And you carry some California white pine, too?

A. A certain amount of it, yes. Mostly sugar.

Q. Mostly sugar pine? But you by some California white

962 pine under that trade name is that true?

A. No, we buy in California the sugar pine for shop work.

Q. How long has that been true, that you have bought California white pine——

A. Very little, mostly western and Idaho.

Q. Up until what time? You say you have bought very little California white pine?

A. Very little.

Q. Have you bought Arizona white pine?

A. Once, a car.

Q. How about New Mexico pine?

A. I don't recall buying any of that.

Q. Now, when you specify on orders when you get orders for white pine, what type of lumber do you regard as a compliance with that order?

A. When a man buys white pine, we either give him western, Idaho, or northern white pine. And they don't pick the western. That is the pondosa, because it has not such defects to it, not as much defect to it as the northern pine has.

Q. As the northern pine?

A. Yes.

Q. And it has a lesser price, too, has it?

A. Yes, sir.

Q. Now, what do you refer to when you say a defect?

A. Coarse knotty defects.

963 Q. Do you differentiate the soft wood as a defect?

A. No, we don't because we buy what we call sap stain and western, or simply sap stain, some fit selects.

Q. Now, the percentage of sapwood is greater in pondosa or northern white pine?

A. In the pitch selects it is all sap.

Q. In which?

A. In the western.

Q. What do you mean?

A. That is what *what* we call the pitch selects, a clear piece of wood with only a little pitch to it.

Q. Do you buy B selects and better in pondosa?

A. No, all we buy in pondosa is number two.

Q. Number two common?

A. The common largely. That is cornice lumber, what we call it.

Q. Do you manufacture cornices?

A. No, no, builders buy it and cut it up and put it up for cornice work.

Q. And what variety do you regard as genuine white pine?

A. Personally I know that the northern white pine is generally named white pine. We know that the western is often substituted for the Idaho.

Q. You think it is coarser than the Idaho?

A. Yes, we know that.

Q. What is your experience if any, on the durability of
964 western white pine in comparison with the others?

A. I have been in the building game and prior to that in the lumber business and so I know a little of the working qualities of the pondosa, and I put some western pine in my own house, and it rotted out in five years.

Q. That you bought for western white pine?

A. Yes.

Q. Do you regard that term western white pine as confusing, in view of the fact that you don't regard it as genuine white pine at all?

A. No, it has been a trade name and we have used it that way; it has been a trade name for western white pine.

Q. The buyer doesn't know it is not genuine white pine?

A. No, the buyer doesn't know.

Q. Have you competition with other retail dealers who handled California white pine?

A. Never had any trouble.

Q. Never had any trouble?

A. No.

Q. Do you have any competition with them?

A. We are in competition with all of them. I guess there are about one hundred or more in the city.

Q. Do you know whether California white pine is on the retail market here?

A. Very little, very little California white pine in here that I know of.

965 Q. Very little. And how about Arizona and New Mexico white pine?

A. Never came in contact with it. The only competition we really know is Idaho and western.

Exam. SHEPPARD. By western, do you mean pondosa?

A. That means pondosa.

Q. (By Mr. Burr.) Now, you do sell pondosa pine as white pine on orders for white pine, do you?

A. Yes, sir.

Q. Do you distinguish between the exterior and interior use?

A. We have no interior use except sheathing lumber, and that would not be considered interior use.

Q. Most of it is exterior use, is it?

A. Yes, sir.

Mr. BURR. You may cross-examine.

Cross-examination by Mr. MATTHEW:

Q. Do you purchase lumber from any of the Weyerhauser companies?

A. Yes, I buy from the Weyerhauser, but most of our goods comes Brooks-Scanlan.

Q. Western pine?

A. Yes.

Q. And that is pine you said you received under the trade name of pondosa pine?

966 A. Yes.

Q. And why do you feel free to furnish this pondosa pine at times upon orders for white pine?

A. We have been used to handle northern Canadian pine because northern Michigan was pretty well cut out; the trouble with northern Canadian was it is higher in price and coarser in knots and not as good as pondosa, and the trade wants that kind of stuff that is better looking, so I just simply give it to the trade.

Q. As long as pondosa was introduced to you as pondosa, why you find it is agreeable to the trade to have you supply that pondosa pine to them for certain purposes on white pine orders?

A. Yes, sir.

Mr. MATTHEW. That is all.

Redirect-examination by Mr. BURR:

Q. Have you bought any northern white pine or Minnesota?

A. I don't recall that. I never liked the Minnesota grade, neither the Wisconsin grades, and that is the reason I haven't bought it.

Q. You don't like the grades.

A. Not, the gradings, no. I was up against an order just here a little while ago, for the city of Detroit. They had specified northern white pine, and bought it in Wisconsin and it

967 was all turned down on me. The grade was way off, the grade that was specified, the defect was way off, and the shipper claimed it was within the grade, and the Detroit inspector claimed it was not. And I took a nice loss up there because the city would not accept it. So I have always been set against the Minnesota and Wisconsin pine.

Q. On that experience?

A. I mean on that grading.

Q. On that grading?

A. Not usable in Detroit.

Mr. BURR: That is all.

(Witness excused.)

Mr. BURR: Now, two of my witnesses if the examiner please, have failed to show up, and one other is not due for fifteen minutes.

(Short recess.)

A. T. BRENNAN, was thereupon called as a witness, and having been duly sworn, testified as follows:

Direct examination by Mr. BURR:

Q. Now, Mr. Brennan you are engaged in what business?

A. Manufacturing screen doors.

Q. You do a retail lumber business?

968 A. No.

Q. Are your sales local or over a large territory?

A. Well, local.

Q. You are located here in Detroit, are you?
A. Yes, sir.
Q. How long have you been engaged in that business?
A. Since 1916.
Q. Were you in the lumber business prior to 1916 yourself?
A. Yes, sir.
Q. And who are your principal competitors in your screen doors?
A. Heubner. You mean, local ones?
Q. Yes.
A. Well, the Heubner Screen Door and Molliker. That is two local competitors, and several of them in a small way, but I would say those are the two.
Q. Now, the doors that you make are they screen doors?
A. Screen doors.
Q. And you don't make the regular type of doors, I mean you don't make regular doors?
A. No, just screen doors. I sell a combination door, but we don't make that.
Q. Now, what variety of lumber do you purchase for these screen doors that you manufacture? What variety——
A. What variety of lumber?
Q. Yes.
A. Cheap common.
969 Q. Cheap common?
A. Yes.
Q. Is that California white pine or Idaho white pine, or what?
A. No; it is pondosa, and California, but not sugar pine.
Q. No sugar pine?
A. No; we have no sugar pine.
Q. Is the California pine the so called California pine?
A. So called, yes.
Q. Now, do you buy any Idaho white pine?
A. I have bought some.
Q. What are you buying now?
A. Well, any Idaho——
Q. Idaho white pine?
A. No; I don't think I have bought any Idaho in the last year. In fact, I haven't bought much lumber in the last year, it has all been left over.
Q. What would you say is the largest source of supply, the California white pine, the Idaho white pine, over a period of five years?
A. Well, I would say about the majority of it pondosa.
Q. Pondosa pine?
A. Yes.
Q. Rather than either of the other two?
A. Pardon me?
Q. Rather than the California pine or the Idaho white pine?
A. No; it would run more to the pondosa.

Q. More than to either the California or the Idaho white pine?

970 A. Yes.

Q. Now, do you have requests for lumber, calling for white pine? And I mean for screen doors calling for white pine?

A. Well, no.

Q. What do they ask for? They ask for screen doors?

A. Screen doors.

Q. Do they ever specify white pine?

A. Oh, if it comes out of an architects office, yes; it has to be white pine, yes.

Q. And you deliver the pondosa or the California white pine as the case may be, is that true?

A. Well, not in all cases. In other words, if there is an architect job going out I try to give him the larger and better stuff, we give him, see, but I would not say that of the trade, I would not say that all the trade calls for white pine.

Q. No, no; I understand they would not all call for white pine.

Q. Now, you do deliver pondosa for white pine upon orders calling for white pine?

A. I would say so.

Q. How long has that been the case with your concern, over a period of some five years, is that true?

A. Well, it must be.

Q. How large a percentage of your material is Idaho white pine?

A. What percentage of it?

Q. Yes.

971 A. Now, to tell the truth that is pretty hard to say.

Q. Oh, roughly, approximately as well as you can, in your best judgment.

A. I would say about a car I believe to three of the others.

Q. Three of each—of which others?

A. Of the pondosa.

Q. How would California pine compare with pondosa?

A. How would California?

Q. Yes, or do you regard that as pondosa?

A. I believe they do; yes. We don't pay much attention to it. If we get a good price on California we take it just the same as pondosa.

Q. Well, about how large a percentage of the combination is pondosa, how much of it is California white?

A. Well, I don't believe I can tell you. We do a business this last year which has been on the down hill. We see mostly metal doors.

Q. And you are not sure which would be the heavier pondosa or California pine? Between purchases over five years?

A. I would say pondosa.

Q. Pondosa little the heavier.

A. Yes, I would.

Q. Where do you buy your pondosa from?

A. Inland Lumber Company, Hollywood.

Q. And where do you buy your California white pine?

972 A. Some of that from the Inland Lumber Company, Chicago.

Q. Do you know where that Inland stock grows?

A. No.

Q. You buy it under the California white pine trade name, it that true?

A. If it is California white pine they have it in the invoice, I believe. I haven't paid much attention to that, to see or to tell you the truth.

Q. Now, with regard to the California white pine, pondosa, and Idaho white pine, do you regard them about the same in durability with—where exposed to the whether as your screen doors are?

A. I don't know the difference, to tell you the difference.

Q. Between the three, as to durability?

A. I don't know.

Q. Which do you regard as the smoothest lumber to handle, of the three?

A. Of the three?

Q. Yes.

A. Well, you have a car of it—I don't know. I tried to find out from some lumber dealers about California and that was awful brittle. There was a car of Idaho came in there, and that was about a year ago, I should judge and it was harder to work than the pondosa, so I would say the pondosa, being easiest to work.

973 Mr. MATTHEW:

Q. Pondosa is what?

A. Easiest to work.

Mr. BURR. You may cross-examine.

Cross-examination by Mr. MATTHEW:

Q. When you receive an order for screen doors in what form is that order customarily framed, what does the customer request?

A. No request there. They come after a door, they just come after a door.

Q. Just say screen door——

A. That is it.

Q. Ordinarily they don't say they want a pine screen door?

A. No, they don't say they want a pine screen door, very seldom mention any sort such as oak, it is merely a screen door.

Q. When an architect specifies white pine for some special job, I understand you undertake to furnish that?

A. Yes.

Redirect-examination by Mr. BURR:

Q. Do you buy stained selects?

A. I do, I buy some stain, that is, I have. I have had no stain in there in over a year.

Q. Do you know whether that is largely sapwood or not?

A. Do I know what?

974 Q. Is that stain select so called, is that largely sapwood?

A. Well, no. If I am buying the way I think I am, I get—I am getting—If I understand it right, it is stained in the pile.

Q. Weather stained?

A. If I understand it right it is stained in the pile. I believe I have been told there is another stain more in the heart of the lumber, a heavy cake. I don't know whether you call that genuine stain or not.

Q. Now, this type of lumber where there is a stain in it, is that a sapwood?

A. A sapwood.

Q. Well, is it from the sap or the heart wood?

A. You got me, I don't know.

Q. Do you consider pondosa and the California white pine as durable as the northern white pine?

A. Well, I never handled much of the northern white pine, so I don't know.

Mr. BURR. That is all.

Mr. MATTHEW. That is all.

(Witness excused.)

Exam. SHEPPARD. We will take a recess until ten o'clock tomorrow.

Mr. BURR. If the examiner please, if the other two witnesses that I called for today haven't showed up, and I tried to reach

975 them over the phone.

(Whereupon a recess was taken until ten o'clock a.m. of Tuesday, October 15, 1929.)

976 Docket Nos. 1620 to 1669, inc.

DETROIT, MICH, *October 15, 1929.*

Met pursuant to adjournment, 10:00 o'clock a. m.

Before William W. Sheppard, Examiner.

Appearances:

Eugene Burr, for the Commission.

Geo. F. Lindsay and A. P. Matthew, for the respondents.

Carl I. Wheat, for the respondents.

J. I. DISE, was thereupon called as a witness, and, having been duly sworn, testified as follows:

Direct examination by Mr. BURR:

Q. Now, Mr. Dise, you are an architect, are you?

A. I am practicing as such.

Q. Located in Detroit?

A. Yes, sir.

Q. How long have you been practicing as an architect?

A. About eight years.

Q. All of that time in Detroit?

A. Yes, sir.

Q. Now, do you have occasion to specify white pine in out-
977 side construction work?

A. We do occasionally.

Q. You are an architect on residential construction work are you at times?

A. Largely, yes.

Q. Now, in specifying for exterior construction work, do you call for white pine on occasions?

A. We do.

Q. In what terms do you specify when you want white pine?

A. Well, we sometimes specify clear white pine, sometimes designate it by the location that the white pine comes from, I think Michigan white pine is one of our designations for a particular pine.

Q. And do you ever specify northern white pine?

A. I don't think so.

Q. Ever specify California white pine?

A. No.

Q. Idaho white pine?

A. No.

Q. Now, what means do you have of checking up, if any, what you receive as to whether it is what you specify in the way of pine, or whether it is not?

Do you have any means of ascertaining, or do you leave that with the contractors, or what is the situation?

A. No. Well, we leave that to our outside superintendent, largely.

978 Q. As a wood technician, I suppose he can tell the difference between these various varieties of pine?

A. I don't think so, not to the finest degree. But I suppose from external appearances—I would not say he could tell absolutely whether we are getting what we specify, even in that way.

Q. Now, do you regard Idaho white pine as a compliance with the specification for white pine?

A. I don't know whether I am absolutely familiar with Idaho white.

Q. Do you regard California white pine as a compliance with a specification for white pine?

A. I don't think I am familiar enough with that.

Q. If it were reported to you that the pine specified or delivered on a job was Idaho white pine, you would regard that as complying with the specifications?

A. Well, after inspecting the pine and seeing what condition it was in, whether it was a good clear white pine, I think I could tell myself by inspection of the pine whether it was a good white pine; whether it is Idaho pine or Michigan pine or whatever the name of

it is, I cannot tell whether California pine or Idaho pine, just by the appearance of it.

Q. If it is reported to you that it was California white pine would your answer be the same as you have just testified when I asked you about the Idaho white pine?

979 A. Yes.

Q. And do you ever buy ponderosa pine—you have heard of that?

A. I have heard of it.

Q. Would you regard that as complying with the specification calling for white pine?

A. I say, I am hardly familiar with it.

Q. You are not familiar with it?

A. No. If you have some pieces of white pine I can tell you more about it.

Q. You could tell me whether you would accept it as white pine?

A. That is our usual basis of judgment.

Q. The appearance of the wood, with regard to whether it comes up to the specification with regard to knots and——

A. Knots, sap, thick, humidity, and everything else?

Q. All right. You may cross-examine.

Q. (By Mr. MATTHEW.) You judge the pine that you put in a building that you are constructing by its appearance and quality and utility as far as you can judge it from looking at it, wouldn't you?

A. Yes.

Exam. SHEPPARD. I think that is all.

The WITNESS. And then I examine it at times also as to the contents of the dampness, the dampness absorbed by the various woods, so that we can try the stuff and dry it.

Q. That is to ascertain whether it is properly dry?

980 A. Yes.

Q. Whether it is in the green state still or not?

A. Yes, sir.

Cross-examination by Mr. WHEAT:

Q. Mr. DISE, the architects are not as a rule wood technicians are they. They can't tell much about it?

A. No, not as a rule.

Q. Are you familiar with the various botanical terms as applied to the pine woods?

A. No.

Q. If I were to mention to you "Pinus strobus" would that mean anything to you?

A. No, sir. Architects don't specify a certain material, they specify a white pine or yellow, or spruce, specify it by as clear, or hasn't knots in it, or as number one grade or number two grade, and so forth.

Q. The question with it is if they can tell if they get what they specify, or do you think they can?

A. Well, I think the average architect can tell whether he is getting a good grade of white pine, whether it is Idaho pine or California pine.

Q. But can you tell whether or not—while he may as you say tell whether he is getting a good grade, can he tell whether he is getting what he ordered?

981 A. I don't think he can absolutely.

Mr. MATTHEW: All right.

(Witness excused.)

HENRY W. MEIER, was thereupon called as a witness, and having first duly sworn, testified as follows:

Direct examination by Mr. BURR:

Q. Mr Meier, what line of business have you, please?

A. I am associated with Donaldson & Meier, architects, as business manager.

Q. How long have you been in such capacity?

A. About 12 years.

Q. How long has your firm been in existence?

A. About 50 years.

Q. All the time in Detroit?

A. In Detroit.

Q. Now, Mr. Meier, do you engage largely in residential construction?

A. General practice, very little residential construction.

Q. For exterior purposes, does your firm on occasion specify white pine?

A. It does almost invariably, as long as I have known it.

Q. Under what term?

A. Under white pine, up until about three years ago.

982 Q. Up to three years ago, you say?

A. Yes.

Q. You made a change at that time?

A. We call it white pine, Pinus strobus.

Q. You call it Pinus strobus?

A. Yes, sir.

Q. Did you up to three years ago accept Idaho white pine in compliance with specifications for white pine?

A. I suppose; I would say, we had hardly questioned the pines up to that time. That was a just question of whether we could tell what we were being furnished. We assumed we were getting white pine, and in some case why we probably did not from what developed later on.

Q. What led you to change and begin to specify white pine as Pinus strobus?

A. The difficulty we had with the Detroit Community Fund Building for which we were the architects. That was in 1926 and

1927, the building located on West Warren, just west of Woodward Avenue.

Q. Right downtown?

A. Up about a mile, around the Grand Circus Park.

Q. Will you tell what happened, Mr. Meier?

A. Well, it was early in January, I am—I can't say the exact date, but possibly January 7th, a day or two either way. I had a report, a verbal report from our superintendent looking
983 after that job that he was suspicious of the sash delivered on the job. He was of the opinion that it was not white pine as specified. I called a friend of mine connected with a mill in Detroit and asked him to go up there and look at it, and he was of the opinion it was not white pine, although he couldn't tell me definitely what it was. Then I had a sample sent up to the Detroit Testing Laboratory and I got a report from them and that report was somewhat indefinite.

Q. What is that?

A. The Detroit Testing Laboratory.

Q. Was that an oral or written report?

A. A written report. I have. But—it they went in and they made a report and they said it might be one of three different kinds of pines. Well, about that time I was ready to give up, but I thought that the thing to do then was to call some United States Forestry service, some body, so I had the general contractor to go over and see Mr. Arthur Koehler.

Mr. MATTHEW. How do you spell that?

A. K-o-e-h-l-e-r.

He didn't know what we wanted him down here for and I didn't ask him directly. I had the general contractor—I had the general contractor take him to the job, and he came to our office and reported that the sash there were not white pine, and that they were yellow pine, mostly pondosa and yellow, he said. I immediately
984 called a meeting. I asked Mr. Koehler to put that in writing.

Mr. WHEAT. That was the forestry man?

A. That was the forestry man.

Mr. BURR. He is one of the staff up there?

Exam. SHEPPARD. May I just ask this question? You said he was from the University of Wisconsin?

Mr. BURR. No.

Exam. SHEPPARD. What did he say?

A. I may be mistaken on that although I think it was in connection with the University of Wisconsin at Madison. Here it is, the Forest Products Laboratory, United States Forest, Madison, Wisconsin.

Q. (By Mr. BURR.) For your information, I will say he is still connected there.

Mr. WHEAT. You got that information all right.

Mr. SHEPPARD. That is the situation, thank you.

A. Mr. Koehler gave me a verbal report and I wanted him to put it down in writing, and he said he didn't quite see—didn't feel like doing it, because "I am supposed to be neutral." I don't want to favor one branch of the industry against the other.

I said, "All right, we are going to have a meeting." And I called a meeting of all the parties immediately concerned, consisting of general contractors and mill men and there happened to be

985 Sergerke Kohlhouse of La Crosse, Wisconsin, and Murray Vansile was the local contractor who purchased the stock from this concern in La Crosse. I called a meeting of all of the contractors. And they had already rejected the sash and went on telling them that they did not come up to the specifications calling for white pine. That meeting, I got a couple of telegrams from some parties that wanted to come and they wanted to hold it over a couple of days. And really when I stepped into the room, there was about 17 or 18 gentlemen present, and they kept coming in from almost all parts of the country, and I had fellows who were working to find out why they were there. And it developed a lot of men evidently were sent in by the western pine interests, and there was a general discussion of this thing. They seemed to be familiar with it, and I just simply turned to Mr. Koehler and I said, "Mr. Koehler what kind of sash has been furnished; is it white pine?" And he said, "No, it is yellow pine. I have had it under microscopical examination, and he says that is the only way to tell."

Mr. WHEAT. May I interrupt a moment, if the examiner please. I feel that this man is going into a lot of details; unless he identifies this matter with the pine in question in this case, which is California white pine, it seems to me that these many details about Mr. Koehler stating it was yellow pine and how many men were present at his meeting are purely extraneous matters.

Exam. SHEPPARD. Well, a little bit too much detail. We

986 want to know, of course, and we feel we are entitled to know if this is California white pine and that is the question before us at this time. Go ahead.

The WITNESS. You want to know whether the sash was California white pine?

Mr. BURR. Go ahead with not quite so much detail.

A. All right. The sash were rejected on Mr. Koehler's statement that the pine—the pondosa pine—was furnished for that job and I rejected it definitely.

Q. And they already installed the sash?

A. Some were and some were laying on the different floors.

Q. Was there any compromise offer made to you?

A. Finally compromise was made by the millwork concern, who offered to donate the sash to the Detroit Community Fund if we would leave them in.

Mr. WHEAT. I object and submit that has nothing to do with the issues in this case, whether any offer to compromise on a matter was made.

Exam. SHEPPARD. Yes. I don't care anything about that, one way or the other.

(By Mr. BURR:)

Q. It is a question, those that were not installed were left out, and those that were in were pulled out?

A. Yes.

Q. Have you had any experience as to the wear of the sash that were taken out again?

A. Yes.

987 Mr. BURR. You may cross-examine.

Cross-examination by Mr. WHEAT:

Mr. WHEAT. May I suggest, Mr. Examiner, that I did not object to the statement of what the report of Mr. Koehler was, although I believe it to be hearsay, because I believe that this witness no doubt has that report and he can take it and can produce it at this time.

Mr. BURR. It was oral?

A. It was oral.

Mr. WHEAT. Then I misunderstood the gentleman I thought he said that he had the report with him.

Mr. BURR. He says that he requested a written report and didn't get it.

Mr. WHEAT. I believe then that this objection is timely in view of the misunderstanding as to the existance of this report in the witness's hands and I would like to object to anything that Mr. Koehler stated to the witness. I believe it is hearsay of the rankest sort.

Mr. Koehler is still in the Government service, according to counsel for the Government in this matter, and can be called.

Exam. SHEPPARD. That is true, Mr. Attorney. Yet, anything that Mr. Koehler said to this gentleman is hearsay, but in order to get it, first we have to get a narrative of the matter
988 and clarify it, I think I will let the statement stay in the record.

Mr. WHEAT. I will ask just one or two questions.

Mr. BURR. I will say for the benefit of counsel, we expect to call Mr. Koehler if he is in town when we get to Madison.

Mr. WHEAT. Well, I will withdraw this objection. I don't want you to feel that I am trying to be technical, but I do think, or rather did at that time that it was writing.

Exam. SHEPPARD. You are right about that. But in order to have a concise clear statement in narrative form, let the whole statement go in, although it is not absolutely and technically correct.

Cross examination by Mr. WHEAT:

Q. Now, Mr. Meier, did Mr. Koehler state to you that the wood which was used in these particular sash was wood sold under the name of California white pine?

A. He said it was pondosa pine.

Q. You stated, I believe, in your direct examination, that the first statement with reference to Mr. Koehler's report was that he stated that it was "not white pine, but yellow pine, mostly pondosa pine and yellow," is that correct?

A. That is correct.

Q. Now, Mr. Meier, when you specify white pine for such construction as you had in mind at the outset of your direct
989 examination, do you accept a wood known as Idaho white pine in compliance with that specification?

A. I might say that we have never followed closely the matter of the pine furnished for sash, and assumed that we were getting white pine.

Q. By white pine, you mean white?

A. I mean white pine, the botanical white pine.

Q. Well, which white pine do you mean?

A. I don't think under our specification we had a right to bar any white pine that was white pine, botanically; that is the way I feel.

Q. Now, do you know whether or not this so-called Idaho white pine is white pine botanically?

A. No; not from my own knowledge.

Q. You are not sure. Have you ever had furnished to you on any jobs where you have specified white pine a wood commonly as California sugar pine?

A. I could not say.

Q. And you don't know then, do you whether or not California sugar pine is or is not what you have termed botanically true white pine?

A. I don't know.

Q. And now did you check up regarding the acceptance, that is, the point of origin of pine that is furnished——May I just
990 make this question clear. Do you find out whether the white pine which you specified came from Maine or Canada or Michigan or Wisconsin?

A. We have never in the past.

Q. Do you now?

A. We make an attempt to do it now.

Q. You do that through your outside superintendent, I take it?

A. Exactly.

Q. Do you know of your own knowledge whether there has been any falling off in the past few years in the supply of white pine which came from Michigan?

A. I have been told that by people who were supposed to know the industry.

Q. That is your understanding?

A. That is my understanding.

Q. Do you know whether there is a dependable supply of that wood, botanical that same wood from any particular source?

A. I don't know the source, but I understand we can get it when we specify it.

Q. Do you know whether or not there is a price differential between that wood and other woods which you have stated are true white pine?

A. I don't know.

Q. By the way, for the purpose of the record, will you state if so, what other woods are in your opinion true white pines?

A. I am not in a position to specify, to discuss the technical
991 white pines because my position in the firm is not a specification man or nothing to do with that except to follow up the work on the outside, look over the reports of the superintendent. In other words, I have nothing to do with the specification work.

Q. You are not in any sense a wood technician?

A. I am not.

Q. Have not made a particular study of that particular field?

A. I have made no pretense about that.

Q. Rely on your employees who are there for that purpose?

A. Rely on the employees and we rely on the concerns to a great extent that we do business with.

Mr. WHEAT: That is all.

Redirect examination by Mr. BURR:

Q. Mr. Meer, do you know whether Mr. Koehler said pondosa or whether he said pondorosa as the type of wood, one is the trade term and the other is the botanical term?

A. I would say that my recollection is pondosa.

Q. Pondosa?

A. Yes, sir.

Mr. BURR. All right.

Mr. WHEAT. That will be all.

(Witness excused.)

992 Mr. BURR. If the examiner please, I move we adjourn until tomorrow at Indianapolis.

Exam. SHEPPARD. All right. Mr. Burr and gentlemen, we will take an adjournment to the city of Indianapolis, Indiana, to convene in the morning, being the 16th day of October at ten o'clock in the morning at Room 233 Federal Building. Up to that time our hearing will be adjourned.

(Whereupon the further hearing of said cause was continued until Wednesday, October 16, 1929, to be reconvened in Indianapolis, Indiana, at 10 o'clock a.m.)

993 Docket Nos. 1620–1669, inc.

INDIANAPOLIS, INDIANA, *October 16, 1929.*

Met pursuant to adjournment, 10:00 o'clock a.m.

Before: William W. Sheppard, Examiner.

Appearances:

Eugene W. Burr, for the Commission.

McCutchen, Olney, Mannon & Greene, (by Messrs. Allan P. Matthew and Carl I. Wheat), for the respondents.

ROY METZGER was thereupon called as a witness, and having been duly sworn, testified as follows:

Direct examination by Mr. BURR:

Q. Mr. Metzger, you are with the Metzger Lumber Company, are you?

A. Yes, sir.

Q. Located at Lebanon?

A. Principal office, yes, sir.

Q. And you have branch offices elsewhere?

A. Six others.

Q. Six others?

A. Yes, sir.

Q. You are here in this city?

A. No.

994 Q. What position do you hold with that company?

A. Well, it is not a corporation; I am the principal owner.

Q. How long have you been in the lumber business in this vicinity, Mr. Metzger?

A. Seventeen years.

Q. What is your line, both retail work and making of factory finished work?

A. Yes.

Q. How long have you been engaged in both of those lines, since the beginning of the seventeen years?

A. Yes, sir.

Q. Now you operate a retail yard, several retail yards, do you?

A. Seven.

Q. And how many factories?

A. Well, I wouldn't call any of them factories; we have two fair planing mills and two are not so good.

Q. Do you have occasion to buy white pine supplies for the retail trade, referring to them as distinguished from the mill work?

A. Well, we carry white pine proper and pondosa pine, which comes from Oregon, and California white pine, and the white pine proper comes from Idaho that we get, and also some from Arizona.

Q. Do you get white pine proper from——

A. (Interrupting.) Most of it comes from Idaho that we get.

Q. Do you get some known as Arizona white pine?

995 A. That is what they call it now, whether it is in the pondosa class or not I am not so certain on this.

Q. You think it is in the pondosa class?

A. Yes.

Q. When you say white pine proper from Arizona you refer to that which comes from——

A. (Interrupting.) Comes from Idaho, that is marked genuine white pine; the other is not so marked and I understand that the Arizona pine is more or less like pondosa, but not from California and Oregon.

Q. Now you say your white pine from Idaho is marked genuine white pine?

A. Yes, sir.

Q. That is the way you order it?

A. That is the way it comes and we like to have it that way.

Q. Do you know whether or not they apply to that product the term "Idaho white pine"?

A. Well, I think that is more or less the different mills, they have their sales arguments in different ways of course, we understand that the best white pine we can get now comes from either Minnesota or Idaho. It so happened we have been buying from Weyerhaeuser at Cloquet, Minnesota, and also Boise, Idaho, and that comes to us marked with a stamp "genuine white pine." It seems to be softer than and of more uniform texture and has less grain than that which comes from Oregon, California, and Arizona
996 called pondosa pine.

Q. Do you get any from Oregon and California?

A. Yes.

Q. Do you get some lumber from California called California white pine?

A. Yes.

Q. Do you get any from California—are you sure it is marked pondosa pine from the State of California?

A. It is marked either pondosa or California pine, that we have been getting, which comes from Pickering and Weed, California.

Q. Do you understand that the pondosa and the California white pine are the same tree or different trees in variety?

A. I really am not informed on that. I know that there is a difference in the type of lumber.

Q. Will you describe that please?

A. The lumber that comes from near Weed, California, is a little harder in texture than that that comes from farther north.

Q. Now what do you mean by farther north?

A. I was just trying to think—we got some last year—you perhaps know where the Red River Lumber Company manufactures their product.

Q. You got some from the Red River?

A. Yes. That is softer texture, so our mill men say, which comes from Pickering.

997 Mr. WHEAT. I don't think the Pickering plant is at Weed.

The WITNESS. No. It is near Weed.

Mr. WHEAT. The Pickering plant, I am quite sure, is at Standard.

Q. (By Mr. BURR.) Which did you get from?

A. We got from Pickering, the last car, which was not satisfactory because of its hardness and splits easier and the planing-mill men kicked, so we bought some from the Red River company, and perhaps you know where that is.

Mr. BURR. Can we stipulate where that is?

Mr. WHEAT. Yes. I think it might be stipulated that the Red River Lumber Company's plant is at Westwood, Lassen County, California.

Mr. BURR. That is given to me, subject to check.

Mr. WHEAT. The Pickering Lumber Company's present plant is at Standard and Tuolumne. In other words, those particular plants are in the southerly portion of this lumber belt on the Sierra Nevada Range.

By Mr. BURR:

Q. Now, are you certain whether or not there is genuine white pine that comes from the Boise plant or is that some pondosa plant out there?

A. I think there are two different qualities of pine near Boise. I think one is on one side of the mountain and one on the other; in fact they may be logged at the same place; I know we can buy both from the same mill.

998 Q. Both Idaho white pine and pondosa?

A. Yes.

Q. Now, did you finish your statement with regard to the differences that you find in California white pine and pondosa pine in quality for your purposes?

A. I think so.

Q. Now, then, referring to this Arizona white pine, do you find that that is similar to the California white pine, the pondosa, or Idaho white pine in its characteristics, if you can give me your best judgment on that?

A. I don't like to say anything unless I am sure. That is so little a part of our business that it would not come to our notice, and I have never had it distinctly called to my attention any difference between pondosa and Arizona.

Q. Your experience does not justify you in characterizing it?

A. Nothing other than to say our planing mill either prefers Arizona or Idaho pine. Now, I never stopped to argue with them much about it nor discuss it, but their ideas are derived from how it works under knives and planes and machinery.

Q. Now, do you distinguish in quality between the Arizona product that you have been buying and the Idaho product?

A. We prefer the Idaho.

Q. You prefer that some?

A. Yes.

999 Q. And your next choice?

Exam. SHEPPARD. Which—Idaho?

The WITNESS. Boise genuine white pine; it does not have to come from Boise; there are a lot of good white pine mills out there and there are some good mills in the northern part of Minnesota.

By Mr. BURR:

Q. Your next choice for far western product would be from Arizona?

A. Yes; or else from that Red River company. Now, a lot of those mills have mills in different places and when we go to buy a product that seems to fit our needs we don't stop to think much more about it; if it suits possibly we repeat the order and as a result my geography of the far West is not perfect.

Q. Are you able to state which of these various types of western wood belong to the genuine white-pine group? If so, I would like to have you say.

A. I could not state that.

Q. Do you know whether or not California white pine possibly is a genuine white pine?

A. As I understand it the words "genuine white pine" is simply sort of descriptive words describing certain textures of wood and the altitude and climate affects the texture of the wood, and I don't really know why you would or would not call the Oregon or Washington pine genuine white pine; I cannot answer.

Q. Now, let me ask this: Do you regard the northern white
1000 pine—what you get from Minnesota?

A. Yes.

Q. Do you regard that as preferable in character to the Idaho white pine?

A. It is about the same quality and same class; we cannot see any difference, because it is right close together. You see we have not used white pine in this territory for so very long other than Wisconsin white pine and this other.

Q. Do you mean by that Idaho—how long have you used Idaho?

A. We have used that in a limited way for fifteen years, but Arizona pine we have only had access to that the last five or six years.

Q. Now, then, you have been talking about your retail work or have you been talking about millwork?

A. Sort of both.

Q. What you have said applies to both lines which you buy for resales and for making up and selling in the finished products?

A. That is correct.

Q. Now, then, for your millwork do you prefer the northern or Idaho white pine to the other varieties you have mentioned, or don't you distinguish any?

A. Yes; we prefer the Minnesota and Idaho white pine for millwork because of its soft texture; we don't prefer to buy it altogether because of its price; it is higher in price.

Q. What products do you make in your mills?

1001 A. We make doors and windows and cabinet work, that is built-in kitchen cabinets, casing, and stairways.

Q. What exterior products do you make for exterior trim?

A. Some outside benches and seats and outside window and door trim and porch columns.

Q. When someone comes to you to ask for your line of goods do you get specifications calling for white pine or for pine or how do they read? As a rule now, I am asking on your exterior work.

A. They vary. A lot of specifications by architects in this section of the country specify cypress, and others specify white pine. They usually manage to get it specified the kind that you haven't got.

Q. Now, when these specifications come in calling for white pine, referring now to your exterior trim specifically, will you state what varieties of the various types of lumber that you buy which you regard as in compliance with those specifications for white pine?

A. Well, I don't know that one out of a dozen can tell the difference between pondosa pine, genuine white pine, or Arizona white pine. There isn't any of them, half of them can't tell the difference between yellow pine and white pine.

Q. Do you mean southern yellow pine?

A. Yes.

Q. Can't they tell the difference between California white

1002 pine and genuine?

A. No; very few can.

Q. When they ask for white pine, what do you do?

A. We give them what we have.

Q. It might be Arizona or Idaho or northern white pine?

A. Yes.

Q. It might be California white pine if you have it in stock?

A. Yes. If they specify white pine we give them either one of those white pines. We say they are all white pine. There is a different texture.

Q. Do you call pondosa white pine for that purpose?

A. That is the way it is sold, but it is called pondosa just the same, just as if a man orders oak and you give him red oak or jack oak or whatever oak you have, but they are different textures and if he would come in and specify burr oak we would give him burr oak or else tell him that we didn't have it, but if he comes in and asks for white pine and does not specify, we give him what we have, but if he specifies it, then we give him what he asks for and a large percentage of those products come from these California and southern Oregon mills.

Q. How large a percentage of your products come from these California and southern Oregon mills that you refer to?

A. Very little; not over two percent.

Q. How large a percentage comes from Arizona?

A. We have quit buying from Arizona.

1003 Q. You have quit?

A. Yes.

Q. Did you previously use California white pine more extensively than you do now?

A. We formerly used mostly for the outside trim and outside woodwork cypress.

Q. Formerly you mean?

A. Yes.

Q. Up until what time?

A. Up until the last five or six years. Before six or seven years ago all we used this white pine for was in the manufacture of doors and windows. We used cypress for veranda work and outside garden work and trellis work and all that sort of stuff. Now, cypress is a little more difficult to obtain and this western wood is working in. If we had a better freight rate we would use more of it, but our freight rate is a handicap.

Q. Which of these types of wood do you regard as most durable for outside weather, if you have reached any experience on it?

A. This Idaho and Minnesota white pine, which they call genuine cork pine.

Q. Have you had any trouble with your pondosa pine or the California pine?

A. It rots out much quicker, so they say.

Q. Have you had any experience yourself?

1004 A. We have this experience: The sash that is made of pondosa pine frequently comes back to us in six or seven years for new bottom rail, which indicates that they are rotting out. For instance, we made new bottom rails for the Lebanon County courthouse and those sash have been in about five years.

Q. Did you furnish the lumber for that?

A. No, sir.

Q. Do you know what type of lumber those sills were?

A. I don't know what it was, but we put cypress sills back in there.

Q. You don't know whether it was pondosa or California?

A. I am inclined to believe they were pondosa, because they would not have rotted out so quick.

Mr. WHEAT. The witness doesn't know.

Mr. BURR. No; the witness does not know.

Mr. WHEAT. I think the answer ought to go out.

Mr. BURR. I will strike that if you want it stricken.

Mr. WHEAT. I would like to move that the answer be stricken out.

Examiner SHEPPARD. Strike what the witness said about what he said he believed about it.

The WITNESS. Perhaps I am talking too much of my own opinion. I don't aim to do that.

Examiner SHEPPARD. We will stop you if you do.

The WITNESS. I am talking to you as anyone coming into the office, understand.

1005 By Mr. BURR:

Q. Have you any facts to go upon as regards whether or not the wood that rotted out in the Lebanon County courthouse there—have you facts as to what variety of lumber it was?

A. No; not the slightest.

Q. Can you tell varieties of wood by inspection?

A. I can tell some of them; some of them I cannot. On the woods we handle I am a fair judge, but there are so many deceptive things; for instance, the difference between hemlock and spruce is very hard for me to distinguish the difference, and the reason I say that is because I had one associate who has been in the lumber business for twenty years and I shipped him a car of mixed hemlock and spruce and he couldn't tell the difference.

Q. Now, the buyer, does he ask for California white pine on occasion, or pondosa pine on occasion?

A. On certain occasions they do.

Q. And then you give them what they ask for?

A. We tell them just what we can offer them.

Q. Do you regard pondosa and California white pine as being interchangeable on specifications one for the other?

A. Yes; we do on those, but not interchangeable with cork pine.

Q. And which do you refer to?

A. Idaho; what we have got from Idaho.

Q. Do you refer to northern white pine as cork pine, too?

1006 A. That is such a little percentage of our business that we have never had occasion to go into that.

Q. Referring to the pines, how large a percentage of your pine purchases are Idaho white pine?

A. Not over one percent of our pine purchases.

Q. From Idaho?

A. No.

Q. Where do you get the bulk?

A. Most of our pine comes from the South, yellow pine.

Q. Now, referring to your soft pines, how large a percent is Idaho pine do you think?

A. About 25 percent.

Q. How large a percentage of your soft pines is California pine?

A. We buy some spruce; you can hardly tell it from white pine and most of the people would just as soon have it; we sell it as spruce.

Q. Eliminating that spruce and referring to soft pines, how large a percentage do you buy of the California white pine from southern Oregon and California?

A. We only buy about four cars a year of that pondosa pine.

Q. The pondosa?

A. Yes.

Q. And by pondosa you mean——?

A. We mean Oregon or California.

Q. You call that pondosa for your purpose, do you?

1007 A. Yes.

Q. How large a percentage of your soft pine purchases would that constitute would you say, giving your best judgment?

A. I would say it would be about three fourths of the white pine we use.

Q. About three fourths.

A. Yes.

Q. And the other 25 percent would be Idaho?

A. I should say two cars a year of the Idaho pine and four, five, or six of the pondosa.

Q. Of the pondosa?

A. Yes, sir.

Q. That includes your Oregon and California white pine, does it?

A. Yes, sir.

Q. Does that include anything that you buy from Idaho of the pondosa variety instead of the genuine white pine?

A. No; we don't just happen to get pondosa from Idaho.

Cross-examination questions by Mr. WHEAT:

Q. How much northern white pine do you purchase in cars a year?

A. From two to three carloads.

Q. I understood you to say—perhaps it is inference on my part—that you were drawing more from Idaho than from the northern white pine area?

A. I did not aim to say that. I am afraid I am a poor wit-

1008 ness for the things you want because of the fact that we use so little white pine and the fact that we have not been handling it for a very long time and the fact that the district is far away and I have only been out there once and it makes me a little hazy and perhaps ignorant.

Q. I am not complaining on the status of your information. I was asking as to the northern white pine and you say there would be only two or three cars a year as compared to all the rest?

A. Idaho or Minnesota; we buy from both Minnesota and Idaho.

Q. I think you said you were getting two cars per year of the Idaho white pine?

A. Yes, sir.

Q. Let us put that aside and will you tell me about the quantity of northern white pine which you purchase?

A. I should say all told about seven or eight cars a year.

Q. Is that Minnesota white pine, the seven or eight cars?

A. No; we only got one car from Minnesota last year, two from Idaho, and the rest came from Oregon and California.

Q. Let us start again if we may. Last year's record would be fairly typical of the last four or five. Now the northern white pine, we will say Minnesota pine, you have got about one car?

A. That is all.

Q. And from Idaho about two cars?

A. Yes, sir.

Q. And about how many cars of pondosa pine?

A. About five cars last year.

1009 Q. Now when you refer to pondosa pine do you include pine that you purchase under the name of California white pine.

A. As I recall we did not purchase it under that name as California white pine; they just sold it to us as California pine, or really they called that white pine from California and we know what it is; that is, we know what it will look like when it gets here.

Q. Did you purchase any under the name of pondosa pine?

A. Not through that name.

Q. When you get this particular variety of lumber from Idaho or from Washington or central Oregon, do you not purchase it under the name of pondosa pine?

A. I don't recall the name because we usually buy it from the manufacturers and I never buy anything unless I have seen it before; I see it in other yards, and I don't know that I buy it under the name pondosa pine, I just buy it because I know where it is coming from and I know what it looks like.

Q. When you say you buy from the manufacturer you buy it from the sawmill operator?

A. Yes, sir.

Q. Do you know whether it is billed to you as California white pine or as pondosa pine?

A. I just can't tell you.

Exam. SHEPPARD. What do you ask the manufacturer for in ordering white pine of that kind?

1010 The WITNESS. The way I do it, I just get the price on California pine and Idaho pine and I judge what I am going to do with it and I order it. If I can sell California pine, as you can in barn siding, then I buy that, because it is four or five dollars a thousand cheaper.

Exam. SHEPPARD. I understand you make a distinction between California pine and Idaho pine. What I want to get from you is how do you order lumber from a California pine manufacturer—what words do you use—do you say, "Send me a carload of white pine"?

The WITNESS. Yes, sir; and I specify the mill.

Exam. SHEPPARD. You just say send me a carload of California white pine and specify the mill?

The WITNESS. I buy it of the mill.

By Mr. WHEAT:

Q. I take it, Mr. Metzger, as a practical lumber man, your interest is in the quality of the product which you purchase and not in the botanical names of the species of the trees?

A. Yes, sir.

Q. You are buying this lumber for what use you can probably make use of it?

A. Exactly.

Q. And that is one of the reasons, I take it, why you are not distinguishing between pondosa pine as a name and California white pine as a name?

A. Yes, sir.

Q. Now the bulk of the pine lumber which you carry then
1011 must be southern white pine?

A. Yes.

Q. It is easy to distinguish the southern yellow pine from the northern white pine, isn't it?

A. Yes, but not so easy sometimes to distinguish between pondosa pine and southern pine, especially in the short-leaf pine.

Examiner SHEPPARD. The answer was not responsive. The witness made no answer to what the question was. I will allow that to be stricken.

By Mr. WHEAT:

Q. Now can you answer the original question?

Mr. BURR. He answered yes. Just strike the rest.

The WITNESS. It is easy for me but not for some other people.

Q. Now you spoke of some pine that you had received from the Red River Lumber Company and said you found that to be rather soft and satisfactory at times?

A. Yes.

Q. Do you know under what name that was billed you, was it as California white pine?

A. If I recollect they just said Red River pine.

Q. But you are not absolutely certain?

A. No, sir.

Q. Have you ever purchased any sugar pine?

A. No, not under that name.

Q. Are you familiar with lumber which is known as Cali-
1012 fornia sugar pine?

A. Fairly. I don't know whether I can say this is a piece of sugar pine and this is genuine white pine; I don't know the difference there.

Q. Could you distinguish California sugar or Red River from Idaho white pine?

A. I have never tried.

Q. Could you readily distinguish this pine of the quality you received from the Red River Lumber Company, say over southern yellow pines?

A. Yes, sir.

Q. Now, you said you sometimes received orders for white pine and I would understand from that statement that there is no qualifying term used, that is, your customer just asks for white pine?

A. Yes, sir.

Q. Does he ever ask just for pine?

A. Yes.

Q. And what do you undertake to furnish him when he asks for pine?

A. We know he wants it on some particular job, so we give him yellow pine.

Q. Now, when he asks for white pine, how do you determine just what you will supply?

A. We usually find out what he is going to do with it.

Q. And after you find out what he is going to do with it
1013 how do you determine what you will furnish?

A. We give him the one we think he ought to have.

Q. In other words, you try conscientiously to satisfy your customer's needs as you understand them?

A. Yes, sir.

Q. And you will sometimes furnish northern white pine?

A. Sometimes the pondosa.

Q. And sometimes the Idaho white pine?

A. Yes.

Q. And sometimes the pondosa?

A. Yes.

Q. And sometimes the California white pine?

A. Yes.

Q. Then you feel free to furnish lumber which you have purchased as pondosa pine upon orders for white pine if you are satisfied that thereby you are meeting your customer's needs?

A. Yes, sir.

Q. In other words, it does not make any difference as to the trade name under which you purchase the wood if you are satisfied that the wood is of such quality that it will meet the particular needs of the customer. Is that right?

A. Yes, sir.

Q. Do you purchase your Idaho white pine lumber from the Weyerhauser interests?

A. Yes, sir.

1014 Q. And your northern white pine lumber likewise?

A. Yes, sir.

Q. How about the pondosa pine?

A. Well, that comes from different places.

Q. That is scattered?

A. Yes.

Redirect-examination questions by Mr. BURR:

Q. Referring to your last testimony about the pondosa pine that you would furnish pondosa pine on order for white pine. Are you referring to the pondosa pine which you purchase from California and southern Oregon, as you testified in the opening testimony?

A. Yes, sir.

Q. Now, when you order genuine white pine do you ask that it be stamped as genuine white pine?

A. We do on barn siding where it goes up in its original board. On small work it is not necessary, because we work it all up any way.

Q. Do you have competition with California white pine dealers here?

A. No.

Q. You don't know of any?

A. No.

Q. Do you come in contact with the actual buyer yourself?

A. No; not much.

(Witness excused.)

1015 FRED WALLICK was thereupon called as a witness and, having been duly sworn, testified as follows:

Direct examination by Mr. BURR:

Q. Mr. Wallick, you are an architect, are you?

A. I am.

Q. Located where?

A. 308 Hume Mansur Building, Indianapolis.

Q. How long have you been an architect in Indianapolis?

A. Sixteen years.

Q. Was it here that you started in the architect profession?

A. New York City.

Q. Now, Mr. Wallick, what is your line of architecture work?

A. I am a specialist in residential work.

Q. Do you specify any particular type of lumber for exterior finish?

A. Always.

Q. What is it?

A. Depending upon where it is to be used; for frames and sills and sash we specify different materials. I have used very little lumber for exterior siding because in these days we build very few frame houses; ordinarily it is brick veneer, either on wood or on some fireproof material, the wood being restricted to the frame, sash, sills, exterior pergola, cornice, moulding, etc.

Q. What wood do you specify for exterior trim when you do use the wood?

1016 A. For frames, with the exception of sill, we specify close-grained short-leaf cypress; for sills, no. 1 red oak; and during the last two years we have specified for sash California no. 1 white pine.

Q. California no. 1 white pine—why do you specify in that manner for that type of work?

A. Because two years ago we have a very large mill in which we used California white pine for the sash at the particular recommendation of one of the best mills and we were so pleased with it that we continued its use ever since.

Q. How long was that?

A. About two years.

Q. What mill was that?

A. It was the Balke & Krause mill.

Q. Here in town?

A. Yes.

Q. Do you know where that California white pine was received from by the Balke & Krause mills?

A. I don't know.

Q. Is California white pine the only variety of pine that you have specified for exterior work?

A. No, sir; we don't always specify where the California white pine shall come from unless it refers only to sash.

Q. I don't think you quite understood me. Is that the only variety of pine that you have been specifying, white pine?

1017 A. We use a blanket specification under the phraseology no. 1 white pine according to certain grading rules of either the Southern Pine Association or White Pine Association and as approved by the Bureau of Standards. We have found so much dispute among the mills and men talking about the quality of lumeber that we feel that to throw the specification back to the Bureau of Standards and the rulings of these pine associations would give better results than a specification on our part.

Q. In your last answer you said or used the words "white pine" and in an earlier answer you used the words "California white pine". Now do you sometimes specify white pine and sometimes California white pine?

A. I had thought I had made clear that I referred to California white pine for sash only.

Q. You do specify white pine for exterior purposes other than sash. Is that true?

A. Some four or five years ago we used white pine siding in an extra width. Beyond that as a rule we use white pine for exterior sash and doors.

Q. During the last four years that has been the case?

A. Yes. Everything else on the outside of houses is not white pine because we don't feel that we can afford to use it; it is one of the recognized very expensive woods.

Q. High priced?

A. Yes.

1018 Q. Do you find California white pine too expensive or do you regard that as suitable?

A. We know very little about the comparative costs of the soft type of white pine that you are discussing here. We merely specify what we have found and believe to be the most satisfactory for our needs. As to where the *the* various mills buy it, we have no particular interest.

Q. Do you regard northern white pine as genuine white pine?

A. I have always so considered it.

Q. Do you regard California and Idaho white pine as genuine white pine?

A. I should consider that as coming under that classification.

Q. When you got white pine for exterior siding four or five years ago how did you specify it?

A. Merely no. 1 white pine siding.

Q. What did you get, do you know?
A. As to the quality of the lumber you mean?
Q. Yes, California or northern white pine?
A. I don't know.
Q. You would have accepted it if it had been California or Idaho white pine, would you, as well as northern?
A. If it complied with the grading rules that we recognize as being authority.
Q. You regard that as complying with your white pine specification, would you?
A. Yes, quite so.

1019 Cross-examination by Mr. WHEAT:

Q. I would ask you if you are particularly informed as to the botanical classification of the several trees which provide pine lumber?
A. No, sir.
Q. As an architect your interest is primarily in the quality and utility of lumber which you obtain?
A. Entirely so.
(Witness excused.)

ROY E. BRANKENSICK was thereupon called as a witness and, having been duly sworn, testified as follows:

Direct examination by Mr. BURR:

Q. Mr. Brankensick, you are in what business?
A. I have been in construction work, I have handled construction work about all my life, nearly all of it.
Q. You are in business for yourself or you work for what concern?
A. Well, the last few years I have been working some for myself. Before that I was employed by the Monolithic Concrete Construction Company for several years, and the Hub City Construction Company here in town.
Q. Did you work on the Cadle Tabernacle here?
A. Yes.

1020 Q. What did you do in connection with that work?
A. I handled the labor on the job, running the foundation and handling the labor; that is, part of it.
Q. Do you know what type of doors they have in that building?
A. I could not say for sure.
Mr. WHEAT. I object to that answer.
Q. Do you know?
A. I don't know.
Q. Do you know how those doors stood up?
A. They have had some trouble with the doors.
Q. Well, what do you mean by some trouble?
A. The lower part of the doors has decayed.
Mr. WHEAT. I take it, the witness is talking of his personal knowledge.

Q. Do you know that personally?
A. I know that.
Q. You have inspected them?
A. I put in two new doors and we have repaired some of the others off and on.
Q. Do you know what kind of wood is in those doors, or are you able to say?
A. I am not able to say that.
Mr. BURR. I will agree that this testimony be stricken unless I tie it up.
Examiner SHEPPARD. It may be stricken.
(Witness excused.)

1021 LOUIS MCCORMICK was thereupon called as a witness, and having been duly sworn, testified as follows:

Direct examination by Mr. BURR:

Q. You are with the West Side Lumber Company, are you?
A. Yes, sir.
Q. In what capacity?
A. Secretary-treasurer.
Q. How long have you held that position with your company?
A. Approximately two years.
Q. What were you doing prior to that time?
A. I was with the Indianapolis Lumber Company.
Q. Indianapolis Lumber Company?
A. And also the Montgomery Lumber Company in Culver City, California, for a year.
Q. How long were you with this other Indianapolis concern?
A. About 15 years.
Q. So you have been here about 17 years in the retail lumber business?
A. Retail and wholesale sash and door about 20 years.
Q. Do you do any wholesaling at the present time?
A. None at all.
Q. Has that been true for the past 17 years?
A. Yes; that is right.

Q. Now, referring to your soft-pine supplies, where do you
1022 secure your material?

A. Are you referring to yellow pine or——
Q. I am referring to all soft pines.
A. Well, of course, we secure our yellow pine in the South.
Examiner SHEPPARD. Do you call yellow pine soft?
The WITNESS. I am referring to Arkansas soft pine.
Q. You regard that as soft pine? Soft yellow pine?
A. We would, but not as white pine.
Q. Now, eliminating your Arkansas soft pine and your Arkansas yellow pine of the South, will you state where you secure your soft pine supplies?

A. We have a shipment now, a part of a car coming from the Red River Lumber Company, California white pine. We have bought some, I think, of Weyerhauser.

Q. Where did that come from?

A. I am inclined to think—I am not right sure where it came from.

Q. Was that Idaho white pine or pondosa pine, or what was it?

A. I don't know.

Q. Where else do you secure your soft pine supplies, eliminating the Arkansas soft?

A. Well, now we buy most anywhere; we don't discriminate between pondosa, northern white pine, or California sugar pine for our purposes.

Q. Those three?

1023 A. Those three; in other words, any western or northern so-called white pine we don't discriminate for our purposes.

Q. You don't discriminate then between Arizona, California, and Idaho white pine. Is that true?

A. No.

Q. Do you buy any Arizona white pine?

A. I don't know that we have had any.

Q. Have you had any New Mexico white pine?

A. I think not.

Q. How large a percentage of this group of pines do you buy of California white pine?

A. I would say 75 percent.

Q. How much of the Idaho white pine do you buy, or don't you distinguish?

A. We don't distinguish.

Q. You do buy some Idaho?

A. We do. We don't usually buy large quantities of white pine.

Q. When you say that, what are you referring to?

A. I am referring to California sugar pine, pondosa, Idaho, or northern white pine.

Q. Are you referring to California white pine?

A. Yes.

Q. But you do use fairly large quantities of that?

A. California white pine, sugar pine—may I explain that in this market in a retail way we consider any of those woods

1024 white pine.

Q. Mentioning which, now?

A. Any of them. In other words, if a man comes into our place and wants white pine, a white-pine board, we don't distinguish. In other words, it is all white pine in this retail market.

Q. Including all of those varieties that you have named?

A. Excepting with the pattern trade. A trade of that kind requires certain texture of wood.

Q. In other words, you call it all white pine, referring to California white pine, pondosa, Idaho pine, or northern white pine. Is that true?

A. That is true.

Q. For the pattern trade, what is the situation?

A. I think they demand pretty largely northern white pine, although we don't sell that trade.

Q. Now, you say you sell these without distinction?

A. Yes.

Q. The four named last? You answered yes. That is true in the retail trade largely here, is it?

A. I think it is.

Q. Now, how about the price. There is some distinction in price between northern white pine and Idaho white pine and California white pine, is there not?

A. Well, that all comes back to a matter of market. Now, understand this is sold in small quantities as far as we are con-
1025 cerned. We don't sell a thousand feet of white pine. I don't think it was ever known for us to sell a thousand feet. It is a board here and a board there.

Q. Did you sell it for exterior trim?

A. Yes.

Q. Do you have people come in with the request for white pine for exterior trim?

A. Very seldom. This market is mostly a redwood and cypress market in that respect.

Q. You don't do any millwork, do you?

A. Yes.

Q. You do millwork?

A. Yes.

Q. How long have you been running a mill? For exterior trim.

A. I have been connected with the mill in all my experience.

Q. All your experience here in town?

A. Yes.

Q. Do you have calls for white pine on your exterior trim?

A. The architects, as I remember it, are not specific. In other words, they will say no. 1 white pine, which is really no specification unless they refer to some certain grading rule, and when they use no. 1 in this market they mean a clear grade that is free from knots.

Q. What would you be most apt to give them on that specification?

1026 A. Whatever I had in the four woods I have mentioned.

Q. How long has that situation as regards the interchangeability of those four woods, how long has that been the situation here?

A. Well, it has been the situation throughout my experience.

Q. Have the far western woods been in this market during that period?

A. I think so.

Q. Which of those four woods do you regard as most durable under weather conditions, or have you any choice?

A. I would be afraid to say.

Q. You would not say?

A. I would not say.

Q. Which of those four woods has the best reputation here generally, if you know?

A. I think the northern white pine.

Q. That has a rather better reputation?

A. I think so.

Q. But you have no experience to back that up?

A. I could not back that up.

Cross-examination by Mr. WHEAT:

Q. Do you purchase some of your far western pine lumber under the name of pondosa pine?

A. Yes.

1027 Q. You have stated also that you have purchased some California white pine, notably from the Red River Lumber Company?

A. Yes.

Q. You stated likewise in response to the Government's counsel if you received an order for white pine you would feel free to supply that with either northern white pine or Idaho pine or pondosa pine or California white pine?

A. Unless a man was specific in his terms. Of course, if he specified a product we certainly would give him what he specified or not sell it at all.

Q. In other words you are trying to satisfy your customer's want as you understand it?

A. That is it.

Q. And of course you are not deceiving him in any way to the best of your ability?

A. In other words, this market has not been educated to the different kinds and qualities of white pine.

Q. You feel free to furnish that pondosa pine, that is the pine which you have purchased under that name, if you feel that it satisfies your customer's wants as you understand them?

A. Yes.

Q. I would gather from that that your interest is not so much in the trade name of the lumber, but you are interested in the quality and utility of the lumber as to your customer's needs?

A. That is it.

1028 The WITNESS. May I just give you one pointer? You were asking about some doors here. You may not want this information, but my experience with doors has been that in all cases where they go bad they have not been properly protected.

Redirect-examination by Mr. BURR:

Q. Now while you are not interested in trade names I would like to ask you this—would you say that the use of the word "pine" in connection with the trade name "California white pine" had a tendency to confuse the local trade here as to any distinction there might be between that white pine and other white pine?

Mr. WHEAT. I object to the form of that question because it calls for a conclusion. I think the witness ought to be asked as to matters of fact.

Exam. SHEPPARD. That is the very thing we have to decide. I don't think the witness' judgment is sufficient.

(Witness excused.)

THOMAS STEWART was thereupon called as a witness, and having been duly sworn, testified as follows:

Direct-examination by Mr. BURR:

Q. You are with the Pinnell-Coombs Lumber Company, are you?

A. Yes, sir.

Q. And they are at Lebanon, Indiana?

A. Yes, sir.

1029 Q. Have you a retail lumber yard there?

A. Yes, sir.

A. How long have you conducted that yard?

A. The Pinnell-Coombs Lumber Company have been in business about forty years.

Q. How long have you been there? You are manager?

A. I have been there since the first of January this year.

Q. What were you doing before that?

A. I have been in the Pinnell organization retail lumber business for the past twenty years.

Q. You were selling before you became manager?

A. Yes; the same as I am now manager of a retail lumber yard.

Q. I thought you said you had been manager for one year.

A. With the Pinnell-Coombs Company; I have been with the Pinnell organization for twenty years same capacity, only different yards—Shelbyville for the past 15 years.

Q. Now you also conduct a mill, a shop, do you?

A. Well, we have a mill; we don't operate it very much.

Q. How long have you been omitting to operate it?

A. Well, the mill of the Pinnell-Coombs Lumber Company at Lebanon for the past year has operated very little on millwork.

Q. In the purchase of your lumber do you have occasion to buy soft white pines, referring now to other pines than the Arkansas soft?

A. For millwork we have not in the past year.

1030 Q. With regard to your retail lumber business?

A. We have; yes.

Q. And what pines have you been purchasing?

A. We have bought pondosa pine altogether, five cars in the past ten months.

Q. Where have you been getting it from?

A. From the Brooks-Scanlan Lumber Company at Bend, Oregon.

Q. Do you get that under the trade name pondosa or under the trade name California pine, if you know?

A. As pondosa pine.

Q. Has that been your sole supply of western soft pine?

A. In the past ten months; yes.

Q. Before that what did you get?

A. Now, I could not say; I don't know; I wasn't there. I do know this, though, from my other experience, we have used mostly cypress. We are buying sash and doors already made; we don't make them any more at all.

Q. What kind of sash and doors are you ordering?

A. White pine.

Q. What kind of white pine is that, do you know?

A. I don't know.

Q. You don't know whether it is California, Idaho, or what?

A. I don't know.

Q. Would you distinguish between those in the point of durability and ability to stay in place, etc.?

A. No; I would not say, because I could not tell from look-
1031 ing at a door what kind of white pine it was when it goes in place.

Q. If you were to order that kind of lumber would you distinguish in any way for your customer's benefit or would you order that indiscriminately?

A. We have never discriminated.

Q. Would it be a question of price with you, which made the lower price?

A. Well, no; I would not just say that.

Q. At the same price would you have preference between those three varieties of white pine for exterior work?

A. Yes.

Q. Which would you prefer at the same price?

A. Not being so familiar with white pine I could not say. Now I am not just exactly clear on the difference of the California white pine and the Idaho white pine.

Q. Can you say whether or not that is the practice in the trade here, regarding these varieties as you have described it, the practice is similar in selling them inerchangeably?

Mr. WHEAT. I don't think he testified as to the varieties sold indiscriminately. I heard no testimony to that effect.

Mr. BURR. I don't want to characterize it if you don't concur.

Exam. SHEPPARD. I don't have any recollection that he has so testified.

1032 Q. If you got an order for white pine would you consider that you had fulfilled that order by delivering California white pine, Idaho white pine, northern white pine——

Mr. WHEAT. The witness has not said that they furnished any California white pine.

Q. Well, would you regard yourself as fulfilling that order for white pine if you furnished pondosa pine, Idaho white pine, or northern white pine?

A. Well our experience has been we would have in the yard cypress and we would probably furnish him cypress.

Q. Cypress for what? White pine?

A. I wouldn't sell it for white pine, that is unless he would be satisfied with it for the same use, because we haven't had trade enough in our trade, in this locality for white pine, enough buildings in the way of plans from architects and all that, they have not been very particular about it, and we just would probably, if we had to furnish white pine, we would order those sash and doors from some sash and door house and we would furnish them just what the sash and door house shipped us.

Q. Irrespective of pondosa white pine, California, or Idaho white pine?

A. We would order white pine doors of white pine sash and what they sent us we would furnish to the customer, if we could not change him from white pine to cypress, if we thought cypress would meet his needs and we had cypress in stock. Our
1033 demand for white pine has not been very heavy. I might add this, if you want it, that our demand for white pine has been in pattern stock. It is barn siding that we have used altogether this year.

Q. Barn siding?

A. Barn siding, eight inches wide, tongue and grooved, from 8 to 20 foot long, for barns and in any other siding.

Q. What did he order?

A. Pondosa pine.

Q. What did you order?

A. We ordered pondosa and we got pondosa pine, and we sold it as a soft pine.

Q. What did your customer ask for?

A. He asked for yellow pine, really what he asked for, and we showed him this and convinced him that it was better material for his barn than the yellow pine and sold it to him.

Q. Do you know whether or not that pondosa is yellow pine?

A. We don't think it is yellow pine.

Q. What do you think it is?

A. It is softer than yellow pine.

Q. Do you regard it as white or yellow pine, white rather than yellow?

A. Yes.

Q. Do you regard that as genuine white pine?

A. No, sir.

1034 Q. What do you regard as genuine white pine?

A. Several years ago, when we got white pine from the North, northern white pine, I regarded that as white pine.

Q. Do you regard Idaho white pine as white pine?

A. No, sir; not altogether, but I may be wrong.

Q. Do you ever deal in California sugar pine?

A. Very little. We may handle sugar pine and not know it by itself.

Q. Do you regard California white pine as genuine white pine?

A. I could not say.

Q. You don't know whether it is or not?

A. No, sir.

Q. Is it offered to you from time to time?

A. No; because our demand is so small that we haven't trade for it, and we, of course, naturally have not had any soliciting of business.

Cross-examination waived.

Mr. WHEAT. I think I will move to strike the testimony of this witness. It is not at all relevant to the complaint.

Exam. SHEPPARD. I will let it stay in for its probative value.

(Witness excused.)

M. E. THORNTON was thereupon called as a witness and, having been duly sworn, testified as follows:

1035 Direct examination by Mr. BURR:

Q. You are with what concern?

A. Thornton & Rodecker, architects.

Q. Located here in the city?

A. Yes.

Q. How long have you been here?

A. We have been located as a firm for almost four years.

Q. Do you specialize in residences or in building blocks?

A. Residences.

Q. And do you have occasion to specify for exterior finish at times on lumber?

A. Yes.

Q. Do you specify white pine for that purpose in part at any time?

A. I think our first specifications called for white pine, but we were then informed by our friends among the local lumber dealers that genuine northern pine was very hard to obtain, so since then our specifications have called for California sugar pine.

Q. What do you specify sugar pine for?

A. On a nice job we specify it for our exterior trim and sash.

Q. You say you find it hard to get northern white pine; that is partly account of the price, is it?

A. I imagine it is. I know the dealer informed us he did not have it and could not get it.

1036 Q. Did you find out whether it could be had if you were willing to pay the price and wait for it to be shipped?

A. Yes; if we would pay the price, they would get it for us.

Q. Now, why do you specify sugar pine for this exterior trim on certain classes of residences?

A. Well, because from our experience that seems to be the best texture and the best finish and works better.

Q. Better than what?

A. Better than cypress or the cheaper grades of white pine.

Q. What do you mean by white pine?

A. Well, I think white pine is closer grained, harder wood than yellow pine; I think of white pine as being a harder wood.

Q. Where do you regard white pine as coming from?

A. Well, I think the pine we get around here comes from California; the kind we like to use does.

Q. Whereabouts in California?

A. I don't know; I have never been informed.

Mr. WHEAT. The witness is referring to sugar pine?

The WITNESS. Yes. I know it all comes from California.

Q. Do you get California white pine?

A. California sugar pine; yes.

Q. California white pine—there is a distinction between the two; do you understand that distinction?

A. No; I don't.

Exam. SHEPPARD. You refer to sugar pine as white pine?

1037 The WITNESS. Yes, sir; I do. For our purposes it is just as good as northern white pine.

By Mr. BURR:

Q. As the northern white pine?

A. Well, I don't know that we have had very much northern white pine to work with.

Q. Do you know anything about pondosa pine?

A. No, sir.

Q. You don't know whether that is white pine or not?

A. I suppose it is; I don't know.

Q. You have never specified it?

A. No, sir.

Q. What means do you have of checking up as to whether or not you get California sugar pine in specifying it?

A. Well, I suppose the only means I have is comparing it to California sugar pine that we know we have had.

Q. You think you can tell whether you get California sugar pine or some substitute by inspection on the job?

A. Yes.

Mr. WHEAT. Mr. Examiner, I will move to strike the testimony of this witness as it is absolutely irrelevant and immaterial to the issues in this complaint.

Mr. BURR. I don't agree with that motion and I oppose it.

Exam. SHEPPARD. I will let it stay in and give it probative value.

(Witness excused.)

1038 W. H. HANSING was thereupon called as a witness, and having been duly sworn, testified as follows:

Direct examination by Mr. BURR:

Q. You are connected with the Cadle Tabernacle, are you?

A. Yes.

Q. Where is that located?

A. Corner of New Jersey and Ohio Streets, this city.

Q. And the Cadle Tabernacle is incorporated, or how is it managed?

A. It was incorporated, but at the present it is under receivership.

Q. That is a large convention hall?

A. Yes.

Q. How long have you been connected with the organization?

A. My father-in-law and I purchased this from Mr. Cadle in 1923.

Q. Did you manage the tabernacle for some time?

A. Yes, sir.

Q. How long?

A. Well, for a period of two years and then dropped out again, and I have been in there since June of this year.

Q. Are you manager there under the receiver?

A. Yes.

Q. When was the tabernacle built?

1039 A. In the summer of 1921.

Q. Do you know whether the doors which were placed in the tabernacle have stood up?

A. They certainly have not.

Q. I wish you would relate what happened, if you will please.

Q. Possibly to review a history of it—my father-in-law furnished Mr. Cadle the finances to build this tabernacle at the time it was built——

Mr. WHEAT. I assume you will lay the proper foundation for these inquiries?

Mr. BURR. Yes, as to the type of lumber.

Exam. SHEPPARD. I would think that would come first.

Mr. BURR. It is quite possible we may have to get a sample and submit it where this sample can be analyzed.

Exam. SHEPPARD. I think you should connect it up with future proof.

Mr. BURR. Yes.

Exam. SHEPPARD. Under those conditions I will allow it to go in.

By Mr. BURR:

Q. All right, proceed with your narration.

A. He and I have had considerable experience in building buildings over various parts of the State; we built the bank building at Plymouth, Indiana, several buildings at Muncie, and several at Albany, Indiana, and we are in the real estate business, or were at the same time, and repair buildings, etc., in various parts of

1040 the State. This matter was gone over at the time as to ad-

vancing the money and as to the construction of the building and the nature of the timber and sills and everything that went into and we were more or less interested, and the building was finally completed, and Mr. Sparks, my father-in-law, took half interest at the time of its completion and shortly after that why negotiations were started and we acquired it.

Q. We are not so much interested in all that. How about the lumber that went into the exterior finish, can you refresh that situation?

A. Nothing more than I presume it was white pine.

Q. Did you order white pine?

A. Mr. Cadle had the supervision of that part of the contract of the building.

Q. Where is Mr. Cadle?

A. Presumably living in this city.

Q. And what are his initials?

A. Howard E.

Q. Now have you had trouble with those doors?

A. Very much.

Q. What happened?

A. Well, seemingly that tenon on the lower part panel fitting in on the lower part of the door up on the upper part of the panel where it joins on the up and down panel there is rotting out and we have had to replace four doors and there are five more in very bad shape.

1041 Q. How about the sash—have you had any trouble with the sash?

A. No.

Q. The sash are all right, are they?

A. Yes.

Q. Who was the architect on that job?

A. The architect, if I have it right, was Nevin, of Louisville, Kentucky.

Q. When did you begin to have trouble with those doors?

A. It began about three years ago.

Mr. BURR. I would like to make a motion before the cross-examination goes in—I think counsel would rather have it made now—I would like to move at an appropriate time the examiner and counsel for both sides visit this building to have a look at the doors. If that is agreeable, I think it might be illuminating.

Mr. WHEAT. If the examiner please, I think that the testimony along these lines goes very far afield. It is easy for us to find on some particular job in any community some structure or some material that has not held up for one reason or another. It may be due to imperfect construction; it may be due to the fact that the material in the interior was not properly dried and had too high a moisture content, and it must be properly protected by paint. Aside from that we don't know whether this lumber was furnished here as

pondosa lumber or as California white pine or how it was
1042 supplied. It seems to me it can have no bearing on this complaint as to the deception on the part of the California lumber producers.

Examiner SHEPPARD. I will let the testimony go in, as I have been doing, in reference to pondosa, as it is admittedly the same species as white pine, or rather the California white pine. I am going to make a finding as to both and let the commission say what it pleases about it. I think it would be well for all of us—I know it would be interesting for me—to go and see those doors myself. I have been wanting to see some of this wood in decayed condition ever since we have been in this case, and I don't know what it will be, there is no testimony yet as to what the wood is, but I am going to see it and I am going to let the testimony stay in in reference to it until there is connecting testimony one way or the other on it. If the wood is pondosa, it stays in the record; if the wood is not pondosa, I will listen to a motion to strike.

(Whereupon at 11:45 o'clock a.m. a recess was taken until 1:30 o'clock p.m.)

1:30 P.M.

AFTER RECESS

Examiner SHEPPARD. During the noon recess the examiner, in accordance with motion made by attorney for the Commission, accompanied by the attorneys for respondent and Commission's attorney, viewed the tabernacle mentioned in the testimony of Mr. W. H. Hansing and inspected the doors in the front part of the said
1043 tabernacle, which he testified to had been in a deteriorated condition.

Mr. BURR. If the examiner please, I desire to offer certain four photographs as Commission's exhibits for the record, nos. 8, 9, 10, and 11, which I understand it is stipulated are deteriorated portions of the Cadle tabernacle, as to which testimony was received this morning. I ask that they be received, subject to proof later to be made, that the samples of lumber obtained by the examiner are shown to be from Pinus ponderosa.

Mr. WHEAT. I will stipulate that these are photographs of certain exterior doors of the Cadle tabernacle and I waive any technical authentication of the photographs, but I should like to reserve the right to strike them from the record unless it is ultimately shown that the doors are constructed of lumber manufactured from Pinus ponderosa tree and that these respondents in some way are chargeable with having furnished California white pine lumber which was used in the construction of these doors.

Mr. BURR. I regard these as admissible and as proper to be finally received if the proof shows that Pinus ponderosa was used for the construction work in connection with the tabernacle, as borne out by the samples when subjected to the technicians at Madison.

Examiner SHEPPARD. Let them go in subject to further connection as indicated by me this morning.

1044 (The photographs were thereupon received in evidence, marked "Commission's Exhibits 8, 9, 10, and 11", and retained by the attorney for the Commission.)

Mr. WHEAT. May it be understood of record that respondents reserve the right to object to the receipt of these last exhibits for reasons which will be offered at the appropriate time. I am offering no technical objection now as to the authentication of them.

Examiner SHEPPARD. You understand I am accepting them subject to further connection, as I stated this morning?

Mr. WHEAT. Yes, sir.

GEORGE WRIGHT was thereupon called as a witness, and having been duly sworn, testified as follows:

Direct examination by Mr. BURR:

Q. You are an architect, are you?

A. Yes, sir.

Q. Your firm is Pierre & Wright?

A. Yes.

Q. Located here in Indianapolis?

A. Yes.

Q. How long have you been here, Mr. Wright?

A. You mean in that connection or how long have I been here?

A. How long have you been an architect in Indianapolis?

A. Five years.

1045 Q. That is not the entire extent of your experience as an architect?

A. No, sir.

Q. Where were you located previously?

A. I was located in the office of Herbert Foltz, of this city, for two years, and previous to that some twelve years in the office of George C. Nimmons & Company, of Chicago.

Q. Do you practice largely with regard to residences or what class of building?

A. Our practice is varied; we have a number of residences, but we also do commercial buildings and industrial buildings. We have done two city schools.

Q. Do you have occasion to specify pine for exterior finish for some of your work?

A. We have.

Q. How do you specify it, as white pine or as California white pine, or as northern white pine, or how?

A. Ordinarily western white pine.

Q. Western white pine?

A. Yes.

Q. Then you specify by grade and requirements of that character, do you?

A. Yes, ordinarily; that will depend upon the use to which it is put, of course.

Q. I am talking about exterior finish now—you have occa-
1046 sion to call for western white pine?

A. Yes.

Q. Mr. Wright, what classes of lumber do you regard as in compliance with a specification for western white pine?

A. I wonder if that cannot be put a bit more in detail?

Q. Specifically?

A. Yes.

Q. If you were informed what you would receive would be Idaho white pine, would you regard that as living up to the specification of western white pine?

A. I would.

Q. Would you regard California white pine as compliance with your specification?

A. I would.

Q. Did you ever hear of pondosa pine?

A. I have heard of it; yes.

Q. Would you regard that as living up to your specification?

A. I am presuming I would. I probably would like to go into that a little more in detail. I mean if the material which was furnished to me was pondosa pine, why I would look into the matter a little more in detail before I would accept it.

Q. Would you accept it if you found that it was Arizona white pine under that trade name?

A. I might.

Q. How about New Mexico white pine?

A. Well, I might accept it; yes. It is a question of the
1047 character of the material. I wouldn't care so much about where it came from.

Q. If it looked nice and white and smooth texture, would you accept it if it was New Mexico white pine?

A. Yes.

Q. What is the reputation in this vicinity of white pine as a building material where exposed to weather conditions?

A. Good.

Q. Do you regard certain varieties of white pine as genuine white pine and others not genuine?

A. When you say genuine white pine I ordinarily think of what is known to the trade, I presume, as northern white pine, and we don't think we are getting much of that in this territory. White pine is perhaps a generalization that covers a multitude of different specialties in white pine.

Q. Would you have any preference as between Idaho white pine, California white pine, and pondosa pine for exterior use?

A. No; I think not.

Q. Would the word "pondosa" without "white" in the trade term place you on notice more or less than California white pine?

A. It would place me on what?

Q. Would you be on inquiry any more as to the character of it if you found out that what had been delivered was pondosa pine than if you found out California white pine had been delivered?

A. I am afraid I will have to ask you to repeat that question.

(The question was read by the reporter.)

1048 A. I understand you to say if I would be more inquisitive about it?

Q. Yes.

A. I probably would. That would be of my own ignorance of the white-pine situation.

Cross-examination by Mr. WHEAT:

Q. I gather from your testimony, Mr. Wright, that you are not particularly informed as to the botanical situation, or the botanical classification of the various pine trees from which pine lumber is obtained?

A. No, sir; I am not. I am much more interested in the lumber that we get on the job.

Q. Your own interest as an architect is in the quality and utility of the lumber which is used?

A. Yes, sir.

Q. Are you familiar with southern yellow pine lumber?

A. We have used a great deal of it.

Q. For what purpose?

A. Largely structural; we use it in rough construction.

Q. Do you use western white-pine lumber to any extent for structural purposes?

A. No.

Q. There is quite a distinction between the uses of the southern yellow pine on the one hand and western white pine on the other?

A. Decidedly so in our practice.

1049 Q. I assume you would not accept southern yellow pine upon specifications calling for white pine?

A. No, sir.

Q. Can you tell us why you specify white pine under the term western white pine—that is, why have you specified western white pine rather than northern white pine or white pine alone?

A. Well, I perhaps should have said western pine, because we accept that. That is where our pine comes from, and it may be a localism; that is what we have used. The white pine that we get in this territory is western pine.

Q. Western pine?

A. Yes.

Q. Then do your specifications ordinar'ly read western pine?

A. Western pine; yes; that is correct.

Q. They don't read western white pine?

A. No.

Q. Then it was just an inadvertence when you said in your direct examination western white pine?

A. Yes.

Q. Your specifications read western pine?

A. Yes.

Q. Why do you not specify northern white pine?

A. Because it is our feeling that northern white pine, if it is procurable, is a rarity and perhaps would cost us more money to do the same job than the material that we specify.

1050 Q. Then you are ordering western pine, knowing from where it originates and what its quality and utility are?

A. We feel so.

Q. And you expect definitely to receive pine lumber from the Western States in response to your specifications?

A. Yes, sir.

Redirect examination by Mr. BURR:

Q. Do you mean, Mr. Wright, that you never specify western white pine at all? Is that true?

A. We may have specified California white pine, but ordinarily it is western pine.

Q. Do you mean that you never specify western white pine, as you testified in your direct examination?

A. Yes.

Q. Never use that phrase?

A. I don't recall ever having used it that way.

Q. Now, when you specify western pine, is it your understanding that you are getting western white pine?

A. It is my understanding that we are getting pine which is comparable to white pine in constructions, etc., the design and makeup of the timber or wood.

Q. Is it your understanding that you are receiving a variety of pine that is equal in durability where placed on the outside of the building to the old northern white pine?

1051 A. I question it.

Q. You question if it is as good, do you?

A. Yes.

Q. Now, do you distinguish in durability for exterior use between Idaho white pine and pondosa and California white pine, or do you think they are all about the same class?

A. I don't believe that my information relative to the different materials is sufficiently technical to answer that.

Q. In other words, you don't know which is more durable?

A. I would not know exactly; I would know exactly what I was getting when I saw it on the job, so far as that distinction is concerned.

Q. Would you know when it is delivered whether it was California or Idaho or pondosa from a physical examination of it?

A. No; I wouldn't.

(Witness excused.)

WILLIAM PENCE was thereupon called as a witness and, having been duly sworn, testified as follows:

Direct examination by Mr. BURR:

Q. Mr. Pence, how long have you been with Balke & Krause?
A. About four years.
Q. What were you doing before that?
A. Capitol Lumber Company.
Q. How long were you with that company?
A. About 25 years.
1052 Q. What business are Balke & Krause in?
A. I have charge of the mill.
Q. That is an exterior-finish mill, is it?
A. Both interior and exterior.
Q. And they are also in the retail lumber business?
A. Yes.
Q. Now, what variety of soft-pine lumber does Balke & Krause handle?
A. Well, since I have been there they have had mostly Idaho white pine.
Q. And do they carry some California pines?
A. Once in a while; not very often.
Q. What distinction do you make as to character and quality for durability between Idaho white pine and California white pine, if you make any distinction?
A. I think the Idaho white pine is a little lighter.
Q. A little lighter in color?
A. Weight and color.
Q. How about texture?
A. Well, I think it is softer-grain lumber. It is more in the nature of the old cork white pine.
Q. Do you regard Idaho white pine as genuine white pine?
A. Well, I am not well enough versed to say whether I would or not.
Q. Do you regard California white pine as genuine white pine?
1053 A. That is similar to the old-fashioned Michigan cork pine.
Q. Now, do you handle any Arizona white pine or New Mexico white pine?
A. No.
Q. Do you know if you get any California sugar pine?
A. Only when we run short we probably buy a little around different yards here.
Q. When you run short, you say?
A. I say, when we run short of our stock we might get it, a little of it through different yards.
Q. In buying around at the various yards you may get sugar pine instead of what you usually carry?
A. Yes.

Q. Now, then, as to durability, do you regard Idaho white pine as rather preferable to California white pine, or the reverse as to lasting quality—do you regard Idaho or California white pine as better?

A. I think the Idaho is the best; that is my experience up to now.

Q. Have you had any experience with California white pine in standing the weather?

A. Not lately, not in the last 4 or 5 years.

Q. Can you recite any experience earlier than that?

A. I had one experience where we used some of it that was stained that was blue, probably had been cut and overnight
1054 was not on sticks and it didn't look as though it would hurt the lumber, but in 3 or 4 years afterward we discovered that it rotted out.

Q. That was bought from who, do you remember?

A. No; I don't.

Q. Do you know what section it came from?

A. No.

Q. You know it was California white pine?

A. Yes. Of course, it probably was a cheap grade.

Q. Have you had any experience with pondosa pine? Do you regard that as different from California white pine?

A. I never handled it.

Q. Which is the bulk of your purchasing for Balke & Krause in the soft pine today, Idaho or California?

A. Idaho.

Q. Are you still handling northern white pine?

A. No, sir.

Q. Is that higher in price in this market?

A. I think it is; I don't know.

Q. Now, while you were with the Capitol Lumber Company, what were they handling?

A. Well, they handled California white pine and sugar pine both.

Q. They handled some sugar pine too, did they?

A. Yes.

Q. Were they handling Idaho white pine too?

1055 A. I could not say; I don't know.

Q. You don't remember that far back?

A. No, sir. Mr. Huey bought all that, and I never paid much attention to what it was.

Q. Have you had occasion to examine the Cadle Tabernacle?

A. Oh, I did about five years ago, I think, five or six years ago.

Q. Did you examine the condition of the doors—exterior doors—at that time?

A. Yes.

Q. What sort of shape were they in?

A. Well, some of them were rotten, the tenons rotted off.

Q. Had that material been painted?

A. Well, I could not say.

Q. You don't remember?
A. No, sir.
Q. And that was about five years ago?
A. Yes.
Q. Do you recall when that building was constructed?
A. No. I judge about fifteen years ago.
Mr. WHEAT. Isn't that of record?
Mr. BURR. That is just his recollection; it wasn't as clear as I thought, perhaps, it might be.
Q. Was that material purchased from the Capitol Lumber Company?
A. Yes.
1056 Q. Can you tell me whether it was California white pine or what it was?
A. No, sir; I don't know, for I never paid any attention to it.
Q. Was the Capitol Lumber Company during that period ordering ponderosa pine; do you know?
A. I could not say.
Q. What is the reputation of northern white pine for durability in this community?
A. Well, I think it will outlast white pine.
Q. Is that its reputation among the men in your trade?
A. Well, I haven't seen any of it for several years. I have used lots of it, that is standing up yet.
Q. What locality was that in?
A. Northern Michigan.
Q. That was the old Michigan white pine?
A. Cork pine.
Q. Cork pine, Michigan?
A. Yes.
Q. Could you state whether the reputation of Idaho white pine for durability is about what you stated your opinion of it to be?
A. Well, we have never had any experience to see whether it had any faults yet. My experience in what I have had of Idaho white pine, it is the nearest thing you can get to Michigan cork pine.
Q. How long an experience have you had with Idaho white pine?
1057 A. Well, this is our second car; it has been about a year, I guess.
Q. You have only been buying it two years?
A. That is all; probably three years—I don't know.
Q. And you are not sure whether the Capitol Lumber Company used it during the days that you were with them or not?
A. I could not say.

Cross-examination by Mr. WHEAT:

Q. You said that you seldom see any northern white pine in this territory?
A. Mighty little of it; that is, the old-fashioned cork pine.

Q. How do you account for its disappearance from the market?

A. Well, I think it is played out.

Q. What pine lumber in general is taking the place of the old northern white pine in this market?

A. Well, the California pine, sugar pine, the Idaho pine, the southern California—I don't remember the name of that.

Q. But the western pines are now supplying the bulk of the trade of this territory?

A. If I understand it right, they are all termed "western pine", but they have different names like——

Q. You mean pines from the Western States generally are supplying the market needs for the most part?

A. Yes.

1058 Q. Do you buy any lumber from the Weyerhauser interests?

A. I don't believe we have. I don't do the buying; Mr. Balke does that.

Q. You don't know whether Idaho white pine is bought from the Weyerhauser companies or not?

A. I don't know; I cannot say.

Q. Do you have any pondosa pine under that name?

A. I could not say.

Q. You know that you do buy some California white pine?

A. Yes.

Q. Is it bought through brokers or do you buy directly from the western manufacturers?

A. I think he buys direct.

Q. And you order it as California white pine?

A. I could not say.

Q. You don't see the orders or the invoice?

A. I could see them, but I never interest myself in it.

Q. That is not your end of the business?

A. No, sir. I take care of the mill.

Q. How long has California white pine been known in this territory, as far as your recollection goes?

A. To my recollection, about 25 years.

Q. That name has been familiar to the trade for that period?

A. Yes.

Q. Just a question or two about these doors in the Cadle

1059 Tabernacle. Did you state that the material for those doors was furnished by the Capitol Lumber Company?

A. Yes.

Q. Did the Capitol Lumber Company manufacture the doors or merely furnish the material?

A. Yes.

Q. They manufactured the doors?

A. Yes.

Q. Were you with the Capitol Lumber Company at that time?

A. Yes.

Redirect examination by Mr. BURR:

Q. Now when you say that the northern white pine is played out are you referring to the Michigan cork pine?

A. Yes.

Q. Do you happen to know whether there is still virgin white-pine lumber coming from Canada and Minnesota?

A. I hear there is; I never seen any of it.

Q. You don't mean to testify that is played out, do you?

A. Which?

Q. Minnesota and Canadian white pine?

A. I don't know only what I have heard.

Q. It is hearsay, is it?

A. I don't want to commit myself on anything I don't know anything about.

1060 Q. Now is your omitting to use northern white pine partly a question of price—higher price?

A. I think it is; I don't know how the prices range, but I think that would be the objection.

(Witness excused.)

LELAND C. HUEY was thereupon called as a witness and, having been duly sworn, testified as follows:

Direct examination by Mr. BURR:

Q. Mr. Huey, you are in the lumber business?

A. Yes.

Q. How long have you been in that business?

A. Since 1909.

Q. And you are with the Capitol Lumber Company?

Q. Yes.

Q. Do you carry California white pine?

A. Yes.

Q. How long have you been carrying that product?

A. Since I came in the business.

Q. Have you been carrying that practically exclusively?

A. For its purpose; yes.

Q. What do you mean for its purpose?

A. For use in door sash; certain amount of exterior trim.

Q. Then was it California white pine that you sold for the Cadle Tabernacle?

A. I don't remember the job, that has been many years ago.

1061 Q. Were you handling California white pine during that period?

A. The Cadle Tabernacle was built about when?

Q. The testimony shows 1921.

A. I was not connected with the company at that time; I was not with them from 1919 to 1923 and cannot answer the question for that reason.

Q. Is anyone connected with your company that was with it then?

A. I think Mr. Pence, the previous witness, was connected with the company in 1921.

Q. Anybody else?

A. Who would be in position to know what kind of pine we furnished?

Q. Yes.

A. Mr. Bell was secretary-treasurer of the company and is now in Leesburg; he was secretary-treasurer at the time.

Q. What are his initials?

A. Charles W.

Q. Charles W. Bell, and he is at Leesburg?

A. Leesburg, Indiana.

Q. What is his company at the present time?

A. He is retired; no business connection.

Q. Do you buy Idaho white pine, too?

A. No, sir.

Q. Do you buy California sugar pine?

A. No, sir.

1062 Q. Do you buy pondosa?

A. I understand pondosa was merely a trade name for western white pine; I think we have had some cars which have been invoiced to us as pondosa; I could not answer the question definitely.

Q. Is the bulk of your soft pine bought under the trade name California white pine?

A. Yes.

Q. What part of the belt do you buy it from?

A. Pickering Lumber Company ships a good deal of it; the Chicago Lumber Company, I don't know just where their mills are located.

Q. Who else?

A. We bought Red River; their home office is in San Francisco; I don't know where the mill is. I think these are the principal shippers.

Q. Do you have occasion to supply orders for white pine?

A. Yes.

Q. And you sell your California white pine?

A. Yes; so-called white pine.

Q. How large a proportion of the trade asks for white pine without specifying anything further?

A. Practically all ask for white pine.

Q. Some ask for California white pine?

A. Occasionally.

Q. Do some ask for pondosa?

1063 A. Occasionally, some.

Q. And you supply them California white pine under any of those orders, do you?

A. That is correct.

Q. Have you been ordering Idaho white pine at times?

A. Yes.

Q. What is your reason for preferring California white pine to Idaho?

A. Principally a matter of price. I have no experience with Idaho.

Examiner SHEPPARD. Did I understand you to say you would furnish California white pine or Idaho white pine when the specification calls for white pine?

The WITNESS. We don't furnish Idaho; we don't stock that white pine in this territory.

By Mr. BURR:

Q. You mean to say there is no Idaho white pine sold here?

A. There may, yes; I don't think any great quantity of it, though.

Q. No great quantity?

A. I don't think so; no, sir.

Q. An order for white pine could not refer to pondosa pine under any circumstances—pondosa pine would not be regarded as white pine, do you think?

A. Yes; I think it would. It is my understanding pondosa pine is merely a trade name for California white pine.

1064 Q. And when you say pondosa means California white pine you would say that would be the trade name of California or the trade name pondosa pine?

A. Correct, sir.

Q. Is there any sugar pine in this market?

A. Very little. We used to buy a little, but not any more.

Q. And there is some northern white pine in this market?

A. Not to my knowledge.

Q. If the price of Idaho white pine were the same as California white pine would you stock with it?

A. I certainly would try the wood; yes.

Q. Have you had any experience with it at all?

A. None at all.

Q. Have you ever had to replace some California white pine sash?

A. No, sir; not to my knowledge.

Q. You are sure of that?

A. Not to my knowledge; no, sir.

Q. Definitely sure—you are willing to swear that, are you?

A. Only in this way: We may have furnished new sash on an old building.

Q. Haven't you, as a matter of fact, found it necessary to replace certain white pine sash on one or more occasions?

A. No, sir.

Q. You are definitely sure of that, are you?

A. Yes, sir.

1065 Q. What you refer to as regard your purchases of white pine relate both to retail and millwork which you sell afterwards; is that true?

A. Yes.
Q. How widely do you sell your millwork?
A. Practically all in Marion County, in Indianapolis.
Q. Locally here?
A. Yes.
Q. Do you distinguish in durability where exposed to weather conditions between the old northern white pine and California white pine?
A. I think the northern white pine to be superior; yes.
Q. More durable?
A. Yes.
Q. Does the consumer, in your judgment, distinguish between the California white pine and northern white pine as to durability?
A. No, sir. By that you mean the buying trade here?
Q. Yes.
A. They consider, as I explained, the California white pine is a white pine, and by that they mean soft, durable wood.
Q. They have in mind the old reputation of the original white pine for durability?
A. That is a pretty hard question to answer. I could not say what is in their minds.
Q. The old northern white pine has a high reputation
1066 among the trade for durability in this community?
A. Yes.

Cross-examination by Mr. WHEAT:

Q. Mr. Huey, why have you discontinued carrying sugar pine?
A. We didn't find it worked so well in sash.
Q. You found by experience the California white pine is superior for the manufacture of sash?
A. We have; yes.
Q. What were the specific objections to the sugar pine?
A. It broke in the tenons and is brash and inclined to break and is harder to machine.
Q. I take it that you have not had that difficulty with California white pine?
A. That is right.
Q. For what period has your company been using California white pine in the manufacture of sash?
A. When I came here in 1901 they were using it.
Q. Then they have used California white pine continuously from that time to this?
A. Correct.
Q. So far as you know, you have never been called upon to replace any sash manufactured from California white pine?
A. That is correct.
Q. Can you approximate the volume of your annual sales of sash?

1067 A. No, sir; I could not; we have no division.

Q. Well, you have a relatively large trade in this vicinity, haven't you?

A. That is correct.

Q. Would it be thousands of sash per year?

A. I suppose we furnish possibly somewhere between three and five thousand sash a year.

Q. You say that there is but little northern white pine in the market?

A. That is my understanding; yes.

Q. You don't carry it at all?

A. We don't carry it at all.

Q. Do your customers demand northern white pine as such?

A. No, sir.

Q. Do you have any complaints from customers that you are not able to supply the old northern white pine?

A. No, sir.

Q. I think you stated that the term white pine in this territory means ordinarily California white pine?

A. Because it is largely supplied; yes, sir.

Q. And has the term California white pine been well known to the trade during your period of experience in the lumber industry?

A. Known as California white pine.

Q. How long has it been known as such?

1068 A. Are you speaking now of the retail trade or the lumber people, such as ourselves?

Q. Take the lumber people such as yourselves.

A. I would like to correct that; they have known it as California white pine for years.

Q. And they know it is what the wood is?

A. Yes, sir.

Q. Do you sell your lumber directly to consumers?

A. Yes, sir; the contractor and homeowner.

Q. I think you said ordinarily your orders are for white pine?

A. Yes.

Q. They are not for pine only?

A. White pine. The contractor's specifications will read sash to be of white pine.

Q. And it is understood that California white pine satisfies those specifications?

A. That is correct.

Q. In the purchase of California white pine do you buy it under that name?

A. Yes.

Q. How is it invoiced to you?

A. California white pine.

Q. As California white pine?

A. Or as California pine; we have it invoiced both ways.

1069 Q. The word "California" is in the invoice?

A. That is correct.

Exam. SHEPPARD. Do you buy straight from the manufacturers?
The WITNESS. Yes, sir.
Exam. SHEPPARD. I suppose they don't know how you sell it then?
The WITNESS. No, sir.

By Mr. WHEAT:

Q. I will assume from your testimony, Mr. Huey, that you are not interested in the botanical classification itself but you are selling your products on its merits?
A. We are selling the thing that they want.
Q. Then it is your effort to meet the requirements of your trade as you understand them to be?
A. That is right.
(Witness excused.)

GEORGE W. MORGAN was hereupon called as a witness and, having been duly sworn, testified as follows:

Direct examination by Mr. BURR:

Q. Mr. Morgan, you are an employe of the Weyerhauser Company?
A. Yes, sir.
Q. How long have you been such?
A. Since July 1, 1928.
Q. Selling the products of the company in this territory?
A. Yes, sir.
1070 Q. Have you had occasion to talk to Mr. Huey, the last witness, with regard to the durability of pine sash made from California white pine during a period of years?
A. Yes, sir.
Q. Can you describe that? When it was?
A. Not exactly; I should say between the months of September and November of last fall, 1928.
Q. Where did this conversation take place?
A. In Mr. Huey's office.
Q. More than one conversation or just one?
A. I think we have brought it up a number of times.
Q. Will you say what he said in connection with it?
A. He has told me, as others have, that he would buy Idaho or northern pine if he could get the right price, but the market conditions here would not stand the additional price to be paid for northern and Idaho pine.
Q. Did he say anything with regard to the durability of California white-pine sash in his experience, as to the length of time that they stood up?
A. On one occasion in Mr. Huey's office we were talking about California white pine and the old genuine white pine, and Mr. Huey told me that at one time he replaced just recently that spring some sash that had not been in more than seven or eight years. He did not say for what reason now, but he told me that they had replaced

California white-pine sash and was replacing them again with California white pine.

1071 Q. Did he say anything about why they had to be replaced?

A. Only in our general conversation as to the durability of Idaho and northern white pine, and that brought up the question, giving me the inference, of course, that they had to be replaced.

Mr. WHEAT. I don't think we should have any inference.

By Mr. BURR:

Q. You were talking about the two types of wood as regards their durability, were you?

A. Yes, sir.

Q. And at that time he stated just what?

A. He stated that he was replacing sash, that it had not been in more than seven or eight years.

Q. They were made from what, these sash?

A. He told me California white pine.

Q. Did he happen to say from what territory or where that lumber had been bought from?

A. No, sir.

Cross-examination by Mr. WHEAT:

Q. Mr. Morgan, just when did this particular conversation take place?

A. I would say some time between the months of September and November of last year, in the late or early fall, some time along in the first part of the winter.

Q. Did he specify the particular job upon which it was

1072 necessary to replace the California white-pine sash?

A. No, sir.

Q. He just made that general statement, that he was replacing certain sash?

A. Yes.

(Witness excused.)

(The examiner called Mr. Huey to the stand to ask him if he wanted to make any explanation or any statements in reference to the testimony just given by Mr. Morgan.)

Mr. HUEY. I don't recall the specific conversation between myself and Mr. Morgan. Of course, from time to time, as he calls at my office rather frequently, we have discussed California white pine and the old northern white pine, and he has attempted to sell me Idaho white pine and told me it was the genuine white pine, which I suppose it is, botanically speaking. I don't recall any statement I made that we had replaced any sash of California white pine with California white pine at any time, with Mr. Morgan.

Exam. SHEPPARD. Can you remember in your experience here in your business around the city or around the county any experience of this where you did substitute new sash for old ones?

The WITNESS (Mr. Huey). No, sir; not unless it would be a natural replacement of which we would know nothing about having fur-

nished it before. If you mean that we got out some sash that
1073 had became defective and we were forced to replace it because of its being defective, the answer is no.

Exam. SHEPPARD. I had no reference to the testimony of Mr. Morgan that you said that at that time you were in the act of replacing certain sash.

The WITNESS (Mr. Huey). I don't recall any conversation or making that statement. I am quite sure we have never replaced California white pine or what we call white pine sash because of its having been defective.

Mr. BURR. Replaced it with anything?

Mr. HUEY. Yes; with anything.

Mr. WHEAT. Mr. Huey, you have not conferred with any representative of the respondents prior to taking the witness stand in this case?

Mr. HUEY. I don't even know who they are.

Mr. BURR. You have not conferred with any Government man with regard to this matter?

Mr. HUEY. No, sir; I don't know what I was called for.

E. HOWARD CADLE was thereupon called as a witness and, having been duly sworn, testified as follows:

Direct examination by Mr. BURR:

Q. What is your profession, Mr. Cadle?

A. Clergyman.

Q. And you are located here in the city of Indianapolis?

A. Yes. 5207 North Meridian Street.

1074 Q. What is your relation to the Cadle Tabernacle?

A. I was founder and builder of it.

Q. How many years ago?

A. Dedicated in October 1921.

Q. Do you remember how the specifications for the exterior doors read?

Mr. WHEAT. Can't we have the original?

Q. Are the original specifications in existence?

A. I would have to look for them; I think they were mislaid. I can have a copy from the contractor.

Q. Who was the contractor?

A. Nevins, Wischmeier and Morgan, Louisville, Kentucky.

Q. They were the architects on the Cadle Tabernacle job?

A. Yes.

Q. Now do you recall, subject to counsel's objection, do you recall whether white pine was specified for the exterior doors or not?

A. I do.

Q. Was it specified?

A. Yes.

Q. Was that in any qualifying phrase as to the botanical name?

A. I remember the time when we talked about the doors, there were so many exits, nineteen exits, and they thought first they should

be birch and then he said white pine would be all right, and so we specified white pine.

Q. That was after consultation with this architect firm?

1075 A. Yes; in forming the plans and specifications.

Q. When were those doors installed?

A. In August 1921.

Q. August 1921. Do you know where they came from?

A. Yes.

Q. Who did make them?

A. The Capitol Lumber Company.

Q. Do you know what lumber they used?

A. No, sir.

Q. You don't know what variety of white pine or other pine that was?

A. No, sir; I do.. t.

Q. When did those doors receive a coat of paint, do you remember that?

A. They were primed immediately and then painted; the building was was completed in October—October 1st.

Q. Was the paint on before the dedication?

A. Oh, yes.

Q. When was the dedication?

A. October 9, 1921.

Q. Do you remember if the doors laid on the ground a considerable time before installation?

A. They did not; no, sir.

Q. When did the doors start to decay?

A. In two years after they were put up.

Q. When was the second coat of paint put on?

1076 A. Two years.

Q. Did they start to decay before or after the second coat of paint?

A. Before. That is the reason we painted them, and then there was some that looked so bad that Mr. Bell then, who was the man I was dealing with with the Capitol Lumber Company, I called him down there and showed him the doors and he took four or five of them back and reglued them or something, and fixed them up. We made objection as to the doors at that time. Then after I severed my connection with its general management why I don't know what steps they took about it.

(No cross-examination.)

(Witness excused.)

WILBUR SHOOK was thereupon called as a witness and, having been duly sworn, testified as follows:

Direct examination by Mr. BURR:

Q. Mr. Shook, you are an architect, are you?

A. Yes, sir.

Q. You are with McGuire and Shook?

A. Yes.

Q. How long have you been an architect, Mr. Shook?

A. We started the firm of McGuire & Shook in December 1916. Previous to that I was in offices here in the city from February
1077 1912 until that time here and in Lafayette serving as a draftsman architect and up through independent practice started December 1916 under this firm name.

Q. What are your jobs, mostly residences or building blocks or general practice?

A. We have a general practice; if there is any specialization I should say it would be in commercial work and institutional educational buildings, and work of that character.

Q. Do you have occasion to call for any variety of pine for exterior purposes?

A. Our specifications call for white pine for exterior trim, solid white pine for exterior doors, sash, frames. I think that is about the extent of the exterior work.

Q. Why do you specify white pine for exterior work?

A. In our opinion, we think that white pine is one of the best woods to maintain its permanency under exterior weather and conditions of the elements.

Q. What kind of so-called white pine are you willing to accept as compliance with those specifications.

A. We make them without any qualifying clause, I think. I don't remember of any. We issue specifications as white pine without any geographical qualifications. We depend in that, as we do in a good many of our items or specifications, upon the manufacturers or representatives that handle it, which in this case would be the mill, that they are not putting something in their grade of millwork, such
1078 as sash-and-door work, that is not merchantable and accepted market products.

Q. For that purpose?

A. Yes; for that purpose.

Q. Do you ever inquire into the matter to find out whether substitution is being made?

A. No, sir.

Q. You take the contractor's material if it seems to have the appearance of the material that you desire. Is that true?

A. Yes; that is true.

Q. Have you any convictions as to whether Idaho white pine would be in compliance with white-pine specifications?

A. Why, I don't really know; I should think so, and my general impression is that all northern pine would possibly come under the general specification of white pine. If there were no further qualifying clauses we feel that southern pines is yellow pine and that is about the only distinction geographically that we would place upon it.

Exam. SHEPPARD. You don't make a distinction in western pine?

The WITNESS. I hadn't thought of dividing it that way. When I mentioned northern I was taking it in that way, of course; because I know the eastern pines have always been considered in the old New

England architecture, the eastern pines were the leading woods. That was locally, it was one of the most used woods for their residential work in the old New England colonial homes, known as white pine homes.

1079 By Mr. BURR:

Q. You would consider Idaho white pine in compliance with your specifications?

A. I say that my general impression would be that it would be, but I wouldn't know Idaho white pine from any other kind, I don't believe, without making some investigation.

Q. How about California white pine, do you feel the same way about it?

A. I could not make any answer on that because I wouldn't know.

Q. If you specified white pine and you found upon inquiry that the material was California white pine, if it looked like and had the appearance called for in your specifications, would you regard that as compliance, if you found it was California white pine?

A. If it had the appearance and the apparent physical construction why I should think we would accept it.

Cross-examination by Mr. WHEAT:

Q. I assume you are not familiar with the botanical classification of pine trees?

A. I am not.

Q. And as an architect you are interested primarily in the quality and utility of the lumber rather than a matter of classification or trade name?

A. Yes, sir.

Examiner SHEPPARD. Is California white pine known in
1080 this territory very extensively, Mr. Shook?

The WITNESS. Well, I haven't associated the geographical names with white pine; white pine has been white pine.

Examiner SHEPPARD. You just specify white pine and you get what you might think is white pine?

The WITNESS. Yes. As I say, we depend upon the mill representatives and the mill in making up their millwork.

(Witness excused.)

C. O. ROGERS was thereupon called as a witness, and having been duly sworn, testified as follows:

Direct examination by Mr. BURR:

Q. How long have you been secretary-treasurer of the Adams-Rogers Company, Mr. Rogers?

A. Twenty-two years.

Q. They are here in Indianapolis, are they, in the retail lumber business?

A. No, sir; we are wholesale sash and door jobbers.

Q. How long have you been in that line, all that period that you mentioned?

A. Yes. You mean me personally or the company?
Q. How about the company?
A. They have been here since 1905.
Q. And you have been here since how long?
1081 A. The spring of 1907.
Q. Where do you buy your lumber for the millwork that you do?
A. Referring to white pine?
Q. Yes. You use white pine, do you?
A. Practically none.
Q. Well, what do you use in your millwork?
A. We are primarily jobbers; we make little special millwork here.
Q. And for milling purposes what lumber do you use?
A. A large percentage of it is yellow pine, cypress, and hardwood.
Q. Yellow pine of the South?
A. Yes.
Q. Do you use any so-called soft pines at all?
A. A little.
Q. For what purpose?
A. Exterior work and for doors and sash.
Q. Do you regard it as superior wood for exterior work?
A. Yes.
Q. Where do you get your white pine for that purpose?
A. From the west coast.
Q. Is it California white pine or Idaho white pine?
A. We have both places.
Q. Do you regard this as interchangeable in character and qualities?
A. Yes.
1082 Q. For that purpose?
A. Yes.
Q. Now then, referring to the wholesale lumber trade, what territory do you cover, where are your customers, retailers?
A. Wholesale sash and doors trade almost entirely in the State of Indiana; we have no wholesale lumber trade.
Q. Now where do you get your soft pine from for that purpose?
A. We buy almost entirely the manufactured product.
Q. And do you carry white pine in that line?
A. Doors and sash; yes.
Q. Already manufactured?
A. Yes.
Q. Who manufactures those for you?
A. Our parent house, Carr Rider & Adams Company, Dubuque, Iowa.
Q. That is white pine, is it?
A. Yes.

Q. What variety of white pine is that?

A. They use west coast woods almost exclusively.

Q. Do you happen to know whether it is Idaho white pine, California white pine, Arizona white pine, or New Mexico white pine?

A. I think a majority of it is from California and Idaho and possibly some from the Spokane district.

Q. Do you carry some pondosa?

A. I don't know what it is.

Q. Now do you distinguish in characteristics between Idaho and California white pine for this purpose, with regard to their

1083 value to the trade, the customer?

A. No, sir.

Q. You regard them of about equal value, do you?

A. Yes.

Q. You don't regard Idaho as being a little more durable, or do you?

A. No, sir.

Q. Now, is there a price differential between Idaho and California products that you know of?

A. I think not.

Q. Do you buy anything from the Anderson Frame Manufacturers?

A. No, sir.

Q. Do you handle frames?

A. Yes.

Q. Where do you get your frames?

A. From our own factory in Dubuque.

Q. You make all your own?

A. Our parent house does; yes.

Q. What are you using for the frames?

A. They are white pine throughout.

Q. Are they Idaho or California white pine?

A. I don't know.

Q. You don't know whether they are both or either. Is that true?

A. I think they are using some of all.

1084 Cross-examination by Mr. WHEAT:

Q. You said that you do buy some California white pine for local manufacture?

A. We buy perhaps a car a year or better for special work. We buy considerable quantity out there of manufactured moldings and lineal sash.

Q. When you buy a car of California white pine, do you order it under that name?

A. Yes.

Q. It is invoiced to you as California?

A. Not necessarily as California; we order that as white pine.

Q. Do you buy from the manufacturer or through local jobbers?

A. Manufacturer.

Q. And it is invoiced to you as California white pine, or do you recall specifically?

A. I don't know, except in one case. I have never paid much attention to it until the last car we got in; it came from California and was specifically specified as Pinus ponderosa, I believe.

Q. Was it specified as pondosa pine?

A. I think Pinus ponderosa.

Q. Could you tell us from what mill you purchased it?

A. It came from Susanville, that is the Fruit Growers Supply Company, of San Francisco, from the Susanville operation.

1085 Q. Did the invoice carry the words "California white pine" in addition to Pinus ponderosa?

A. I don't know; I don't remember.

Q. But your attention was directed to the term "Pinus ponderosa"?

A. Yes.

Q. Through what territory do you distribute the sash and doors which you obtain from your parent house of Carr, Rogers & Adams?

A. Almost entirely in this State.

Q. You have been in the trade I think you said for some 22 years?

A. Yes.

Q. Is there quite a large volume of that trade, Mr. Rogers?

A. Well, I don't know what you would call a large volume.

Q. Are there some thousands of sash and doors which you distribute annually throughout the State of Indiana?

A. Yes, sir.

Q. And have you any complaint from your customers as to the quality of the sash and doors which you are supplying?

A. If you refer to the kind of lumber that is contained in them, no. If you refer to machine work or something mechanical that might occasionally slip, of course we do have occasionally; as to the type of lumber, no.

Q. There may be a mechanical flaw in the construction of some particular sash or door?

A. It is possible.

1086 Q. But you have no complaint as far as the quality of lumber is concerned, nor as to its durability?

A. No, sir.

Redirect examination by Mr. BURR:

Q. Your customers are retailers, not builders, are they?

A. Retail lumber dealers almost exclusively.

Q. You don't come in contact with the ultimate builder or contractor, do you?

A. Only indirectly on special houses, jobs.

Q. If there was a complaint made it would be made by the customer, the complaint would be made to the man with whom he dealt rather than to you?

A. It would get to us eventually through that channel.

Re-cross-examination by Mr. WHEAT:

Q. How long have you been familiar with the term "California white pine", Mr. Rogers?

A. I would say since about 1903 or 1904.

Q. Has that term been well known to the lumber trade throughout that period, from 1903 or 1904 to date?

A. I heard of it about that time.

Q. How long has it been pretty well known, would you say?

A. Well, frankly, we don't speak down here of California white pine or Idaho white pine in this territory; we simply say
1087 white pine as distinguished from the southern yellow pine.

Q. This term "white pine" is used locally to distinguish these woods from the southern yellow pine?

A. Entirely so.

Q. And California white pine is normally accepted as being responsive to the term "white pine" as being satisfactory compliance with the term "white pine"?

A. Yes.

Examiner SHEPPARD. You make no distinction, I gather from what you have testified, between so-called "old-time northern or eastern pine" and the western pine that you get?

The WITNESS. We do to this extent: That if we have an order specified as old-fashioned northern white pine, if that is what you want to call it, we don't take it, because we would not have it and don't handle it, except at prohibitive prices.

Examiner SHEPPARD. Therefore you come to the West?

The WITNESS. To the west coast; yes.

By Mr. WHEAT:

Q. I understand if you have an order for northern white pine you don't furnish California pine or Idaho in response to such order?

A. No, sir. We would have it go to the factory; and if they could not furnish the order, we would pass it up.

Mr. BURR. You could get northern white pine if your customer is willing to pay the price?

The WITNESS. Yes.

(Witness excused.)

1088 CHARLES WAGNER was thereupon called as a witness and, having been duly sworn, testified as follows:

Direct examination by Mr. BURR:

Q. Mr. Wagner, you are secretary of the Burnett-Binford Lumber Company?

A. Yes.

Q. They are located in Indianapolis?

A. That is right.
Q. How long have you held that position?
A. That position? Eight years.
Q. Were you with them a longer time than that?
A. Eleven years.
Q. They operate a lumber retail yard here?
A. That is right.
Q. And they have a factory for special work, finished work?
A. That is right.
Q. Where is that factory?
A. This same place.
Q. Now, in your retail yard, referring to that rather than to the factory, what kind of soft pines do you carry?
A. Do you include in soft pines southern yellow pine?
Q. No; I wouldn't include yellow pines of the South, and I would rather you would not include Arkansas soft, if you carry that. I am referring now to the soft pines of the West and North.
1089 A. Well I will have to clarify myself. We carry in stock woods primarily to be used in the mill. Now, sometimes parts of those stocks are sold at retail. We carry no commercial sizes in soft pines; that is, the dimension sizes ordinarily sold at retail without being previously manufactured.
Q. Now, your retail work is incidental to your millwork, is it?
A. Our millwork is also retail. In other words, we operate a retail custom mill in which we make to order items which are sold at retail.
Q. Whatever sales you make that are lumber business, that you have not put through your factory, that is merely incidental, is it?
A. Well, it is a very important part.
Q. Now, referring to that trade, what types of lumber do you sell of soft pine?
A. None.
Q. No soft pine?
A. That is right.
Q. You don't sell to the trade any California white pine?
A. No, sir.
Q. And no Idaho white pine?
A. None.
Q. No California—or rather sugar pine?
A. No, sir.
Q. And no pondosa pine?
A. No, sir.
1090 Q. And no northern pine?
A. That is right.
Q. Now, then, what do you use in your factory in the way of white pine?
A. Just this white pine. We use California white pine some, sugar pine, and that is all.

Q. You use no pondosa pine?

A. Well, we have bought none as such; we consider pondosa and California white pine under the same class, but, so far as our purchases go, it is California white pine.

Q. Do you know whether it is California white pine?

A. Yes.

Q. Where did you get your California white pine?

A. Well, it practically all comes from California; Red River Lumber Company has made considerable sales to us, and we have bought from Charles H. Nelson.

Q. They are wholesalers?

A. No; I think they are manufacturers.

Q. And the Owens Oregon Lumber Company?

A. That is from southern Oregon, and I am not sure.

Q. What types of exterior finish to you make?

A. You mean what woods do we use?

Q. No; what are the articles that you make along the line of exterior finish—doors and frames?

A. A few doors; we make frames in large quantities and
1091 we make cornice material which is used for outside trim.

Q. This trade here regards practically everything outside as cornice, do they?

A. Everything in connection with the roof of the building and immediately attached thereto.

Q. Well, cornice has a more restricted meaning in some localities, hasn't it?

A. I think it has.

Q. What do you use for your exterior trim, such as doors and cornice and frames; do you use California white pine for that?

A. Not to any great extent.

Q. Do you use pine at all for it?

A. Seldom; we use it sometimes for doors.

Q. Exterior doors?

A. Yes.

Q. And that is California white pine?

A. Yes; but that is a very small part of our manufacture.

Q. Your cornice work is what type of lumber?

A. Cypress largely.

Q. Do you distinguish for outside purposes between California white pine and Idaho white pine?

A. Well, since we don't carry Idaho white pine, we don't.

Q. I thought perhaps you might have some definite reason for handling one class rather than the other. Are you solicited for Idaho white pine?

A. Seldom.

1092 Q. Have you any particular reason for not buying Idaho white pine?

A. No; I don't have. I am not familiar with the species.

Q. Are they able to make the same price, do you know?
A. I don't know, because we have not been solicited.
Q. Do you see the buyers yourself? Is that part of your business?
A. Yes.
Q. What is the reputation of white pine, the northern white pine, in this community for durability where exposed to the weather?
A. It is considered quite durable.
Q. Do you regard California white pine as being in the same class?
A. No; I don't.
Q. Does your trade ask for white pine?
A. Yes.
Q. And you furnish them with California white pine, do you?
A. Yes.
Q. And that is for both interior and exterior purposes, where you don't use cypress, I mean?
A. We have practically no call for white pine for exterior work except for doors.
Q. And when they call for them they do ask for white-pine doors, do they?
A. That is right.
1093 Q. And on those occasions you do use the California white pine in compliance with that order. Is that true?
A. That is right.
Q. How long has that been the case with your firm?
A. Well, only I should say for about five years have we had any white pine to any extent in our stock at all.
Q. And prior to that you were using cypress? Or you were using some other wood?
A. Prior to that time we made practically no outside doors at all, and for all other purposes we used cypress.

Cross-examination by Mr. WHEAT:

Q. Mr. Wagner, how long have you been familiar with the name California white pine?
A. Well, for about five years, I should say. Of course, I have heard it for longer than that, but I would say I am only familiar with it for that length of time.
Q. When you order California white pine do you order it under that name?
A. Yes, sir.
Q. And the lumber is invoiced to you as California white pine?
A. I believe it is.
Q. For what purpose do you use sugar pine? I am not sure that that was clear on direct examination.
A. I only mentioned sugar pine a while ago, because at one
1094 time we had a stock of sugar pine. We don't even have it; I don't know whether we have any great amount at present. Sugar pine is used largely for pattern work.

Q. At one time did you use more sugar pine than you now use?

A. Yes, sir.

Q. Why have you changed from sugar pine to California white pine?

A. Largerly on account of the difference in price.

Q. Do you find California white pine satisfactory for your purposes?

A. Yes, sir.

Q. I think you said in answer to questions from counsel for the Commission that your orders come to you under the name "white pine"?

A. Yes.

Q. They ask for white-pine doors or frame or exterior trim?

A. Well, they don't ask for it for exterior trim; that is, we don't furnish it for exterior trim, but what orders we have on which we furnish California white pine, if this answers your question, are filled in answer to requests for white pine; yes.

Q. And why do you feel free to furnish California white pine upon those orders?

A. Most of our California white pine is worked into interior finish, cabinet work, and for that purpose we consider California white pine fully as good as any other white pine.

1095 Q. Is that generally understood in the trade, that an order for white pine is made satisfactory by furnishing California white pine?

A. I cannot answer.

Q. How is it in your own trade?

A. In our own trade it is satisfactory.

Q. Have you any complaints from your customers about it?

A. We have had none.

Redirect examination by Mr. BURR:

Q. I think you said for interior work you regard it just as good as genuine white pine or as the northern white pine?

A. Yes.

Q. Do you regard it as being as good for exterior purposes?

A. No; I don't.

Q. Now, as regards the price of sugar pine, have you found that to be higher than California white pine in price?

A. Yes.

Q. When Idaho white pine is ordered do you find that to be higher in price than California white pine?

A. I am not familiar with the price of Idaho white pine.

(Witness excused.)

C. L. SCHAAB was thereupon called as a witness and, having been duly sworn, testified as follows:

Direct examination by Mr. BURR:

1096 Q. You are with the Allen A. Wilkinson Lumber Company, Mr. Schaab?

A. Yes, sir.

Q. They are located where?

A. Our general offices are at the corner of Pine and Michigan Streets, Indianapolis.

Q. You are in the retail and wholesale lumber business?

A. Yes.

Q. And you run a factory, do you?

A. No.

Q. A small mill?

A. Small mill.

Q. That is for making finished work, is it?

A. Oh, odd stock, occasionally an odd door; maybe an odd garage door.

Q. Do you make cornice work and things of that kind?

A. Well, possibly occasionally; I don't think we do much, though.

Q. Now, what variety of soft pine do you carry in your trade?

A. Well, we don't carry any, I don't think, except perhaps at one or two places.

Q. You don't carry soft pine at all to speak of?

A. No, sir. I think we have two yards, maybe, where we have a little.

Q. Do you have any calls for white pine?

A. No.

1097 Q. Do you have any calls for California white pine?

A. No, sir.

Q. What is your business, cypress?

A. Well, no; it is usually yellow pine.

Q. Southern yellow pine?

A. Yes.

Q. Do you carry any pondosa?

A. Yes; I think we have some at one yard.

Q. Do you dispose of that as white pine on orders for white pine?

A. I could not tell you. It is a retail yard, and I assume he does, though I don't know; it is a retail yard, and it is 125 miles from here, and I don't know what he sells it for, but I assume he sells it for white pine.

Mr. WHEAT. You don't know?

The WITNESS. No; I don't know.

Mr. WHEAT. I think any assumption ought to go out of the record. I move to strike out the witness' assumption.

Exam. SHEPPARD. It is so ordered. Go on.

By Mr. BURR:

Q. Who does the buying for your concern?

A. I do.

Q. Do you buy for both yards?
A. We have 32 yards.
Q. Do you buy for the whole property?
A. Yes.
1098 Q. And you say you don't buy any white pine to speak of for any of your yards?
A. We do not. You didn't ask me if we buy it for any of them. We buy it for two yards.
Q. Where are they located?
A. I don't really know the destination, but I think we have one yard that bought this year from California; I don't remember whether pondosa or California, but I think it came from California; that is just common b'ard no. 2.
Q. What was it that lead you to buy out of your usual custom?
A. I couldn't tell you that.
Q. Was it an order for white pine?
A. I couldn't tell you that; I don't know.
(No cross-examination.)
(Witness excused.)

EDWARD JAMES was thereupon called as a witness and, having been duly sworn, testified as follows:

Direct examination by Mr. BURR:

Q. You are with Burns & James, are you?
A. Yes.
Q. You are a partner of that firm?
A. Yes.
Q. You are located here in the city of Indianapolis?
A. Yes.
1099 Q. And your business is what?
A. Architect.
Q. How long have you been in the architect business?
A. Do you mean in practice?
Q. Yes.
A. Three years.
Q. And how long has that firm been in existence as a firm?
A. Burns & James for three years; the firm before that for fifteen years. Mr. James has had the firm for eighteen years. I have been associated with the firm for three years.
Q. Do you have occasion to specify white pine for exterior purposes?
A. We use white pine very seldom for exterior purposes.
Q. Well, now, do you mean only once or so a year, or how often?
A. Only when the owner specifically asks for white pine.
Q. When the owner asks for white pine do you then specify white pine in your requirements?
A. Yes.
Q. And what means have you for checking up as to what species of white pine you receive?

A. Only the integrity of the dealer with which we deal.

Q. In your specifications do you have it read white pine or northern white pine or some particular variety of white pine?

A. We do not; only white pine.

Q. If you specify white pine in accordance with the request
1100 of your customer and you learn that it was California white pine that had been furnished, would you regard that as compliance with your specifications?

A. Yes.

Q. If it is Idaho white pine, would you regard it as compliance?

A. Yes.

Q. And how about it if it were sugar pine?

A. If sugar pine is considered white pine, I would consider that as complying. I have never specified anything calling for sugar pine.

Q. You wouldn't know without checking up whether sugar pine was compliance?

A. I would not.

Q. How about pondosa pine? Do you regard that as compliance?

A. I have never used pondosa pine, so I would not know that, either.

Q. If you were told it was pondosa pine, would you make further investigation?

A. I would.

Cross-examination by Mr. WHEAT:

Q. You are not familiar with the botanical classification of pine trees?

A. No; I am not. I am a designer and not a specification writer.

1101 Q. And I assume that you are interested primarily in the quality and utility of the lumber rather than in the botanical classification of trees?

A. Exactly.

(Witness excused.)

Exam. SHEPPARD. We will take an adjournment, to convene in the city of Chicago in the office of the Federal Trade Commission, Transportation Building, room 2243, on the morning of October 18th, at 10:00 o'clock.

1102 Before the Federal Trade Commission

Docket Nos. 1620–1669

In the matter of White Pine cases

CHICAGO, *October 18th, 1929.*

Met pursuant to notice, 10:00 o'clock a.m.

Before William W. Sheppard, examiner.

Appearances:

Eugene W. Burr (Washington, D.C.) for the Federal Trade Commission.

Allan O. Matthew and Carl I. Wheat, attorneys for the respondents.

1103 PROCEEDINGS

Examiner SHEPPARD. You may proceed, gentlemen.

JOHN MOELING was thereupon called as a witness and, having been duly sworn, testified as follows:

Direct examination by Mr. BURR:

Q. Mr. Moeling, you are a retailer, are you, in the lumber business here in the city of Chicago?

A. Yes, sir.

Q. How long have you been in that line of business?

A. Since 1924.

Q. And you are with the Sterling Lumber & Supply Company, are you?

A. Yes, sir.

Q. Where are they located?

A. 11900 South Halsted Street, city of Chicago.

Q. What is your position with that firm?

A. Vice president; in charge of purchases also.

Q. What types of lumber for retail purposes do you deal in?

A. Practically every type that is manufactured in this country.

Q. Well, what types of pine?

A. Yellow pine, white pine, pondosa pine, California white,
1104 sugar pine, so-called.

Q. Now, in the sales of your lumber for retail purposes, do you supply orders calling for white pine on occasion, Mr. Moeling?

A. Yes, sir.

Q. And do you carry Idaho white pine?

A. Yes, sir.

Q. You supply orders on occasion with Idaho white pine, do you?

A. Yes, sir.

Q. Calling for white pine?

A. Yes, sir.

Q. Do you carry the northern white pine?

A. Yes, sir.

Q. Where is that from, Minnesota or Canada or what part?

A. Well, it is grown in the central lake regions of Minnesota, Wisconsin, and the southern end of Canada. I think those are the three principal parts.

Q. Now, when you get orders merely calling for white pine you feel free, do you, to supply those orders from northern white pine on occasion?

A. What was that again?

Mr. BURR. Read the question.

(Question read.)

The WITNESS. Yes; I do.

1105 By Mr. BURR:

Q. Now, do you supply orders for white pine with California white pine also?

A. Yes, sir.

Q. How long have you been handling California white pine?

A. I daresay it came in this market about nine years ago. I have only been connected with the company since 1924, and they were handling it then.

Q. Do you handle the pondosa pine, so called?

A. Yes, sir.

Q. Now, when you get orders for white pine do you feel free to supply those orders with pondosa pine?

A. Unless it is specified for northern white pine.

Q. You would, then, unless it was specified northern white pine, feel free to supply either Idaho white pine, California white pine, or pondosa?

A. Yes, sir.

Q. You would not supply the yellow pine that you say you buy?

A. No, sir.

Q. What is that? Southern yellow pine?

A. Southern yellow pine; yes.

Q. Which variety of white pine do you regard as most durable where it is exposed to the weather?

A. The northern white pine.

1106 Q. Well, which would you regard as next most durable?

A. The Idaho white pine.

Q. You think that is more durable than California white pine?

A. Oh, undoubtedly.

Q. What makes you think so?

Mr. MATTHEW. Don't you think you had better qualify him to answer that question?

Examiner SHEPPARD. Let him answer that question first.

A. (By the witness.) The western pines are used for cornice lumber here, and we have had numerous cases where they have rotted out under the paint and siding in cornice lumber.

By Mr. BURR:

Q. That was what variety of lumber that rotted out?

A. Pondosa and California white pine.

Q. Do you recognize any distinction as regards durability between pondosa and California white?

A. No, sir. They are practically the same.

Q. These four varieties of lumber that you have described—the northern white, the Idaho white, the pondosa, and the California

white—have they a reputation for durability in this section among retailers in the order in which you have named them?

A. I would believe so; yes.

1107 Q. Now, how about sugar pine? Do you sell that on orders for white pine where there is no specification as to what kind of white pine they desire?

A. Yes, sir.

Q. Now, how would you rate sugar pine for durability, if you have had experience to qualify you to answer that question?

A. I had this discussion up about a year ago——

Mr. MATTHEW. Is the witness going to give hearsay testimony?

Mr. BURR. I do not know what he is going to say.

The WITNESS. With the Forest Products Laboratory, Madison, Wisconsin.

Mr. MATTHEW. Of course, that is hearsay.

By Mr. BURR:

Q. And you were going to testify to what they told you, were you?

A. I was going to say——

Q. Well, I am afraid that would come under the hearsay rule, sir, and we will ask you to omit that.

Examiner SHEPPARD. Read the question to him.

(Question read.)

A. (By the witness.) Sugar pine, as far as durability for outside use, would rate with the pondosa and California white pine.

1108 By Mr. BURR:

Q. You do not think it is equal to the Idaho white for durability.

A. For durability outside? California white?

Q. I mean with Idaho white.

A. No; I would think not.

Q. How long have you had experience—that is, your firm—with Idaho white?

A. For the past three years.

Q. Three years?

A. Yes.

Q. How long has it been selling in this community, so far as you know?

A. Practically three years now. It formerly had been much higher priced, and when a large mill went on a production basis they had to sell out, and it came on this market.

Q. Mr. Moeling, you conduct millwork operations here, do you?

A. Yes, sir.

Q. And you make outside finish, do you?

A. Mainly in the millwork itself, interior finish.

Q. Do you make any outside finish at all?

A. Yes; we do.

Q. Do you make exterior doors?

A. Yes, sir.

1109 Q. Do you make exterior window frames?

A. Yes, sir.

Q. Where does your competition along that line come from?

A. The furnishing of millwork competition?

Q. The millwork exterior that I have just asked you about.

A. Principally in the city of Chicago.

Q. Do you have Mississippi Valley competition along those lines?

A. In some few items where the nonunion manufactured materials are liable to come into the city. Of course, the Mississippi Valley mills are nonunion, and on smaller jobs they do not come into the city, with the exception of manufacturing storm sash; that is, stock items.

Q. Now, in making your exterior finish, you order what varieties of pine lumber?

A. Principally pondosa pine and some California white.

Q. Do you use any Idaho white for the manufacture of exterior doors and sash?

A. Very little, because Idaho white pine is a small, many knotted type of log that does not furnish good shop lumber when used in cutting up.

Q. Now, do you use northern white pine for exterior finish?

A. Yes; we do.

Q. When customers come and ask for exterior finish of this pine, they ask for white pine, do they, occasionally?

1110 A. Yes, sir.

Q. And you furnish either the northern white pine or the California white pine, or which of them?

A. If they just say white pine, we furnish pondosa pine.

Q. Yes.

A. And if it is specified the true northern white pine, of course we give the true northern white pine.

Q. Now, under what circumstances do you furnish California white pine?

A. Under a general stock plan just calling for white-pine sash and frames and doors.

Mr. BURR. That is all.

Examiner SHEPPARD. Cross-examine.

Cross-examination by Mr. MATTHEW:

Q. Mr. Moeling, as I understand it, you have been in this lumber business for five years?

A. Directly; yes.

Q. Your experience has been entirely in this city?

A. No; I worked for four months in the California white and sugar pine region for the McCloud River Lumber Company.

Q. But apart from that, that has been your experience in the lumber industry?

A. Well, I have always lived in a mill town in the South
1111 and knew southern yellow pine, and have been in contact practically all the time with the lumber industry.

Q. And how many years were you in contact with the southern lumber industry?

A. Approximately—well, I don't know. Since I was born; that was seventeen years before I came up here.

Q. I take it, then, you are quite familiar with the southern yellow-pine lumber?

A. Yes, sir.

Q. Of the different species? Your answer is yes?

A. Yes.

Q. And for the past five years approximately you have been in the Chicago market?

A. Yes, sir.

Q. You carry southern yellow pine in addition to the pine lumber concerning which questions have been asked you upon direct examination?

A. Yes, sir.

Q. Do you ever furnish any southern yellow-pine lumber upon orders for white pine?

A. No, sir.

Q. Why not?

A. Because it is southern yellow pine.

Q. And its properties and uses are quite different from the properties and uses of the white pines, generally speaking?

1112 A. Generally speaking, yes.

Q. The southern yellow pine is largely a structural timber, is it not?

A. I would say yes.

Q. It has greater strength and hardness than the white pines?

A. Greater strength, yes, and hardness than the white pines.

Q. You have no difficulty in distinguishing between southern yellow pine lumber on the one hand and the white pine lumbers on the other hand?

A. It depends on the grades.

Q. Ordinarily the distinction is easily made?

A. Ordinarily the distinction is.

Q. You have stated you use pondosa pine very largely in your millwork?

A. Yes, sir.

Q. And I think you stated in greater measure than California white pine; that is, to a greater extent?

A. It just so happens; yes.

Q. There is no particular reason for using pondosa pine in larger volume than California white pine in this particular work?

A. There is no reason; no particular reason except a buying reason.

Q. That is, you can purchase the pondosa pine at a some-
1113 what lower price than California white pine?

A. Well, this particular mill manufactures more items and it is possible to get a greater mixed car, so that we would be able to buy smaller quantities from this particular mill. It just so happens. With somebody else it might be a different proposition.

Q. So this lumber is purchased, then, in mixed carloads, very largely?

A. By mixed carloads I mean mixed grades of the same kind of lumber.

Q. Of pondosa pine?

A. Of pondosa pine; yes, sir.

Q. It happens to satisfy your purposes better than an ordinary carload shipment of California white pine?

A. Yes.

Q. I understood you to say that you do not use the Idaho white pine to any extent in your millwork because it is not well suited to your purposes; is that true?

A. It does not make a grade of shop lumber such as we use to interchange with the so-called northern cork white pine; it does not make as good a job for cutting up as ash and grained lumber.

Q. Then it is for that reason that you do not use the Idaho white pine to any extent for shop purposes?

A. Yes.

1114 Q. It is not adapted to your requirements?

A. Yes; that is it, for true white pine.

Q. You do use some northern white pine in your shop work?

A. Yes.

Q. Does your use of northern white pine in shop work preponderate over the use of the pondosa pine?

A. No; it is only for special jobs of a schoolhouse type that we have had a good many of. They specify the true northern cork white pine.

Q. And when your specifications call for northern white pine you do supply the northern white pine?

A. The northern white pine; yes.

Q. And when you are asked to furnish white pine you feel free to furnish either northern white or California white or pondosa pine?

A. Yes.

Q. I assume, Mr. Moeling, that you do not purchase and use the pondosa pine merely because of its name, but that you obtain it and use it because of the uses to which it may be put in your business?

A. Yes.

Q. That is, the name is immaterial to you?

A. Yes.

Q. I assume in turn that if the present trade name of Cali-
1115 fornia white pine were replaced by such a name, for example, as California pondosa pine, it would make no difference in your present practice as to the purchase and use of the pine lumber?

Mr. BURR. Just a moment. I would like to object to that. It is hypothetical, and it is not the province of this witness to predict as to what the situation would be under a change of nomenclature.

Mr. MATTHEW. I think the examiner ruled upon this very question a number of times and allowed it in this form. I recall distinctly that counsel objected to a blanket question as to a change to any name, but when I made it specific in other instances he did not object, or in any event the examiner ruled that it was proper. I think it goes right to the issue in this case.

Mr. BURR. Read the question.

(Question read.)

Mr. BURR. I think the examiner ruled upon that very point. Here he substitutes the word "California pondosa pine", and the Commission has no authority, nor has it any purpose, to specifically order the use of any particular name.

Mr. MATTHEW. The question does not assume it.

Mr. BURR. Just a moment, now. And it seems to me that there is an assumption there which is immaterial to this issue. Even the Commission is not going to suggest what name should be used.

1116 Mr. MATTHEW. Counsel entirely misconceives the purpose of that question. The purpose of the question, as must be perfectly obvious, is to ascertain whether the word "white" in our trade name carries this lumber into the trade or not.

Mr. BURR. That is a conclusion for the Commission to draw rather than the witness.

Mr. MATTHEW. No; I am asking what the witness would do in his business. The Commission can draw any inference that it desires.

Mr. BURR. It is hypothetical. How does he know what the market conditions would be under a changed name?

Examiner SHEPPARD. I think, gentlemen, it is immaterial. This witness, of course, has no idea, and the fact is it is a question that is entirely up to the Commission. They may not order any change, or they may, I don't know; that is something that the future will have to reveal. But Mr. Burr's point is this, that it is immaterial what this witness thinks about it, and I think so, too. I do not think an inquiry of that kind is pertinent to the issue whatsoever. I think I will bar that hereafter, because it is not relevant or material to the issue involved here, in my judgment, at all.

1117 Mr. MATTHEW. Mr. Examiner, if I were asking a question which called for a conclusion as to what might happen in the general trade in a hypothetical set of circumstances, possibly the question might be objectionable, but when I am asking as to this witness' own field of action and making my question as specific as I did, it seems to me that it is entirely pertinent and relevant, because finally the Commission will want to determine whether or not there is truth in the blanket charge brought against us that our lumber is masquerading under a false name and in that way is replacing the so-called genuine white pine.

Mr. BURR. It is hypothetical for the reason that this witness cannot tell what a change in market conditions might do.

Mr. MATTHEW. We are not asking about changes in market conditions.

Mr. BURR. I know, but you are asking him to presuppose what he would do, without any knowledge on his part of what the market conditions would be under a change in trade name, or what the customs would be?

Examiner SHEPPARD. As I stated a while ago, I do not think that inquiries of that kind are at all pertinent to the issue involved here. I think I will bar them hereafter.

Mr. MATTHEW. Will the examiner allow an exception in the record, please?

Examiner SHEPPARD. Yes; surely.

1118 By Mr. MATTHEW:

Q. Mr. Moeling, I take it that you purchase lumber because of its quality and the uses to which you believe it to be adapted?

A. Yes, sir.

Q. You are not interested in the botanical classification of trees, I assume, as far as the purchase of lumber is concerned?

A. Only when it is so specified on the contract.

Q. But as a practical lumberman your concern is with your customer's needs and with the quality of the lumber?

A. Yes.

Q. And it is for that reason that you feel free to furnish pondosa pine in certain cases upon orders for white pine?

A. Yes, sir.

Q. You believe that you are satisfying your customer's requirements in those particular cases?

A. Yes.

Q. And it is for the same reason that you, to a large extent, use pondosa pine in your millwork, is that true?

A. Yes.

Q. I take it that the term "white pine" in this territory has come to mean something more than northern white pine, am I right in that, from your testimony?

A. Yes.

1119 Q. The term "white pine", then, may include northern white pine, Idaho white pine, California white pine, and pondosa pine?

A. Yes.

Q. And your purpose is to ascertain the desires of your customer in each instance?

A. Yes.

Q. Are we to gather from your testimony that the Idaho white pine is hardly a competitor with pondosa pine and California white pine in the shop grades?

A. In the shop grades that is correct; yes.

Examiner SHEPPARD. It is or is not?

The WITNESS. It is not a competitor; they do not make shop grades.
Examiner SHEPPARD. That is what you understood, Mr. Matthew?
Mr. MATTHEW. That is what I understood.

By Mr. MATTHEW:

Q. Your experience personally with Idaho white pine is confined approximately to the past three years?

A. The past three years; yes.

Q. Then you have not been in a position, as far as personal experience is concerned, to satisfy yourself as to the relative durability of Idaho white pine, have you, for exterior finish, for example?

1120 A. Of course, it is only three years that I have actual definite knowledge of. I have tried to ascertain from outside sources.

Q. Yes; but I am asking you as to your personal experience. It is confined to three years as far as Idaho white pine is concerned?

A. I will answer that so far it has proven very satisfactory, as far as three years can go. That is all the further that I could give an answer.

Q. Yes. Have you furnished much Idaho white pine for exterior use during that period?

A. Yes.

Q. Have you furnished as much Idaho white pine for exterior use during that three-year period as the amount of pondosa and California white pine?

A. Yes, sir.

Q. Is the use of Idaho white pine as far as your interest is concerned, greater in volume than the use of pondosa and California white pine?

A. No; it is less.

Q. Is it less with respect to use for exterior trim?

A. No; it is not.

Q. You use more Idaho white pine for exterior trim than pondosa and California white pine?

A. Yes. I would say our condition would not be general,

1121 though, because we have a particular trade out there calling for a different kind of wood. I could say that the pondosa and California were more generally used throughout the city.

Q. You expressed the opinion that sugar pine would rate with California white pine and pondosa pine as far as the element of durability is concerned?

A. As far as durability is concerned; yes.

Q. Is that based upon any personal experience?

A. Not personal experience, just what I have studied.

Q. It just reflects the information which you have tried to obtain in order to qualify you adequately in the lumber trade, I assume?

A. Exactly.

Q. Do you carry any great amount of sugar pine?

A. Not a great deal; no.

Q. Are your sales of sugar pine increasing or decreasing?

A. They are remaining about stationary.

Q. Are your sales of Idaho white pine increasing or decreasing?

A. It is hard to say that, because right now we have a very slow condition in the lumber industry here, and every wood is decreasing at present. I would say relatively they are about the same.

Q. Well, in making your last answer you had reference to all of these pine lumbers?

1122 Examiner SHEPPARD. Decreasing, you say?

The WITNESS. Decreasing. Our volume is decreasing; has been decreasing for the past two years.

By Mr. MATTHEW:

Q. In other words, you have a slow lumber market?

A. A slow lumber market in Chicago.

Q. And you are not able to state whether the pondosa and California white pine sales are relatively greater than they were some three or four years?

A. I would say they were the same.

Q. In other words, the course of that market is about the same as the market for sugar pine?

A. For all other pine.

Q. Then there is no difference in the relative sales of these several varieties of lumber?

A. No.

Q. Do you purchase any of your lumber from the Weierhaeuser interests?

A. Yes.

Q. Do you obtain most of your white pine from the Weierhaeuser interests?

A. I would say the great portion, yes; from Weierhaeuser.

Q. And do you purchase pondosa from Weierhaeuser?

A. Yes, sir.

Q. The greater portion of your purchases?

1123 A. A good proportion, yes.

Q. I think you stated that you purchase relatively small quantities of the California white pine under that name?

A. Yes; relatively small portions.

Q. When you receive an order for white pine without any qualifying term, how do you determine whether to furnish northern white or Idaho white; that is, how would you make your choice between those two lumbers?

A. I would say that there is no choice. It is only a matter of stock conditions between Idaho and northern white pine.

Q. And again, if you receive an order for white pine without any qualifying term, how do you make your choice between northern white, Idaho white, California white, and pondosa?

A. Well, my studies have been the result of correspondence—my knowledge has been the study of correspondence I have had with authorities. As I understand, there are two definite classes of lumbers——

Q. Pardon me just a moment. I think you do not understand my question. I am asking as to how you determine what particular lumber you will supply upon an order for white pine?

A. I get in touch with the customer.

Q. And after getting in touch with the customer you undertake to furnish him what you understand he desires and what
1124 you believe will best be adapted to his needs?

A. Yes.

Q. You were questioned as to durability, and may I ask you whether you would distinguish between the durability of sapwood and heartwood?

A. In respect to the pines, or in respect to the general classes?

Q. No; with respect to the pines, and particularly these several pine lumbers as to which we have questioned you. In other words, we will take northern white, Idaho white, or any other of these pines. Is the sapwood or the heartwood the more durable of the two?

A. The heartwood is the more durable than sapwood of all the pines.

Q. That is true of all of these pines, is it not?

A. Yes.

Q. You said that it has been ascertained in at least some instances that pondosa pine or California white pine which you have supplied for exterior use has failed, has decayed for some reason?

A. It has; yes.

Q. Do you know whether in those instances the material which decayed was sapwood or heartwood?

A. Mainly sapwood.

Q. Do you know of any case where the sapwood of the
1125 northern white pine has been subjected to similar tests?

A. The test was in the use of the lumber. We have not had a come-back on northern white pine in any case.

Q. Do you know of any case where the sapwood of northern white pine has been used in similar fashion?

A. Yes; we have used it ourselves.

Q. In your millwork?

A. In our millwork; yes.

Q. For interior use or exterior use?

A. Exterior use.

Q. The sapwood?

A. The sapwood; yes.

Q. Has that been protected by paint?

A. Protected by paint; yes.

Q. I assume that ordinarily you would recommend that sapwood be thoroughly protected, that paint, that is, be used for exterior purposes?

A. Oh, entirely.

Q. Now, in the cases where you said the pondosa or California white pine failed when exposed to exterior conditions, can you let me know whether it was lumber which you purchased as pondosa pine or which you purchased as California white pine, or have you any such record?

A. Well, I have cases of both failing. The item was cut sash stock——

1126 Q. Can you give us the specific instance?

Mr. BURR. He did not quite finish his answer.

Mr. MATTHEW. Pardon me, I thought you had finished.

A. (By the witness.) And was used in sash on a building, and the general practice is to have them primed as soon as they are on the building. In this instance of the sapwood failing, it was failing under the paint and where the paint apparently was in good condition, as far as we were able to determine. It showed that the wood had failed under the paint.

By Mr. MATTHEW:

Q. Now, what was this instance specifically, if you please? Can you identify the particular job?

A. I could with reference; yes. I could not right here. I was out on the job myself, and the sash has since been replaced.

Q. With what did you replace it?

A. With the same sash material.

Q. Pondosa pine?

A. In this instance it was California white pine.

Q. Why did you replace it with California white pine rather than with northern pine?

A. It is in general use, and our specifications for that sort of job generally call for white pine; cheap bungalow construc-

1127 tion, and that was the material asked for on the job by the builder and owner.

Q. That is, you supplied this lumber to a builder?

A. Yes, sir.

Q. And was it the builder who asked you to have this sash replaced?

A. It was the builder and owner; yes.

Q. Did the builder and owner understand that you were replacing it with California white pine?

A. They understood that we were replacing it with the same material that had gone in there beforehand.

Q. Did they know what material was furnished initially?

A. The owner did not know, and the contractor knew that it was the same material that he had generally received on all his jobs of that similar nature.

Examiner SHEPPARD. Had white pine been specified in that case?

The WITNESS. White pine; yes.

Examiner SHEPPARD. Without a qualification?

The WITNESS. Without a qualification.

Examiner SHEPPARD. And you delivered California white pine?
The WITNESS. We delivered California white pine.
Examiner SHEPPARD. All right.

By Mr. MATTHEW:

Q. The builder understood exactly what he was getting?

1128 A. The builder understood what he was getting; yes.

Q. Now, can you identify that job specifically—that is, give me the location of the residence and the date of construction, approximately?

A. I think I could if I could check up with the bookkeeper on this particular job.

Q. You cannot do it right now, but you could by going to the office?

A. I could by going to the office; yes.

Q. Now, this was cut sash stock; by that you mean that the sash had not been completely constructed?

A. In buying cut sash stock this lumber is made from a low-grade shop grade of lumber and cut at the mill, and to the sizes that will make sash, so that in shipping lumber it is shipped ready to use without the knots all cut, and bundled to the desired shape, ready for graining.

Q. Then you did not manufacture the complete sash yourself?

A. Well, they cut the wood to the rough size, the mill does. We receive that wood and machine it and assemble it and deliver it to the job as a sash unpainted and unglazed.

Q. Now, how many of these sash frames failed in the manner that you have described?

A. Not a great many. Over the past four years I would say that we had knowledge of six or seven cases. Of course, there may

1129 be some that we have no knowledge of, but I daresay we would hear of a great percentage of them.

Q. By six or seven cases you mean six or seven individual sash?

A. Individual sash; yes.

Q. How many sash were there in this particular job concerning which you have testified?

A. This job was a five- or six-room bungalow; I think a six-room bungalow; and there would be an average of between two and three windows to the room, with two sash to the window. That would be between 34 and 36 sash—that is, the whole sash in the building.

Q. Did you replace all the sash in the building?

A. No; we replaced simply the ones that had been defective.

Q. How many were there?

A. To tell you the truth, I could not remember exactly in this individual case.

Q. You do not remember whether there were two or three or more?

A. It was either one or two on this particular building.

Q. Now, you say that as far as your knowledge goes there are only six or seven cases where you have had complaints of the failure

of material manufactured by you and supplied from California white or pondosa pine?

A. Yes.

Q. Can you approximate the volume of your business during
1130 that same period—that is, can you tell me whether you furnished thousands of sash or hundreds of sash during that period?

Examiner SHEPPARD. I believe you said a four-year period a while ago?

The WITNESS. Yes; a four-year period.

Examiner SHEPPARD. All right, and give us an answer to Mr. Matthew's question as to the volume of sash.

A. (By the witness.) The volume of sash would run in thousands.

By Mr. MATTHEW:

Q. Thousands per annum?

A. Yes, sir.

Q. Now, can you give us any other specific instance where there has been a failure upon which we might check up in some way?

A. I could after conferring with the mill manager or the people who have direct charge of them.

Q. You have none specifically in mind right now?

A. None specifically in mind.

Q. I would gather from your testimony that these failures have been quite exceptional?

A. Quite exceptional; yes.

Q. And they have not been sufficient to lead you to discontinue the use of California white pine and pondosa pine for these purposes?

1131 A. No.

Q. Could any of these failures have been due in part to the circumstance that the lumber might not have been properly dried?

A. They could have been due to a great number of circumstances. Of course, after you get to a job and some failure has occurred, why, you cannot definitely know all that has transpired between the time you delivered the sash to the building and the time you get there. If it had possibly been wet before a priming coat was put on, why, that might lead to rot underneath, or if in some way moisture could get in by the sash standing there, of course that would affect it, too.

Q. Now, it is not an uncommon thing for the construction to be defective in that very respect, is it, that the sash is not properly protected against moisture getting in, with the result that decay may commence?

A. Yes. It does not happen every day, of course, but I mean you hear frequently of cases where it does happen.

Examiner SHEPPARD. You mean in other woods?

The WITNESS. In other woods, too; yes.

By Mr. MATTHEW:

Q. Do you find the California white pine and pondosa pine quite suitable for interior use?

1132 A. Quite suitable; yes.

Q. Do you use it quite extensively for that purpose?

A. Not quite extensively, because that particular type of finish is suitable for an enamel finish, and the woods particularly used in this city are birch, and oak with gum. Now, where an enamel job is used, why, we do use the pondosa or the California pine.

Q. Do you find it satisfactory for that purpose?

A. We find it satisfactory.

Q. Is it as satisfactory as northern white or Idaho white for that particular purpose?

A. The wood is not quite as soft or as easily worked, but for all general purposes it is as satisfactory. The northern white and Idaho white are easier worked and cut than pondosa or California white.

Q. After the work has been done in your mill and the material has been actually installed for interior purposes, do you find it as satisfactory, as far as your experience goes——

A. Yes.

Q. As the northern white or Idaho white pine?

A. Yes.

Mr. BURR. That was for interior, wasn't it?

Mr. MATTHEW. Interior.

By Mr. MATTHEW:

Q. Does it take a finish as well as the Idaho white and

1133 northern white?

A. Practically; yes.

Q. Do you use southern yellow pine to any extent for interior finish?

A. Yes; we do.

Q. And do you use it to any extent for exterior finish?

Mr. BURR. If the examiner please, I would like to know the purpose of this southern proposition. I have a great many witnesses, and I believe that is immaterial. I do not want to be captious, however.

Examiner SHEPPARD. I have been letting that go in, Mr. Burr, because it is the respondent's purpose to show the difference, the comparison between these pines and the southern pines, on the one hand, and the other northern pines on the other hand.

Mr. BURR. I am agreeable.

Examiner SHEPPARD. Go on; answer the question. Read the question.

(Question read.)

A. (By the witness.) Yes; we do.

By Mr. MATTHEW:

Q. Do you use the southern yellow pines and the white pines interchangeably for exterior and interior purposes?

A. Oh, no.

1134 Q. Now, will you distinguish between the uses of the two groups? Now, for the moment I am putting the southern yellow pine in one group, and I am including pondosa and California white, northern white, and Idaho white in another group.

A. Between the two groups?

Q. Yes.

A. Yellow pine is the stronger wood, that is, where strength and heavy use is necessary. The white pine is easily worked and will stand the weather better and take a paint or enamel finish better than the yellow pine. I would say the heavy against the finished product.

Q. Then may I ask you this question, whether the California white pine and the pondosa pine in general are employed for purposes similar to those in which northern white and Idaho white pine are employed?

A. They are employed for similar purposes; yes.

Q. And in general they are not used for the same purposes for which the southern yellow pines are used?

A. In general, no.

Mr. MATTHEW. That is all.

Redirect examination by Mr. BURR:

Q. Do you regard it as necessary to paint California white
1135. pine for exterior purposes?

A. Yes, sir.

Q. Do you regard it as equally necessary to paint northern white pine where it is used outside?

A. That is, for preservation?

Q. Yes.

A. For preservation, yes.

Q. Do you think that northern white pine stands up better without paint than the California white pine would?

A. Undoubtedly.

Q. Where do you get your California white pine from?

A. Do you want me to name the company or the section of the State?

Q. Yes, if you are agreeable.

A. From the Longbell Lumber Company, I think, and the McCloud River Company, at McCloud, California.

Q. How long has that been the case?

A. For four years.

Q. Now, where a customer, as you testified on your direct examination, asks for white pine, there is a certain percentage of cases where

you get in touch with him to find out which variety of white pine he prefers, is there?

A. Yes, sir.

Q. Now, you do not always do that, do you?

A. No.

1136 Q. How large a percentage would you say that you have gotten in touch with the customer afterwards to query him as to whether he preferred northern white pine or California white pine or Idaho white pine?

A. Somewhere between two and five percent.

Q. Now, you testified on cross-examination with regard to one job, I believe, where you said a number of sash had rotted out, the first job that you referred to.

A. Somewhere between one and three sash.

Q. Then did you refer to another particular instance where you had had trouble with several sash or with only one?

A. No particular instance. I remember that those instances have come up. I do not remember the particular job, though.

Q. Now, I think you said six or seven times complaints had been made, did you? Was that correct?

A. Yes. The complaints were brought to me by the mill manager and talked over with the idea of the policy of replacement.

Q. I see.

A. And I got the conditions from him. I did not see the jobs actually.

Q. And when this occurred, was it more than one sash at times, or was it one sash always, or what was the situation?

A. No specific cases there. I remember at least one where there was a single sash and one where there were two, as I

1137 recall. I would not want to say definitely.

Q. I think you said how many times, six or seven times, that complaints, individual complaints, had been made?

A. Roughly, six or seven. I would not want to be set down on that. It may be one or two more, or it may be one or two less.

Q. Now, was that always just one sash? I think you said only six or seven sash on your cross-examination; is that correct?

A. It may be six or seven, it may be five, or it may be nine.

Q. Well, six or seven instances, but several sash as an average, or only one sash each time?

A. I would not want to be pinned down to an average there.

Q. All right. Have you ever had northern white pine fail where put in for exterior use?

A. You mean due to rotting out?

Q. Yes.

A. I have no personal experience of a job failing with northern white pine.

Mr. BURR: That is all.

Mr. MATTHEW. May I request the witness to supply us, at his convenience, before this hearing adjourns, with the particular instance

concerning which I interrogated him on cross-examination?

1138 Examiner SHEPPARD. Mr. Moeling, if you can, when you go back to your office, search your files and see if you can bring us definite information of any one, two, or several cases in reference to which you have been interrogated about. Come back here at two o'clock.

The WITNESS. If I can make it by two o'clock.

Examiner SHEPPARD. Or three.

The WITNESS. I will come back as soon as I can. The office is at 119th and Halsted Street, and that is a long ways from here.

Examiner SHEPPARD. You come back, then, in the morning at ten o'clock.

(Witness excused.)

Examiner SHEPPARD. Gentlemen, I want to tell you both that in these specific instances that witnesses bring out from time to time on both sides, I want them made as definite as you can. I am going to insist that you make them definite.

ROBERT WORK was thereupon called as a witness, and having been duly sworn, testified as follows:

Direct examination by Mr. BURR:

Q. You are an architect, Mr. Work?

1139 A. Yes, sir.

Q. How long have you been an architect?

A. I got my license in 1912.

Q. And you are located here in Chicago?

A. Yes, sir.

Q. Are you practicing for yourself, or, if not, what is your firm name?

A. My firm name is Russell Wolcott & Robert Work, Architects.

Q. Is your work house or business-block building, in the main?

A. We build mostly houses.

Q. Residences?

A. Residences.

Q. And in connection with your work do you have occasion to specify white pine for any exterior uses?

A. We do; yes.

Q. How do you specify? What language do you use? Just white pine, or what?

A. We usually call for white pine.

Q. And what means do you have of checking up as to what species or variety or trade name of white pine you receive?

A. You mean how do we recognize the wood?

Q. Yes; how do you check it up?

A. Well, our superintendents report to us on the wood. In

1140 our practice in the Chicago district we have very few questions. The mills know what we want and they give it to us, and we deal with a comparatively small number of mills. Out of

town we go to the trouble of expressing what we want exactly and say "northern white pine" and the quality of it at some length.

Q. Now, if you specified white pine and California white pine were delivered on the job, and you ascertained it was California white pine, and if in appearance the freedom from knots and all that kind of thing suited you, would you accept that as a compliance with the specification of white pine?

A. We would be inclined to bar it out on account of paint. Northern white pine holds paint better than any other wood we have used.

Q. Well, when you specify white pine, what do you mean by that specification?

A. We understand white pine to mean northern white pine.

Q. Would you accept Idaho white pine as a compliance with that specification?

A. I do not know Idaho white pine; I could not tell. I know, or at least I think I know, what white pine is.

Q. But you would throw out California white pine invariably, no matter how acceptable it might look; is that true?

A. Not invariably; no. That would depend some on the quality of the work.

1141 Q. I mean for exterior use now.

A. For exterior use, frames and sash and outside doors, which is practically what we use it for, we would insist on northern white pine.

Q. Have you at any time rejected California white pine when it was furnished?

A. I do not know that I have; I do not think I have. The custom, when a mill wants to substitute a wood, is to bring us samples of the wood and ask us if that will do.

Q. Well, now, have you any technician there that is able to distinguish invariably between genuine white pine, we will say northern white pine, and California white pine?

A. No; I do not know that I have.

Q. Well, if the samples looked O.K. in quality, you would accept them?

A. I think I could tell what was northern white pine and what was California pine and sugar pine and those sort of things. I imagine I would know it was not white pine. I might not know whether it was Idaho or California, but I would know it was not northern white pine.

Q. Does the term "white pine" among architects in the city of Chicago have a definite meaning?

A. I believe it has.

Q. What is that meaning?

A. I think it refers to the northern white pine.

1142 Q. Are you still able to get northern white pine of good quality here?

A. We have had a great deal of difficulty.

Q. Where does it come from in the main?
A. From Minnesota, I think; mainly the Mississippi Valley.
Q. Would you accept sugar pine as a compliance with a specification for white pine?
A. I have in some cases, but I do not think it is as good as white pine.
Q. How about pondosa pine? Would you accept that?
A. I do not know it.
Q. I beg pardon?
A. I do not know it by that name. I do not know pondosa pine.
Mr. BURR. I think that is all, sir.
Examiner SHEPPARD. Cross-examine.
Mr. MATTHEW. No questions.
(Witness excused.)

JOHN CHALMERS was thereupon called as a witness and, having been duly sworn, testified as follows:

Direct examination by Mr. BURR:

Q. What is your name?
A. John Chalmers.
Q. You are a retailer, Mr. Chalmers?
1143 A. Yes, sir.
Q. A retailer of lumber?
A. Yes, sir.
Q. And your firm is Lord & Bushnell, is it?
A. Yes, sir.
Q. What position do you hold in that firm?
A. Secretary.
Q. And you are here in Chicago?
A. Yes, sir.
Q. You also do some wholesaling, do you?
A. Yes, sir.
Q. What species of white pine do you carry?
A. The pine that has been commonly known as white pine from the northern forests of central United States, in recent years.
Q. What is that? Northern white pine, you mean?
A. What has been commonly known as northern white pine; yes, sir.
Q. Now, do you carry also the Idaho?
A. What is commonly known as Idaho white pine; yes, sir.
Q. How long have you been handling Idaho white pine?
A. Fifteen to twenty years.
Q. How long have you handled California white pine, if you do at all?
A. Well, what is commonly known by trade practice in the
1144 last ten years as California white pine or western white pine or pondosa white or Oregon soft pine, which we classify as generally alike, we have carried for about fifteen years, if that is what you have reference to.

Q. Yes. Now, then, when you have orders for white pine, without specifying any particular variety, what do you furnish to your customer?

A. Northern white pine.

Q. Do you ever furnish Idaho?

A. No, sir.

Q. Under what circumstances have you furnished Idaho white pine?

A. When we sell it as Idaho white pine.

Q. You never furnish it to a man who orders northern white pine unless you talk with him about it and tell him it is the Idaho white pine; is that true?

A. Absolutely.

Q. Now, does "white pine" have a significance here in this city among architects and buyers of wood?

Mr. MATTHEW. Just a moment. I think you ought to strike out the reference to architects.

Mr. BURR. Well, I am agreeable. I will strike the question entirely.

By Mr. BURR:

Q. Are your retail operations among the largest in Chicago?

1145 A. Yes, sir.

Do you regard the soft pines in general as having varying characteristics and qualities for exterior use?

A. Yes, sir; in a small degree.

Q. What is the preferable variety of white pine for exterior use, in your judgment?

A. The northern white pine.

Q. For what reason?

A. The lasting qualities.

Q. What would you rate as next to that, in your experience?

A. Your question was?

Q. For exterior use, as regards durability.

A. Exposed nakedly to the weather?

Q. You mean without paint?

A. Yes. That is what you are referring to.

Q. Yes; you might answer that, exposed nakedly.

A. Under those circumstances, I believe northern white pine would come first and Idaho white pine second.

Q. Do you regard sugar pine as a true white pine?

A. Not being a technician, I do not know.

Q. Do you handle any sugar pine?

A. Yes, sir. I am taking it that these words are all common words and not botanical.

Q. I am not asking you for botanical words at all, sir, at present, and probably shall not.

1146 A. Well, don't start it. [Laughter.]

Q. You are not posted on the botanical names of the various species?

A. No, sir. I do not even know whether it is white pine, but that is in common use—the word.

Q. Do you know whether California white pine is a genuine white pine or not?

A. I was not educated in twenty-three years as its being white pine, only as it has been presented to the market in the last ten or twelve years. They have called it white pine, but it is nothing like we understood to be white pine from the north, from the central Mississippi Valley States. But it has been called that, and therefore it has been marketed under that name.

Q. Do you market it under that name yourself?

A. We have no objection to that—yes; we do that; yes.

Q. When they ask for it?

A. No; but we have up to the last two years. I should not make that right up to date.

Q. Well, you have not sold it on orders for white pine without specification. Where you get orders for white pine you do not sell California white pine, do you?

A. No, sir.

Q. That was my understanding of your testimony. But you sell it under that name—California white pine?

1147 A. At the present time we would say to a buyer, "This is either California white pine or pondosa or western white pine."

Q. Do you distinguish any difference in durability for exterior use between pondosa and California white pine?

A. No. That question is very broad, because we have purchased in the past lumber under those names, and you get lumber that is different. I am trying to say that a California white-pine invoice might have what somebody else would call pondosa pine. I presume you are talking right up to date. Now, a few years ago California white pine, pretty nearly everybody called it that, from California, but they do not today.

Q. Some call it other names besides California white pine, even though it comes from California; is that true?

A. Yes; I think so. That is our understanding of it. We have checked some.

Q. Now, from what sections are you buying California white pine?

A. Well, various—oh, nothing today. We do not buy any California white pine.

Q. You are not handling it today; is that true?

A. Yes; we handle what is known as that, but when you make a specific question of buying California white pine we do not pay any attention to that word out there, because that is

1148 merely a trade name now, as we understand it, and we have tried to buy it as the so-called westeri soft pine.

Q. And do you try to sell it as western soft pine?

A. No—yes, western soft pine or pondosa pine. That is the way we are using the distribution efforts now.

Q. In other words, you are trying to avoid the use of the term "California white pine" when you can, are you?

A. Yes, sir.

Q. Why do you do that?

A. Well, we gained the general knowledge a few years ago that it was requested by the Government not to use the word for those woods that grow from the Northern States, the line of the United States down through California, of that type, and it is not misleading to our customers to call it California white pine.

Q. You say it is not?

A. It is misleading to our customers. We have called for northern white pine in every line.

Q. To call it California white pine, did you say?

A. Yes—oh, just a minute now. Perhaps that answer is not clear, because with that word "California white pine" it is a distinguishing mark. Your question is what?

(Question read.)

A. We are trying to avoid the use of California white pine as misleading to the consuming public.

1149 Q. Well, now, is that true of your wholesale business or your retail business or both?

A. Both.

Q. Do you sell to retailers who are not posted on the distinction between California white pine and the so-called genuine white pine?

A. Oh, I do not know.

Q. You do not know as to that?

A. I do not know what they know.

Q. How large is your wholesale business annually in the soft western pines; I mean as distinguished from the hard southern pines? How many cars approximately do you carry?

A. In a wholesale way, I understand—you may have a different idea of wholesale than I have. Your question is hard to answer. I do not believe it is susceptible of a fair answer.

Q. I merely wanted an approximation of how many cars go through your company in the course of an average year of the western pine lumber, merely to give an idea to the examiner here.

A. Between twenty and thirty cars, carloads.

Q. Between twenty and thirty cars?

A. Something like that; yes, sir.

Q. That is your wholesale business?

A. No; through our company, you said this time.

1150 Q. Altogether?

A. You changed your question.

Q. Yes; I know. That is wholesale and retail, both, is it?

A. Yes, sir; the western soft pine, if that is what you mean, Oregon, is that correct?

Q. Aren't all the western pines soft? Do you regard California white and pondosa as soft pines?

A. They call it douglas fir pine, some people.

Mr. MATTHEW. May I ask Mr. Burr, if you include Idaho white pine in your question?

By Mr. BURR:

Q. You have included Idaho white pine in your answer, have you?

A. Yes, sir.

Mr. BURR. That is all.

Examiner SHEPPARD. Cross-examine.

Cross-examination by Mr. MATTHEW:

Q. You stated that you purchased some pondosa pine from California?

A. They call it that.

Q. Well, was it ordered by you under that name and billed to you as pondosa pine?

1151 A. My general recollection is that it was. If you are getting around to a specific question, I probably could not say.

Q. Could you give me the name of the mill from which you purchased the pine?

A. No.

Q. That is, you do not recall; is that it?

A. Yes.

Q. Well, is it a fact that the bulk of the pine lumber which you obtain from California is billed to you as California white pine?

A. In what period of time?

Q. Well, we will take the past two or three years, or any other period that you may wish to cover. I am just trying to get the general practice.

A. It has changed so in the past five years that your question is very broad.

Q. I am asking you about the California pine.

A. Yes.

Q. I am excluding for the moment, now, the pine lumber that comes from the inland empire and the Pacific Northwest. Is it not a fact that practically all of the pine lumber which you obtain from California, excluding now for the moment sugar pine, has always been billed to you as California white pine, and is now so billed?

A. The large majority of it; yes.

1152 Q. There has been no recent change in practice in that respect, has there?

A. Some percentage in the last five years; yes, sir.

Q. As to California?

A. Yes, sir; I think so.

Q. But you cannot tell to what extent?

A. No.

Q. Now, if you receive an order for California white pine, do you supply California white pine?

A. We give them the pine that—we call them up and tell them we will give them this western soft pine that comes from the western States out there.

Q. You feel free to furnish lumber which you have purchased either as pondosa pine or California white pine upon such an order?

A. Depending on the grade.

Q. Yes. But assuming that you are satisfying the customer as to grade, you furnish the pondosa pine or California white pine upon such an order?

A. Under that assumption; yes, sir.

Q. In your wholesale department do you sell California white pine under that name?

A. No, sir.

Q. What name do you use?

A. Oh, you would have to have a lot of talking to get it straightened out, whether it is western soft pine or pondosa pine, depending on what we think he wants, then we straighten it out before selling.

1153

Q. Am I to understand that you do not sell California white pine in your wholesale department under that trade name?

A. No, sir; we do not.

Q. That was about two or three years ago that you changed your practice in that respect?

A. No; we did not have that business before that; no, sir.

Q. Then you never have sold California white pine under that name of California white pine?

A. Oh, yes.

Q. Well, do you sell it now under that name?

A. Oh, yes; sure.

Q. In both your wholesale and retail departments?

A. No, sir.

Q. Merely in your retail department?

A. Yes, sir.

Q. Why distinguish between the two departments in that respect?

A. Because we do not have any of that business.

Mr. MATTHEW. May I have the answer?

(Answer read.)

By Mr. MATTHEW:

Q. Now, will you explain that? That you do not have any of what business?

1154

A. Will you read that question?

(Question read.)

A. In the wholesale.

Q. Then we are to understand that as far as your wholesale department is concerned you do not deal in California white pine?

A. We are willing to, but we cannot get any orders. We have not sold any that I know of.

Q. So since you do not sell any California white pine in your wholesale department, you have not any practice as to the sale of California white pine in that department?

A. Not in recent years, no.

Q. Do you sell pondosa pine in your wholesale department?

A. Yes, sir.

Q. And you sell that under the name pondosa pine?

A. Yes, sir.

Q. Now, you stated that it was your impression that some two or three years ago the Government requested that the term "California white pine" should not be used. Is that about the substance of your testimony?

A. That is an impression, yes, sir. I may be wrong about that.

Q. Where did you get that impression?

A. Just public papers, that is all.

1155 Q. It was merely from reading in the press? It was not obtained through somebody's conversation with you at all?

A. It might have been.

Q. You are not certain?

A. No. It is too far back.

Q. How does the volume of your dealings in northern white pine compare with the volume of your dealings in the western soft pines? I include in that letter term the Idaho white and the California and pondosa pine.

A. That is, relatively speaking between the two varieties?

Q. I am dealing with your current business, approximately your current business?

A. We sell mostly northern white pine.

Q. You sell a greater amount of northern white pine than western soft pines?

A. Yes, sir.

Q. I think in answer to a question put by Mr. Burr you stated that your wholesale dealings in western soft pines amounted to fifteen or twenty carloads a year. Am I right in so recalling your testimony?

A. I do not think so; no, sir.

Mr. BURR. I think you said twenty. It was wholesale and retail.

By Mr. MATTHEW:

1156 Q. That was your wholesale and retail dealings in the western soft pines, approximately twenty carloads per annum?

A. Yes.

Q. Can you estimate the volume of your dealings in the northern white pines?

A. Oh, it varies, of course; but thirty or forty carloads, or fifty carloads. It varies.

Q. All right. We can say from thirty to fifty carloads per annum?

A. Yes.

Q. Do you purchase your northern white pines to any extent from the Weierhaeuser interests?

A. To some extent; yes, sir.

Q. Is the bulk of your northern white pine obtained from the Weierhaeusers?

A. I do not know about that.

Q. You do not know as to that?

A. Your question is broad. I do not know whether we buy the bulk of it from Weierhaeuser.

Q. Well, I want to find out just what you know.

A. Subpoena my records from the office.

Q. I am asking you for your best recollection now.

A. I do not know.

Q. You do not know?

A. No.

Q. Do you buy any Idaho white pines from the Weier-
1157 haeuser interests?

A. We do.

Q. Can you tell me whether you buy the bulk of your Idaho from the Weierhaeuser interests?

A. We do; yes.

Q. Do you buy any pondosa from the Weierhaeuser interests?

A. Yes, sir.

Q. Do you know whether the bulk of your pondosa pine comes from the Weierhaeuser interests?

A. I do not know.

Q. I want to ask just one or two further questions about the way you handle orders for white pine, Mr. Work. You testified that when you receive an order for white pine without any qualifying term, you supply the northern white pine?

A. Yes, sir.

Q. Then you do not in any instance furnish Idaho white pine upon an order for white pine only?

A. Not without asking the customer about it.

Q. And ordinarily is an order for Idaho white pine received by you under that name of Idaho white pine?

A. Oh, yes.

Q. That is the practice in the trade?

A. In our trade. I do not know about the trade.

Q. I am asking about your particular case. And when you
1158 receive an order for California white pine, you furnish the California white or pondosa pine?

A. Well, we explain to the customer. That has occurred, I believe, where the order reads "California white pine" in certain grades.

Q. Then you undertake to supply your customer in each instance with what you understand that he desires?

A. Yes, sir.

Mr. MATTHEW. That is all.

Redirect examination by Mr. BURR:

Q. Do you deal with the Shelvin-Hixon interests?
A. Yes, sir.
Q. In northern white pine?
A. Yes, sir.
Q. Do you get Idaho white pine from them also?
A. I do not think so.
Mr. BURR. That is all.

(Witness excused.)

C. W. JACOB was thereupon called as a witness and, having been duly sworn, testified as follows:

Direct examination by Mr. BURR:

1159 Q. What is your name?
A. C. W. Jacob.
Q. Mr. Jacob, you are with the John Bader Lumber Company?
A. Yes, sir.
Q. You are located here in Chicago?
A. Yes, sir.
Q. How long have you personally been with that company?
A. Twenty years.
Q. And how long has the company been in existence?
A. Oh, about fifty years—forty, I would say.
Q. Are they one of the larger retailers of lumber in this city?
A. A medium-sized yard.
Q. What is your office with that company?
A. President.
Q. How long have you been such?
A. Twelve years.
Q. What varieties of soft white pine, now, excluding the hard pines of the South—what varieties of soft pine do you purchase?
A. What are commonly known as northern white pine, pondosa pine, California pine, Idaho pine, sugar pine.
Q. Now, when you say California pine, do you refer to the product that is sold under the name "California white pine"?
A. Well, it is sold to us under that name; yes, sir.
1160 Q. How do you sell it?
A. We class it with the pondosa pine and call it western pine; we classify the California white pine and the pondosa as practically one wood.
Q. You do not use the term California white pine to your trade?
A. We sell it here as western pine.
Q. Well, now, do you get orders occasionally for white pine?
A. For white pine? Yes, a good many orders.
Q. Now when you get such orders without any specification of northern or any term going along with the words "white pine", do you feel free to furnish the so-called western pine?
A. Possibly within the last four or five years.

Q. In other words, if they ask for white pine and do not say what kind they want, you would furnish what you buy as pondosa or California white pine, would you?

A. In repeating the order, we always repeat the words "Western pine" when they want white pine.

Q. Western pine?

A. Yes, sir.

Q. How do you mean, in repeating the order? Invoicing it to them?

A. For instance, the general term might be called white
1161 pine, but I would say that better than eighty percent of the lumber that is used now in the common building trade is western pine, due to the fact that the northern pine cannot be gotten.

Q. It is actually western pine?

A. Yes.

Q. But you do not mean that the retailers generally are following your practice or naming it western pine, or do you?

A. I do not know.

Q. Well, there is California white pine sold here in the city under that trade name by retailers, is there?

A. I imagine so.

Q. Well, now, suppose someone orders from you white pine, then if I understand you correctly you might furnish western pine, and you would in that case tell the dealer you were furnishing western pine, would you?

A. Yes, sir.

Q. Do you regard this western pine, including in that term, as I understand you to do, both pondosa and California white pine, do you regard that as a genuine white pine, or do you not?

A. Well, I regard all the woods that are commonly known as pine, or possibly including the species as white pine, considering the sapwood possibly as good as the other for exterior purposes.

Q. Well, do you recommend to your trade that the western
1162 pine, so-called, that you handle is a real white pine?

A. Well, I do not know what real white pine is.

Q. And you do not advise them as to whether or not this is white pine, is that true?

A. We advise it to them as to the adaptability for the purpose which it is intended. Along those lines we advise them.

Q. Well, now, do you furnish it for exterior purposes?

A. Yes, sir.

Q. Do you regard it as equally durable with the northern white pine for exterior use?

A. With the same percentage of sap to the wood, yes.

Q. Well, is the percentage of sap as great with the western white pine, or is it greater than in the case of the northern white pine?

A. I would say the percentage of sap in the northern white pine would be greater than the western.

Q. Would be greater?
A. Yes.
Q. Where are you getting your northern white pine?
A. From Weierhaeuser, Shevlin-Hixon, and the Dells Lumber Company.
Q. That is up in Idaho?
A. No; it is up in Eau Claire, Wisconsin.

Q. Now, you said the percentage of heartwood is greater,
1163 do I understand you correctly, in the western pine than it is in the northern pine?
A. Yes, sir.
Q. Then you would recommend that for exterior purposes rather than northern white pine?
A. Under those circumstances, when the percentage of sap is greater in the one wood, yes.
Q. Are you getting a second growth or virgin white pine from the northern white pine lumber mills?
A. I guess we get both of them.
Q. I beg pardon?
A. I imagine it is both.
Q. Now, from the Weierhaeuser people, do you get any second-growth lumber?
A. I do not think so. I do not know that; I would not say that definitely. I can tell you where we do get some.
Q. Where is that?
A. From the farther south, in the States where they are sawing their hard woods and hemlocks now, and they have reached the point where there is a good deal of the second growth comes in.
Q. Second growth of northern white pine?
A. Yes; it is noticeable to me because of the grain being coarse.

Q. That is from Minnesota?
1164 A. I would say from the middle part of Wisconsin.

Q. You are getting some second-growth northern white pine from central Wisconsin?
A. That is what I would call it.
Q. Do you ever buy Canadian white pine?
A. Well, we buy what is commonly termed by us lumbermen as Jack pine.
Q. No; I mean Canadian white pine.
A. We have gotten some from British Columbia; yes.
Q. Is that Idaho white pine or northern, do you know?
A. I would have to know more about it than I do to tell you the difference.
Q. You would recommend, then, would you, the pondosa pine or the California white pine under your trade name of western white pine, in preference to northern white pine for outside use, would you?
A. No, sir.

Q. You would not?
A. No, sir.
Q. Well, what would you use for exterior use?
A. I told you the percentage of sap would enter into it a good deal for exterior purposes.
Q. Then which would you recommend?
A. I would recommend the one that had the least amount of sap.
1165 Q. In the particular type that you had on hand?
A. Yes, sir.
Mr. BURR. That is all, sir.

Cross-examination by Mr. MATTHEW:

Q. You testified, Mr. Jacob, that in your opinion approximately eighty percent of the lumber that is used in the local building trade is western pine lumber?
A. No; for exterior purposes.
Q. Oh, for exterior purposes?
A. Yes.
Q. Now, at the time when you first entered upon the lumber business in this area, was the percentage of western pine lumber as great as that?
A. When I entered in, we did not handle any western pine.
Q. What pine lumber then held the market?
A. Northern white pine.
Q. Now, to what reason do you ascribe the substantial displacement of the northern pine in this market by the western pines?
A. It was practically impossible to get the northern pine.
Q. Then the western pines are finding their way into this market largely by reason of the shortage of northern pine?
1166 A. Yes, sir.
Q. And, I assume, likewise, by reason of the circumstance that generally they are adapted to practically the same purposes for which northern pine has always been used?
A. Yes; generally speaking.
Q. Do you get as high a grade of northern white pine at the present time as was obtained when you first entered upon the lumber business in this community?
A. Will you ask that question again?
(Question read.)
A. You mean grade for grade?
Q. Yes.
A. They are the same; the rules have not changed any.
Q. Was there a time when the grading rules for virgin white pine provided that sap would be regarded as a defect?
Mr. BURR. If the examiner please, just a moment. I do not believe the Commission wants to go into the question of the grading rules, and I think the examiner made such a declaration. It seems to me if we get into this grading-rule proposition we would be getting into a

maze of complications which the Commission need not go into and should not be called upon to go into in this case.

Examiner SHEPPARD. I do not presume you are going to follow that far.

1167 Mr. MATTHEW. Mr. Burr is always so very prompt that he does not always allow me to develop my thought.

Examiner SHEPPARD. He is a good lawyer; he ought to be prompt.

Mr. MATTHEW. In many respects, he is too good a lawyer.

Examiner SHEPPARD. Go ahead.

Mr. MATTHEW. Let me just say I have not any interest in the grading rules except as they may relate to the relative amount of sap in the northern white pine today as against the northern white pine of twenty years ago.

Mr. BURR. If the examiner please, he is opening up the whole proposition and requiring me to go into this whole proposition of grading rules, which is a technical proposition, and I do not believe we want to qualify the members of the Commission to be experts in the whole lumber industry.

Examiner SHEPPARD. You gentlemen both remember what I said before about this grading proposition. We are not going into it in detail. I am going to allow this question because I do not think Mr. Matthew is going to follow it up very far.

Mr. BURR. He is going to require me to follow it up pretty far, I am afraid, Mr. Examiner, but I shall make no further objection, in harmony with your honor's ruling.

Examiner SHEPPARD. Read the question to the witness.

1168 (Question read.)

A. I guess they do yet in certain grades.

By Mr. MATTHEW:

Q. You are not familiar with any change as far as the requirement as to absence of sapwood is concerned?

A. No, sir.

Q. You have testified that the northern pine which you now obtain does contain a good deal of sap; at least you stated that it was your impression that there is a larger percentage of sap in northern white pine than in the western pines which you obtain?

A. In the grades that are commonly used for exterior purposes; yes.

Q. What are those grades?

A. The common board grade and the selects.

Q. Well, is the texture of the northern white pine which you now obtain in these grades as good as the texture of the northern white pine which you obtained twenty years ago?

A. I would say yes.

Q. Is the texture of the second-growth pine which you are now obtaining as good as the texture of the virgin-growth pine?

A. Practically speaking, a little coarser grained.

Q. Which is a little coarser grained?

A. The second growth.

1169 Q. And you get more of the second-growth pine than you did twenty years ago, I take it?

A. I imagine so.

Q. I gathered from your direct examination, Mr. Jacob, that you are not informed as to the botanical classification of pine trees?

A. I would not want to be asked in that form at all.

Q. And your interest as a practical lumberman is in the quality of the lumber which you obtain and the use to which it is best adapted?

A. Yes, sir.

Q. And I take it further that when you furnish as western pine lumber which you have purchased either as pondosa pine or California white pine, and in your repeat orders use that term, you are undertaking to satisfy the desires of your customer as you understand them?

A. Yes, sir.

Q. So far as you are informed, your customer knows exactly what he is getting from you?

A. Yes, sir.

Mr. MATTHEW. That is all.

By Examiner SHEPPARD:

Q. Mr. Jacob, do I understand you to follow this procedure: You buy California white pine and then advertise it to your trade as western pine?

1170 A. We do not advertise it. We sell it as a western pine.

Q. You sell it as western pine; you do not advertise it?

A. No, sir.

Examiner SHEPPARD. All right.

Redirect examination by Mr. BURR:

Q. Now, the securing of a supply of northern white pine for resale by you is governed by the competitive situation, is it?

A. Prices are about alike of the woods, grade for grade. We do not handle all species of northern white pine in the selects, and so forth; we do not get into them in shops.

Q. I beg pardon?

A. We do not get into the shops or selects of northern white pine.

Q. Your testimony, then, related to what varieties of lumber when you testified about northern white pine, the common grades?

A. For exterior purposes, I think the question read.

Q. In other words, all your testimony goes to common grades of northern white pine so far as you referred to northern white pine, is that true?

A. Used generally in the building construction, not for sash and door work, remanufacturing.

1171 Q. You do remanufacturing work?

A. No; we do not. I am referring to that.

Q. Now, your testimony with regard to northern white pine has related only to common lumber?

A. To the building needs, principally.

Q. I beg pardon?

A. To the building needs, and shelving.

Q. You stated a moment ago about not referring to the select grades.

A. Well, it would not be used to remanufacture, for instance, for sash and doors.

Q. But you do not remanufacture?

A. Well, we would sell to the man who remanufactures, but we do not have that class of trade. We do not remanufacture.

Q. But you do sell to the millwork establishments, is that true?

A. Very little.

Q. Well, now, coming back again, what grades of northern white pine do you handle?

A. Well, we handle the 1, 2, and 3 and 4 and 5, common.

Q. Common, but not select grades?

A. Wait a minute.

Q. Go ahead.

A. We do not handle any shops, but we handle possibly the C and better white pine.

1172 Q. C and better white pine?

A. Yes. We do not handle any D, either.

Q. And when you say white pine you are still talking about northern white pine?

A. Yes, sir.

Q. Now, when you talk about not being able to get northern white pine, are you considering the question of competitive conditions for the resale of it in competition with other grades?

A. There have been times; yes.

Q. Is it a question of the price, not being able to get it at a price to compete, or is it not being able to get it at all?

A. Not at all times price, by any means.

Q. I beg pardon?

A. Not at all times price, by any means. It is impossible to get it.

Q. It is impossible to get it?

A. Yes, sir.

Q. Do you know whether or not Canadian white pine is coming into the market?

A. Yes, sir.

Q. Do you handle it?

A. Yes, sir.

Q. Is that or is it not virgin timber?

1173 A. I would say it was virgin timber.

Q. The lumber that you get from the Weierhaeusers in Minnesota, you say that is virgin timber?

A. I think so.

Q. How about Shevlin-Hixon? Is that virgin timber?
A. I think so.
Q. Is Shevlin-Hixon Canadian or in Minnesota?
A. I think they are Canadian.
Q. Well, now, how about the other white pines that you are getting, if any, from Minnesota? Is that or is it not virgin timber?
A. It would be hard for me to answer that definitely.
Q. Where it is virgin timber, the percentage of heart wood is very much larger than in the case of second growth, is it not?
A. Yes.
Mr. BURR. That is all.
Mr. MATTHEW. That is all.
(Witness excused.)

CHARLES H. HOHMEIER was thereupon called as a witness and, having been duly sworn, testified as follows:

Direct examination by Mr. BURR:

Q. What is your name?
1174 A. Charles A. Hohmeier.
Q. You are with the Charles A. Hohmeier Lumber Company?
A. Yes, sir.
Q. How long has that concern been in the retail lumber business?
A. About seven years.
Q. And how long have you been at the head of it? All that time?
A. About seven years.
Q. You are in business here in the city of Chicago, I take it?
A. Yes, sir.
Q. Do you run a millwork shop, mill and lumber?
A. Mill and lumber.
Q. Do you do any wholesaling?
A. No, sir.
Q. Now, referring to soft pines, including the western pines and the so-called Idaho white pine and the so-called California white pine and also the pondosa, will you state how large your annual purchases are, approximately? Just give me roughly.
A. About twelve cars.
Q. About twelve cars a year of the northern and western soft pines; is that true?
A. Yes, sir.
Q. Now, do you have on occasion orders calling for white
1175 pine without a further specification or description?
A. Yes, sir.
Q. Do you regard yourself as at liberty to furnish Idaho white pine under that description?
A. Yes, sir.
Q. Do you regard yourself at liberty to furnish California white pine under that description?
A. Yes, sir.

Q. How about pondosa pine?

A. Yes, sir.

Q. You would do that without necessarily explaining what you were furnishing, would you?

A. I would.

Mr. MATTHEW. Just a moment. I am going to object to leading the witness.

Mr. BURR. I am getting in a hurry, I guess.

Mr. MATTHEW. Suppose you strike the question and reframe it.

Mr. BURR. All right.

By Mr. BURR:

Q. Now, on occasion you consult with the customer, do you, about what kind of white pine he wants?

A. If the customer just orders white pine he is liable to get Idaho or northern or pondosa or even redwood, if he does not com-
1176 plain. We just furnish him anything and depend on him to complain, because we know he perhaps said white pine just because he wanted siding. It will happen in siding, I meant to say.

Q. Well, now, how large an amount of northern white pine do you get?

A. Oh, probably three out of the twelve per year.

Q. What is your largest purchase among those varieties of pines that we have referred to?

A. California mainly; California white pine.

Q. What section of California do you get that from?

A. I would not know so well. We buy it from a broker here in Chicago, and we depend on him to sell us California white pine when we order it, and we always get it.

Q. What is the nature of your factory business?

A. We make special sash and doors and sometimes trim that should be made of white pine.

Q. Now, what you testified with regard to your retail trade, is that true also of your sash and door trade that you sell retail?

A. Yes. If we had California white pine we made it of that. If we had Idaho we made it of that. With pondosa, we never felt at liberty to use that without taking that up, because it is not called white pine. Pondosa, I understand, is a new name for the old western pine.

Mr. BURR. I see. I think that is all, sir.

1177 Re-cross-examination by Mr. MATTHEW:

Q. Mr. Hohmeier, as I recall your testimony upon direct examination, you said that when you receive an order for white pine you sometimes feel free to furnish either California white pine or Idaho white pine or pondosa pine or even redwood?

A. Yes, sir.

Q. You further stated, I believe, that your practice in that respect is due to your understanding that your customer merely wants lumber for siding purposes?

A. Yes, sir.

Q. Now, when you furnish redwood upon an order for white pine, it is not your understanding, of course, that redwood is a white pine?

A. No, sir.

Q. You are merely trying to satisfy your customer's needs as you understand them?

A. Yes, sir.

Q. Do you use any northern white pine in the manufacture of sash and doors?

A. Yes, sir.

Q. How do you determine whether you will use northern white pine or some other wood in making up your sash and doors?

1178 A. Just depending on the supply on hand. If I have northern on hand I use that, and if I have California on hand I always feel free to use that.

Q. Do you use any Idaho white pine in the manufacture of sash and doors?

A. Yes, sir.

Q. That again depends on whether you have it on hand?

A. Yes, sir.

Q. Do you find California white pine makes up satisfactorily into sash and doors?

A. California white pine? I believe it does.

Q. Is your trade generally content to accept California white pine?

A. Yes; if they want it. If they come in and say, "We want something good and soft", of course, we always give them northern or Idaho. If we have not got it, we will say, "We will give you the substitutes we have got—California is fairly soft—and see if you can make that go." If they just call for white pine, we will give them California, Idaho, or northern.

Q. Generally your customers are satisfied with the California white pine that you furnish?

A. Yes; they are.

Mr. MATTHEW. That is all.

1179 Redirect examination by Mr. BURR:

Q. Well, now, this lumber for siding, is that exposed to the weather after use?

A. Yes.

Mr. BURR. That is all.

(Witness excused.)

STANLEY KWASIGROCH was thereupon called as a witness and, having been first duly sworn, testified as follows:

Direct examination by Mr. BURR:

Q. Your name, please?

A. Stanley Kwasigroch.

Q. Mr. Kwasigroch, you are with the Northwestern Lumber Company?

A. Yes, sir.

Q. Here in the city of Chicago?

A. Yes, sir.

Q. How long have you been with them?

A. Fourteen years.

Q. How long has that company been going?

A. Fifteen years.

Q. What is your position with the firm?

1180 A. Secretary and treasurer.

Q. You handle pine lumber, do you?

A. We have for the last three years.

Q. It is only three years that you have been handling any soft-pine lumber?

A. I mean we have been advertising and buying for the last three years.

Q. Your firm has been handling it during the entire fifteen-year period, I take it?

A. Yes; I have.

Q. You are in the retail line. Do you wholesale also?

A. We do not.

Q. Have you any milling establishment there?

A. No; we have not.

Q. Now, you have orders for white pine on occasion, do you?

A. White pine?

Q. Yes, sir.

A. We do not. It is very seldom we have any orders for white pine. Since I have been taking care of it here for three years, we have had practically in the last six years the same customers.

Q. The same customers?

A. Yes; and they already know what they are buying; it is western pine and pondosa pine. The only thing I handle is

1181 pondosa pine, and we handle about three or perhaps four cars a year.

Q. Three or four cars a year of what?

A. Of pondosa pine.

Q. Of pondosa. You also handle Idaho pine, do you?

A. We do not.

Q. Do you handle northern pine?

A. We do not.

Q. Do you handle sugar pine?

A. No; nothing, just pondosa.

Q. Just pondosa only?

A. Just pondosa only.

Q. Well, don't you have any orders for white pine?

A. No; we haven't any.

Q. Where do you get your pondosa from?
A. Bend, Oregon, Brooks-Scanlon.
Q. How do you invoice your sales?
A. We invoice our sales most of the time on this pondosa pine as western pine and occasionally pondosa pine.
Q. Do you ever call it western white pine?
A. We do not.
Q. Do you ever call it California white pine?
A. We do not.
Q. Do you ever have any calls for California white pine?
A. We have not had a call.
Mr. BURR. That is all.
1182 Mr. MATTHEW. No cross-examination.
(Witness excused.)

JOSEPH ROTHFIELD was thereupon called as a witness and, having been duly sworn, testified as follows:

Direct examination by Mr. BURR:

Q. Your name, please.
A. Joseph Rothfield.
Q. You are with the Charles Levy Lumber Company, are you?
A. Yes, sir.
Q. And located on Belmont Avenue, Chicago?
A. Right.
Q. How long have you been with that concern?
A. Four years.
Q. And how long has the concern been going?
A. Five years.
Q. And what is your position with the company?
A. Vice president.
Q. Now, what varieties of soft white pines do you carry, classing pondosa and California white pine as soft pines?
A. We carry pondosa only.
Q. I beg pardon?
A. We carry pondosa pine.
1183 Q. Well, do you buy some California white pine?
A. No, sir.
Q. Can you testify to that positively, sir?
A. Yes, sir.
Q. Do you have orders for white pine in your trade?
A. For the western soft pines.
Q. I beg pardon?
A. Soft pines.
Q. Do you have any orders for white pine?
A. No, sir. If we do, we go out and buy it once in a while from our friend Chalmers, here, or Mr. Jacob, if we get a call for California white pine.

Q. You do get calls for it?

A. Very rarely.

Q. Do you get any calls for white pine without specifying Idaho or California or any other classification, just white pine?

A. Well, the general requests are for soft pine. We do a building business only.

Q. What?

A. A building business only, for exterior purposes and shelving.

Q. Exterior purposes and shelving?

A. Yes.

Q. A building business only; is that right?

1184 A. That is, we furnish our lumber to the building trade.

Q. To the building trade, and only for shelving, aside from furnishing to the building trade?

A. That is it.

Q. Well, now, do the building trade, any of your customers, ask for white pine without any specification?

A. Yes, they do, and we give them pondosa.

Q. And you furnish them pondosa?

A. That is right.

Q. Where do you get your pondosa from?

A. Weierhaeuser.

Q. Do you get anything from California at all?

A. No, sir—wait, I will take that back. I think we bought one car or two cars from the Longbell Lumber Company, shipped from California.

Q. That would be California white pine?

A. Yes; that would be California white pine.

Q. Would you feel free to furnish that California white pine if you had it in stock to a purchaser who asked for white pine?

A. Yes, sir.

Q. Do you handle any northern white pine at all?

A. No, sir.

Mr. BURR. That is all.

1185 Cross-examination by Mr. MATTHEW:

Q. Mr. Rothfield, I understood you to say in the early part of your direct testimony that you practically never receive any orders for white pine without any qualifying term. Was I wrong in so understanding your testimony?

A. I did not get that, sir.

Examiner SHEPPARD. Read the question.

(Question read.)

By the WITNESS:

A. By qualifying term you mean northern white pine or western pine?

By Mr. MATTHEW:

Q. Yes; that is, your customers do not order white pine?

A. Occasionally they do. They say white pine. Most of the time they say soft pine.

Q. Now, when you receive an order for soft pine what do you supply?

A. Pondosa.

Q. And this is largely pondosa lumber which you have purchased from the Weierhaeuser interests?

A. Yes.

Q. Now, when you receive an order for white pine what do you furnish?

A. Pondosa.

1186 Q. And I think you said at one stage of your testimony that you sometimes purchase pine from Mr. Jacob's company?

A. Where we get a special order specifying California white pine of a clear grade.

Q. Why do you feel free to furnish pondosa pine upon an order for white pine?

A. It generally fits the purpose for which it is used, stepping and facing.

Q. Exterior steps, do you mean?

A. Yes; exterior steps on the back porches.

Q. Does the term "white pine" in this market mean any particular variety of white pine?

A. Well, in the building business, which is the only thing that I am acquainted with, it does not appear that it does.

Q. That is, you might furnish upon such an order either northern white or Idaho white?

Mr. BURR. He does not deal in northern white.

The WITNESS. We do not handle northern white.

Mr. MATTHEW. I think he said in some instances he would go out and purchase northern white.

The WITNESS. No; I did not say northern; I said California clear stock.

By Mr. MATTHEW:

Q. You never have any northern stock?

1187 A. No.

Q. The term "white pine" in this trade, so far as you are familiar with it, would include the pondosa pine?

A. That is right.

Mr. MATTHEW. That is all.

(Witness excused.)

Mr. BURR. I move to adjourn until two o'clock.

And thereupon a recess was had until two o'clock p.m. of the same day, Friday, October 18th, 1929.

1188 Before the Federal Trade Commission

In the matter of White Pine cases

Docket Nos. 1620–1669

CHICAGO, *October 18th, 1929.*

Met pursuant to recess, at 2 o'clock p.m.

Before William W. Sheppard, examiner.

Appearances:

Eugene W. Burr (Washington, D.C.) for the Federal Trade Commission.

Allan C. Matthew and Carl I. Wheat, attorneys for the respondents.

1189 PROCEEDINGS

J. A. BISHOP was thereupon called as a witness and, having been duly sworn, testified as follows:

Direct examination by Mr. BURR:

Q. What is your name, please?
A. J. A. Bishop.
Q. You are a retailer of lumber, are you, Mr. Bishop?
A Yes, sir.
Q. What firm name?
A. Bishop Lumber.
Q. Are you at the head of that firm?
A. No, sir.
Q. What position do you occupy?
A. Vice president.
Q. How long have you held that position?
A. About three years.
Q. How long has the Bishop Lumber Company been in existence?
A. About ten years.
Q. What types of lumber do you handle, Mr. Bishop?
A. General construction lumber.
Q. And what varieties of pine do you use?
A. What varieties of pine?
1190 Q. Yes. What kinds of pine do you use?
A. Well, we have Norway pine and a white pine.
Q. What kind of white pine do you carry?
A. Northern white pine, sugar pine, western pine.
Q. Do you carry California white pine?
A. Yes.
Q. Do you carry pondosa pine?
A. Yes, sir.
Q. You carry northern pine, you say?
A. Yes, sir.

Q. Do you carry Idaho white?
A. Yes, sir.
Q. Do you receive orders for white pine occasionally, Mr. Bishop?
A. For white pine?
Q. Yes.
A. Yes, sir.
Q. And which of those varieties of lumber do you furnish when you get orders for white pine?
A. They usually specify whether it is a soft pine or a hard pine.
Q. When you get orders for a soft pine, what do you furnish?
A. An Idaho or sugar pine or a northern white pine.
Q. On orders for white pine do you ever furnish California white pine?

1191 A. On orders for California white pine?
Q. No; on orders for white pine do you ever furnish California white pine?
A. Well, if we know the type of work, or it is specified. Ordinarily we do not.
Q. I did not get your answer.
A. In the case of California being substituted for soft pines, we would not do that. There is a difference between the California and Idaho in that respect.
Q. You would substitute Idaho, would you?
A. We would not figure that Idaho was a substitution. We would figure if they wanted a white pine they would probably use a soft pine.
Q. Would you figure that you could furnish sugar pine under an order for a white pine?
A. Yes.
Q. Then, you would furnish interchangeably, according to the condition of your stock, an Idaho white pine, a sugar pine, or a northern white pine; is that true?
A. No; we do not do that, because there is a difference in price and a difference, probably, in the grade. It would probably be indicated by the grade and the nature of the work that was required for the lumber.
Q. Well, do you regard all three of those as being white pine?

1192 A. The sugar pine?
Q. The sugar pine, Idaho white, and northern?
A. Yes; I would.
Q. Now, then, why would you refrain from supply California white pine under such an order?
A. Well, it is not the species of wood that they would require for that order. It is a harder pine, I think.
Q. It is a harder pine?
A. Yes.
Q. How about pondosa? Isn't that also a harder pine?

A. That is probably also the same species.

Q. Which variety of pine do you prefer for exterior use?

A. Well, I do not know. That is probably a personal opinion. It is a matter of taste, I imagine, for interior use.

Q. For exterior use, now. Did I say interior?

A. I thought you did.

Q. Now, for exterior purposes which variety of pine do you regard as preferable?

A. Well, personally, I would think that the Idaho or the northern white pine would be. The northern white pine would be probably the best.

Q. Why?

A. Well, I figure it is a species of wood that resists the general weather conditions better than the others.

Q. Have you had any experience with California white pine
1193 or pondosa pine?

A. Not directly; only in a merchandising way.

Q. As regards its durability?

A. None; only in a merchandising way.

Q. What is the reputation of northern white pine in this community here among retailers and architects for durability for exterior purposes?

Mr. MATTHEW. You have not qualified him as to architects.

Mr. BURR. Well, I will cut out architects for the present purpose.

By Mr. BURR:

Q. What is the reputation for durability where exterior uses are to be made of the lumber, of northern white pine, among the retailers?

A. It is supposedly very good.

Q. What is the reputation, would you say, of Idaho white pine for durability where exposed to the weather?

A. I imagine that they are very similar in species, and therefore they are similar in their possibilities of resisting wear and weather and one thing and another. Take Thinkwell——

Mr. MATTHEW. I do not believe the witness has answered the question.

1194 Mr. BURR. I asked as to the reputation, and you gave your personal opinion, I believe.

Q. Now, what is the reputation of Idaho white pine in this community among retailers? Do you know the reputation of Idaho white pine among retailers for durability where exposed to the weather?

A. It has the reputation of being very good.

Q. What is the reputation of California white pine where exposed to the weather?

A. I do not know.

By Examiner SHEPPARD:

Q. Mr. Bishop, do I gather from what you have said that you consider the California white pine and the pondosa pine a harder wood than the old-time northern white pine or the Idaho pine?

A. Yes, sir.

Examiner SHEPPARD. All right.

By Mr. BURR:

Q. For what purposes do you recommend California white pine when you are asked for your best judgment as to what ought to be purchased?

A. Well, I do not know. It depends on the type of building and depends on where they are going to use it and what kind of use they are going to put it to. There may be possibilities where it could be used as a substitute or used to an advantage, or something
1195 of that kind. I do not know. California white pine may be used to an advantage where I would not know where it was best to use it. I could not answer.

Mr. BURR. That is all.

Cross-examination by Mr. MATTHEW:

Q. What proportion of your pine lumber of the species or names concerning which you have testified is represented by the northern white pine?

A. I did not quite understand your question.

Examiner SHEPPARD. Read the question.

(Question read.)

A. (By the witness.) I could not answer that question.

By Mr. MATTHEW:

Q. Now, do you carry relatively a large amount of northern white pine, or are your dealings mostly in some other white pine?

A. Well, I would not say so. I think we carry a fairly average stock of the northern white pine and the Idaho white pine.

Q. Do you sell as much northern white pine as Idaho white pine?

A. Well, year in and year out, I don't know how I would be able to answer that.

1196 Q. You cannot tell which would preponderate as far as volume of sales is concerned?

A. I think it is just a guess; I would say probably the Idaho was a little in the major part of it.

Q. Do you sell more Idaho white pine than California white pine?

A. No; I would not say so.

Q. Do you think you sell more California white?

A. Than Idaho?

Q. Yes.

A. Yes; I think so.

Q. Now, are you including in California white pine the lumber that you receive under the name of pondosa pine?

A. No; I am not. The pondosa I was not including in that.

Q. Well, do you sell more pondosa pine than Idaho white pine?
A. Yes; I think so.
Q. Then you sell more pondosa than California white?
A. Yes, sir.
Q. Do you purchase your lumber supplies to any extent from the Weierhaeuser lumber interests?
A. To any extent?
Q. Yes.
A. I have bought lumber from the Weierhaeuser people, although not regularly.

1197 Q. Do you buy the larger part of your northern white pine stocks from the Weierhaeuser companies?
A. No.
Q. How about the Idaho white pine?
A. I have bought some from the Weierhaeuser people.
Q. And the pondosa pine?
A. Yes; I have bought pondosa from them.
Mr. MATTHEW. That is all.

Redirect examination by Mr. BURR:

Q. Are the Weierhaeuser companies your principal source of supply?
A. No.
Q. Where does your California white pine come from?
A. Well, it comes from California, and it comes from, I think from Oregon; some of it comes from Oregon and some of it from Washington. Of course, your stuff from Oregon may be classified as the pondosa. If it is in California, it may be the California. I could not answer that.
Q. Do you distinguish between pondosa and California white pine?
A. Do I distinguish between pondosa and California?
Q. Yes.
A. Yes.

1198 Q. Well, now, are you sure you get any so-called California white pine from the State of Washington?
A. No; I would not say from the State of Washington, but I said from Oregon.
Q. Yes. I think you testified you got some from Washington. You are referring to pondosa, then, are you not?
A. Yes; I was including Washington in there as a possibility.
Q. Do you buy that same type of lumber from New Mexico or Arizona?
A. I could not answer that.
Q. Do you know what concern you deal with in California for the California white pine?
A. I have bought some from the Red River.
Mr. BURR. I see. That is all.
(Witness excused.)

CHESTER H. WOLCOTT was thereupon called as a witness and, having been duly sworn, testified as follows:

Direct examination by Mr. BURR:

Q. Your name, please?

A. Chester H. Wolcott.

Q. Mr. Wolcott, you are an architect here in the city of Chicago?

A. Yes, sir.

1199 Q. How long have you been in that profession?

A. Eighteen years.

Q. What is the name of your concern?

A. Under my own name.

Q. And you have been practicing under your own name for that entire period, have you?

A. I have had partnerships with two others.

Q. I see. Now, your line of work is residences or business blocks, or what is it?

A. About ninety per cent residences.

Q. Do you have occasion to specify for exterior purposes any variety of pine on occasion?

A. Yes, sir.

Q. What do you specify?

A. White pine for sash and doors; exterior work usually.

Q. Do you specify it in the term "white pine" or do you specify in a more restricted sense or language?

A. Lately in a more restricted sense, because in our work we find great confusion as to what white pine is.

Q. Will you explain that, please?

A. There are many varieties of so-called "white pine", as I understand it from our mills.

Q. Now, what specifications besides the term "white pine" do you put into your specification column?

A. We have been using the words "western pine."

1200 Q. I beg pardon?

A. Western pine.

Q. You have been, you say?

A. Yes.

Q. You have been of late, you say?

A. Yes.

Q. You have been using the specification "western pine", is that right, for exterior trim?

A. Yes.

Examiner SHEPPARD. That is, when you want white pine?

The WITNESS. Yes.

By Mr. BURR:

Q. Now, what varieties of pine would you regard as a compliance with your specification of western pine?

A. A pine of a good color and grain, free from knots, and so forth.

Q. You go ahead and specify, in addition to the words "western pine" you then go ahead and specify as you just answered, do you?

A. Yes; something like that.

Q. Well, now, what variety of wood do you regard—I am not now talking about the grade or the freedom from knots—what variety of wood do you regard as a compliance with your specification of western pine?

A. I do not know quite how to answer that question; I do
1201 not quite get you.

Q. Well, do you regard Idaho white pine as a compliance with your specification?

A. I would; yes, sir.

Q. You do not use the word "white" in connection with your specification; is that true?

A. I have not recently.

Q. You cut out the use of the word "white" and you now specify "western pine", then you go ahead and specify the grade?

A. Yes.

Q. And the condition it should be in?

A. Yes. We have samples submitted.

Q. Now, then, if you got northern white pine, would you regard that as a compliance?

A. Yes, sir.

Q. Even though it does not grow in the West?

A. Yes.

Q. How about California white pine? Would that be a compliance?

A. I am not very familiar with that.

Q. Well, if you were told that California white pine had been delivered on the job and that it, in appearance and freedom from knots and the apparent grade, and so forth, was apparently satisfactory, would you accept it as being in compliance with your specification?

A. Yes; I would.

1202 Q. How about Idaho white pine?

A. The same applies to that.

Q. How about California sugar pine?

A. I do not know that.

Q. You do not know that?

A. No, sir.

Q. How about pondosa pine? Would that comply with your specifications?

A. Not to the extent that the others would; no.

Q. Now, do you regard the California white pine and the Idaho white pine and the northern white pine as all being white pines?

A. I do not know the California variety.

Q. Do you regard the other two as genuine white pines?

Mr. MATTHEW. You had better qualify him on that.

Mr. BURR. No; I do not think he needs qualification. I am trying to get his view.

The WITNESS. I would say that the northern white pine in my practice is regarded as the true white pine.

By Mr. BURR:

Q. Well, now, I think when you first began your testimony you testified that your requirements for exterior trim were a white pine; is that correct?

A. Yes. Not for all buildings, but that is the typical timber; yes.

1203 Q. That is the preferable type, is it, in your judgment?

A. Yes.

Q. And you have ceased, as I understand your testimony, to use white pine when you desire white pine for exterior trim and have substituted the term "western pine" for this exterior work; is that true?

A. Yes.

Q. Now, what experience led you to make that change, if you can tell?

A. Because we could not get northern pine.

Q. You could not get northern pine?

A. No.

Q. Do you realize that there is a difference in price between northern pine and the various varieties of western pine?

A. I am not familiar with that.

Q. Now, when you say that you could not get the northern pine, are you referring to prohibitive price conditions as regards the northern white pine?

A. Well, my experience has not been very wide in this matter. We deal through Chicago mills and cabinet shops, and after being told several times that the northern white pine was very difficult to get, we said, "What have you?"

Q. Yes.

A. That is what led to the expression "western pine."

Q. You referred awhile ago to the confused state of the

1204 trade as regards these western pines. Will you explain that a little bit?

A. The confusion is all in my own mind, perhaps.

Q. Well, explain that, if you will.

A. I cannot tell the difference, neither can many of the men in my office, from a small sample of wood, whether it is northern or what I call western.

Q. Yes.

A. I am frankly unable to tell at times the difference.

Examiner SHEPPARD. Does that arrive from the contractors?

The WITNESS. Yes; from the mills.

By Mr. BURR:

Q. Now, what is known as or given a name, including the word "white", in view of the confusion that you refer to, would you regard that as a genuine white pine if the word "white" was in the trade term?

Mr. MATTHEW. I object to that.

Examiner SHEPPARD. That is a conclusion I have got to draw. I do not care to have him testify to that.

Mr. BURR. All right. That is all.

Examiner SHEPPARD. Cross-examine.

Cross-examination by Mr. MATTHEW:

1205 Q. Mr. Wolcott, I take it that as an architect your primary interest is in the quality and utility of the woods which will be furnished for particular work, and that you are not especially interested in the botanical classification of the species of trees?

A. Very true; yes.

Q. Quality and utility are important in your mind?

A. Yes; and effects, grain effects.

Q. That would be included in the word "quality", I take it?

A. Yes; I presume it would.

Mr. MATTHEW. That is all.

(Witness excused.)

T. J. CURLEY was thereupon called as a witness and, having been duly sworn, testified as follows:

Direct examination by Mr. BURR:

Q. Mr. Curley, you are with the William C. Schreiber Lumber Company?

A. Yes, sir.

Q. That is here in Chicago?

A. Yes, sir.

Q. What is your position with that firm?

A. President.

Q. How long have you been in that position?

1206 A. Five years.

Examiner SHEPPARD. Are they retailers or wholesalers?

The WITNESS. Retailers and wholesalers.

By Mr. BURR:

Q. You do not do any millwork, do you?

A. Commercial planing.

Q. Now, what varieties of soft white pines do you deal in?

A. Soft white pines?

Q. Soft pines, I should say—not white.

A. Northern white pine, Idaho white pine, sugar white pine.

Q. Do you deal in California white pine?

A. Yes.

Q. Do you deal in pondosa?
A. Yes.
Q. Do you regard those as soft white pines, or are they a little harder?
A. A little harder.
Q. You do not regard them as being in the same class with the hard southern pines of the South, or do you?
A. No.
Q. Now, do you have on occasion, Mr. Curley, orders calling for white pine without there being more descriptive than merely that term?

A. We do; but we try to understand our customer's require-
1207 ments before we attempt to fill the order.

Q. Well, do you ever on occasion fill an order for white pine with California white pine?
A. Not without calling it California white pine.
Q. Yes; but would you, if you got an order for white pine, invoice it to them as California white pine and go ahead and furnish it?
A. Invoice it as California white pine and furnish California white pine; yes.
Q. You would do that, would you?
A. Yes.
Q. Which varieties of wood, when your opinion is asked, do you recommend for exterior trim?
A. Northern white pine and Idaho white pine.
Q. Don't you recommend California white pine for that work?
A. As a price proposition; yes.
Q. What do you mean by that?
A. That it is a lower priced wood than we consider Idaho or northern white pine.
Q. Do you regard it as being equally serviceable for exterior purposes?
A. Not in my opinion.
Q. Which do you regard as the very best variety of pine for exterior trim?

A. I would place on an equal basis the Idaho white pine and
1208 the northern white pine.

Q. Do you deal in any sugar pine?
A. Yes.
Q. How do you regard that for exterior trim as to durability, if you use it for that purpose?
A. Sugar pine for the exterior trim—I do not recommend it on account of the sugar that is in it, which we deem unsatisfactory for that purpose entirely.
Q. Do you sell any variety of lumber for pattern stock?
A. Yes; we do.
Q. What do you recommend for that where your opinion is asked?
A. Northern white pine, Idaho white pine, or sugar pine.

Q. Do you ever sell the California white pine for that purpose?
A. No.
Q. Where do you get your California white pine from?
A. The firm or place?
Q. Yes; if you do not mind naming them.
A. The St. Cloud River Lumber Company, the Algoma Lumber Company, and the Madeira Sugar Pine Company are our principal sources of supply.
Q. Of the California white pine?
A. Of the California white pine; yes.
Q. Now, the Maderia Lumber Company—they do not call it California white pine, do they?
A. They call it por doso pine now.
1209 Q. They call it pondosa pine now, do they?
A. Yes.
Q. Do you get your sugar pine from there?
A. Some.
Q. Where do you get the rest of it from?
Examiner SHEPPARD. Are they respondents?
Mr. BURR. Who?
Examiner SHEPPARD. The one you just mentioned.
Mr. BURR. The Sugar Pine Company?
Examiner SHEPPARD. Yes.
Mr. BURR. No, sir; they are not.

By the WITNESS:

A. The Owen Oregon Lumber Company; we have had some from them, at Medford, Oregon.

By Mr. BURR:

Q. You have had some sugar pine from there?
A. Yes, sir.
Q. Now, as to durability for exterior use, do you distinguish between pondosa pine and California white?
A. For exterior purposes? The only distinction I make between the two woods is that I consider the California white pine a softer wood than the so-called pondosa or western pine.
Q. Do you happen to know whether they are the same variety of tree, or don't you pay any attention to that?
A. Except only as to the texture.
1210 Q. What is the reputation of northern white pine for durability where exposed to the weather in this community?
A. Very good.
Q. What is the reputation of Idaho where exposed to the weather?
A. Very good.
Q. Do you know the reputation of California white pine where exposed to the weather?
A. For ordinary purposes, used for ordinary purposes, that is all, as a price proposition.

Q. What do you mean by "as a price proposition"?

A. It is a lower-priced item in the Chicago market for selling to the consuming trade.

Q. Do you find that a good many of your customers are building for speculative purposes for resale immediately?

A. At times.

Q. Where there is competition between the genuine white pines and California white pine, would the price proposition be particularly attractive to that class of trade? Is that your experience?

A. To the factory trade it would be.

Q. What do you mean by factory trade?

A. The cabinet men and sash and door factories can buy it at considerably less than they can the northern or Idaho white pine.

1211 Q. Well, now, when you say that California white pine is used for exterior purposes as a matter of price, what do you mean?

A. I mean that there is no restriction cast around the item of wood itself, and an architect in specifying as a rule cannot determine the difference, and that the wood is substituted for white pine. The reason for it being substituted is the lower price, lower cost to the sash and door men or to the interior men.

Q. And the architect cannot tell the difference after the substitution; is that true?

A. As a general rule.

Q. Do you think there is much of that substitution where there is a specification for white pine?

Mr. MATTHEW. If he knows.

By Mr. BURR:

Q. If you know.

A. Do I think there is much substitution?

Q. Yes.

A. About ninety-five percent.

Q. You think in about ninety-five percent of the cases the architect does not get genuine white pine?

A. Yes; where he specifies white pine only.

Examiner SHEPPARD. You mean the lumber sellers, retail and wholesale, substitute the California white pine for a specification calling for genuine white pine or white pine?

1212 A. I do not mean the lumber sellers; I mean the factory manufacturers that remanufacture this into sash and doors and exterior trim. It is commonly known among the sash and door men if a specification comes in for white pine they will furnish California white pine or so-called western pine or pondosa pine, without attempting to get the genuine northern white pine or Idaho white pine.

By Mr. BURR:

Q. Is California white pine as durable for exterior trim, in your judgment, as the Idaho or the northern white pine?

A. No.

Q. Do you find that you are able to compete with genuine white-pine materials when you come up against competition where there is a substitution of California white pine for genuine white-pine specifications?

A. Do we find that we are able to compete?

Q. Yes.

A. With genuine white pine?

Q. Yes.

A. We do not attempt to. We try to determine which particular wood is acceptable.

Q. Is acceptable?

A. Is acceptable; and we handle the varieties of woods that you mentioned.

1213 Q. Then on a specification for a white pine, if you found that they were going to permit California white-pine bids to be considered, you would bid on California white pine, too, would you?

A. We would specify California white pine and bid on California white pine.

Mr. BURR. You may cross-examine.

Cross-examination by Mr. MATTHEW:

Q. As I understand it, Mr. Curley, when you receive an order for white pine you ordinarily furnish either northern white or Idaho white pine, but you never will furnish California white pine upon such an order without first ascertaining whether it will be acceptable to your customer?

Mr. BURR. He did not so testify.

Mr. MATTHEW. I understood him so to testify.

Mr. BURR. No.

By Mr. MATTHEW:

Q. I am asking you now.

A. Not without verifying the wood.

Q. Let me get this, then. You will, in response to certain orders for white pine, furnish either northern white pine or Idaho white pine?

A. Yes.

1214 Q. You feel free to furnish either of those two species of lumber in response to an order for white pine?

A. Yes.

Q. Now, you stated that in some instances you will furnish California white pine upon an order for white pine?

A. Only after finding out if California white pine is acceptable.

Q. Yes. Then I am right in understanding that you never furnish California white pine upon an order for white pine without first ascertaining whether that will be acceptable to your customer?

A. Right.

Q. And you invoice the California white pine to him as such—that is, as California white pine?

A. Yes.

Q. And you undertake to make it clear to your customer just what he is getting in each instance?

A. Yes.

Q. Do you distinguish between the durability of heartwood and sapwood, respectively?

A. Yes; in my opinion the heartwood is more lasting than the sapwood under certain conditions.

Q. Well, when exposed to the weather on the exterior of a building, without paint, it is your understanding that the heartwood is far more durable than the sapwood?

1215 A. Than the sapwood.

Q. And that is true with respect to all these several varieties of pine, is it not?

A. Yes.

Q. Do you obtain any material quantity of Idaho white pine in the shop grades?

A. From seventy-five to a hundred thousand feet of lumber on hand, according to the demand of the trade here in the Chicago territory, in our business.

Q. You are talking about your own stocks?

A. I am talking about our own stocks.

Q. This is Idaho white pine stock?

A. Idaho white pine.

Q. In the shop grades?

A. In the shop and better grades.

Q. Shop and better?

A. Probably more than that with shop and better; it would probably be one hundred and fifty thousand feet.

Q. What about the shop alone?

A. Shop alone, about seventy-five thousand feet.

Q. And how does that compare with your stock of northern white pine in the shop grades?

A. It is interchangeable with our northern stock. We do not make any distinction.

Q. When you answered my inquiry, then, as to your stock of

1216 Idaho white pine, you included the northern white?

A. I tried to eliminate some of it. That would probably increase that about thirty thousand feet.

Q. As I get it now, then, about thirty thousand feet of your stock would be northern white pine and the remainder of seventy-five thousand would be the Idaho white pine?

A. Idaho white pine.

Q. In the shop grades?

A. In the shop grades.

Q. Can you tell us approximately the amount of your stock in California white pine in the shop grades?

A. About two hundred thousand feet.

Q. How about pondosa?

A. We class all of our California and western pines as pondosa, being principally California white pine, buying it for texture.

Q. Then your two hundred thousand feet figure represents the combined stocks of California white pine and pondosa pine?

A. Yes.

Q. I understand that California white pine predominates in that figure?

A. Yes; in shop grades I am talking about.

Q. I was talking about the shop grades; yes. I am not sure whether you stated on your direct examination whether you do any millwork or not.

1217 A. I stated planing-mill work, which means surfacing, and running the pattern.

Q. Now, you referred to the substitution of the California white and pondosa pine by the manufacturers for white pine, and as I recall the substance of your testimony you said there was very extensive substitution of California white and pondosa pines for white pine?

A. By manufacturers I meant the sash and door plants around Chicago. Yes; I did.

Q. Now, by that you meant, did you not, that the sash and door manufacturing plants around Chicago used predominantly the California white and pondosa pines in their manufacturing operations?

A. Yes.

A. And do they distinguish between California white pine and pondosa pine, either in their manufacturing operations or in furnishing their product to their customers?

A. I do not know. I could not answer that question except in this way, that if they were to call us for a price on that lumber they would want to know whether that was California white pine or so-called pondosa pine?

Q. What is your understanding as to the reason for such an inquiry?

A. California white pine being of a softer texture than the ordinary pondosa pine.

1218 Q. For that reason it is regarded as somewhat more satisfactory for shop use?

A. Than the pondosa pine, as I understand, the pondosa coming from the State of Washington and northern Oregon and Montana and some parts of Idaho.

Q. What is the basis for your statement that 95 percent of the orders for white pine sash and doors are filled by sash and doors manufactured from California white or pondosa pine? Is that just a general impression?

A. A general impression.

Q. It is just a general impression?
A. Just a general impression.
Q. Do you know why northern white pine is not used more extensively by the sash and door manufacturers in the Chicago district?
A. The price.
Q. Is it for that same reason that Idaho white pine is not used more extensively?
A. The price, the same reason.
Q. It is not a matter of the name of the wood, then, but it is a matter of price?
A. The price; yes.
Mr. MATTHEW. That is all.
(Witness excused.)

1219 RICHARD POWERS was thereupon called as a witness and, having been duly sworn, testified as follows:

Direct examination by Mr. BURR:

Q. Please state your name.
A. Richard Powers.
Q. Mr. Powers, you are an architect, are you, sir, in the city of Chicago?
A. Yes.
Q. How long have you been in that profession?
A. 19 years.
Q. During that entire time in this city?
A. For the last four years in this city.
Q. Prior to that time where were you?
A. In Boston, Massachusetts.
Q. What is the reputation of white pine for durability where exposed to the weather, Mr. Powers?
A. We have always considered it to be very good.
Q. Is there any other variety of white pine that you would regard as equally or practically equally good for exterior trim?
A. Any other variety? The only thing I said was just generally white pine; that is, we regard that exteriorly as a very good wood to use.
Q. Well, do you regard Idaho white pine as being in the
1220 same class as the northern white?
A. Personally, I cannot answer that, because the end of my work has been chiefly that affecting design, and the matter of specifications I have left usually to a subordinate to handle. But we have never specified any particular brand of white pine. The specifications would read "white pine."
Q. If you learned that sugar pine had been delivered on the job when you specified white pine for exterior purposes, would you regard that as a compliance, provided the grade, and so forth, were satisfactory?
A. I do not believe I would be qualified personally to pass on that. I would want to go to someone with more authority and ask them.

Q. Someone outside of the firm, you mean?

A. Someone outside of the firm who I considered to be an authority on matters of that kind.

Q. What if you found that California white pine had been delivered on the job? Would you regard that, if the grade, and so forth, were up to your specifications—would you regard that as a compliance?

A. I think I would feel just exactly the same way in regard to that—that I am really not in a position to know. The only thing we usually require is good, straight-grained wood, free from knots, sap, streaks, or things of that sort.

Q. But you do require white pine, do you?

1221 A. We call for white pine, we specify white pine—that is, for certain things; yes.

Mr. MATTHEW. Pardon me, but it seems to me as long as the witness says he does not deal himself with the specifications and is not familiar with these various woods, it would be hardly a proper foundation for these other questions. I object on that ground. I have not interrupted, but I do not see how the witness can answer this latter question when he says specifically he has not dealt himself with the specifications and is not qualified to pass upon the several points.

Mr. BURR. If the examiner please, I will ask him a question or two more.

By Mr. BURR:

Q. What is your position with your organization there? You are at the head of it, are you?

A. Yes; I am at the head of it.

Q. And the specification writer acts in accordance with the policies which you lay down, does he?

A. That is correct.

Q. And the matter of the specification of white pine for exterior use is a policy of your own, is it not, rather than his?

A. Correct; yes.

Q. Now, then, how would you ascertain whether any given

1222 variety of lumber had actually been supplied when you specified northern white pine?

A. Well, I personally do not know whether I would be able to tell whether it was northern white pine or not.

Q. Well, have you no one in your organization who could tell?

A. Yes; I assume they could tell, but I think in a great many cases it is difficult to distinguish as between certain brands of white pine.

Q. Have you, as a matter of fact, a man who is a trained technologist in wood matters in your organization?

A. Not especially trained in wood matters; no.

Q. Well, do you or do you not, as a matter of policy, rely upon the character and standing of your contractor with regard to the variety of pine wood that is delivered on the ground?

A. We rely chiefly upon the mills with which we do business, which are usually a selected list. I think probably, if I may be permitted to explain, the nature of the work, which is a high-class residential work——

Q. Yes.

A. Doing that sort of work, you naturally restrict yourself to certain different mills and contractors whom you know can deliver the quality of work you want, and very often in the case of specifications to which we are referring now I say "white pine",
1223 knowing that this mill, whichever mill is doing it, will supply the best thing they have. That is my point.

Q. Well, now, when your office inspects the lumber that is actually delivered, if the appearance is good and the freedom from knots and the grade are satisfactory, do you, as a matter of general policy, check up the variety through someone outside of your organization?

A. Not as a matter of general policy.

Q. In other words, if the lumber is satisfactory in appearance under your specification, you rely upon the contractor's fidelity to your specification, do you?

A. That is correct.

Q. If someone outside of the organization were to be called in to identify the lumber, would you or would you not have it called to your attention?

A. Would you please repeat that?

Mr. BURR. Read the question.

(Question read.)

A. Yes; I would. (By the witness.)

By Mr. BURR:

Q. How many times during the past year have you gotten help from outside to find out whether the exterior pine material was in accordance with your specification for white pine?

A. I have not had that called to my attention in my experi-
1224 ence in Chicago.

Q. Not once?

A. Not once.

Mr. BURR. That is all. You may cross-examine.

Cross-examination by Mr. MATTHEW:

Q. I take it, Mr. Powers, that you are not particularly informed as to the botanical classification of the several species of pine trees?

A. I am not particularly well informed as to that; no.

Q. You are not advised as to the scope of the so-called white pine group or the scope of the yellow-pine group, or others?

A. Very vaguely, very vaguely.

Q. Your interest as an architect, I take it, is in the quality and utility and appearance of the material which is to be furnished for your work?

A. That is correct; yes, sir.

Q. Now, you have had no personal experience with sugar pine for exterior purposes?

A. Not here in Chicago; no.

Q. Have you had experience with sugar pine elsewhere?

A. In practice in the East we used to call—if we had a par-
1225 ticularly fussy piece of exterior work involving carving we tried to obtain what we called sugar pine: I do not know whether the name was an accurate one, but it was considered to be in that office a very good material to employ for such a purpose.

Q. That represents your principal experience with sugar pine?

A. Yes.

Q. Have you had any particular experience with Idaho white pine?

A. With Idaho white pine?

Q. Yes.

A. Not that I am aware of; no.

Q. Do you know whether or not the northern white pine achieved its just repute for durability largely because of the fact that it was a heartwood that was commonly utilized for exterior purposes?

A. Well, I really do not believe I am sufficiently posted to answer that question.

Q. You do not personally, then, distinguish between durability of heartwood and sapwood?

A. As a general proposition; yes.

Q. Generally you would recognize that heartwood is the more durable of the two?

A. Yes.

Mr. MATTHEW. That is all.

(Witness excused.)

1226 FRED L. LAMMERS was thereupon called as a witness and, having been duly sworn, testified as follows:

Direct examination by Mr. BURR:

Q. Your name, please?

A. Fred L. Lammers.

Q. Mr. Lammers, you are engaged in what line of business, sir?

A. In the sash and door and interior trim business.

Q. And how long have you been so engaged?

A. Twenty-five years the first of next February.

Q. And you are located where?

A. Bayport, Minnesota.

Q. And you have been there during your entire experience, have you?

A. Yes, sir.

Q. Now, have you had experience in the forest at all, Mr. Lammers?

A. Part of four years.

Q. Where was that?

A. In northern Wisconsin and Minnesota.

Q. Just what were you doing in the forest? What was your line of duty?

A. I was clerking and helping oversee logging operations there for my father.

Q. What other practical experience in the forest have you had?

1227 A. I have operated some small portable mills myself, going around also through the northern part of Minnesota and Wisconsin and buying small mill stocks.

Q. Now, in your mill what class of finish are you making—exterior or interior, or both?

A. We make both, but lately our product has been largely higher-class fine interior work in one branch of our business, and in the other business exterior trim business put up in packages.

Q. What do you use for your exterior trim?

A. That will depend entirely upon the specifications of the architects for whom we are doing work. In our locality a large part of it is specified as white pine, being close to the white pine mills.

Q. It is specified to you as white pine?

A. As white pine.

Q. Under those circumstances what do you furnish?

A. In these finer jobs we furnish white pine. We are quite familiar with the architects, knowing their specifications, and when they specify white pine they mean northern white pine. If we are in doubt, we see them about it and furnish white pine, if that is called for.

Q. Now, then, for your exterior work how much California white pine do you use in the course of an average year?

A. Last year we cut approximately three million feet of

1228 California pine.

Q. From whom do you get that?

A. We buy that in the Klamath Falls district from sawmills companies, Billock & Bay, Ewauna Box, Red River Lumber Company, and we buy a lot from wholesalers, coming from different firms out there.

Q. Now, do you regard the California white pine bought from the sections that you do business with as a satisfactory wood for interior purposes?

A. For interior purposes? Yes, sir.

Q. Do you regard it as satisfactory for exterior purposes?

A. We do not furnish it only just when we find that the competition demands that we furnish that in competition with other factories.

Q. Will you be kind enough to explain what you mean—explain the circumstances more fully?

A. If we figure a plan from an architect that we do not know who is specifying white pine, if we find that he does not know what white pine is and has just specified "white pine", we go to

him and ask him if white pine is satisfactory; we ask him if pine is satisfactory and what pine he wants—California pine, pondosa pine, or northern white pine. If we find that any one of them is satisfactory, we will furnish either the pondosa pine or the California white pine, and we so specify in our bids. If it is northern
1229 white pine we figure and specify northern white pine in our bid. We know a good many of the architects and know just what they want. We know that most of them, when they specify white pine, they mean northern white pine.

Q. And when they want northern white pine they get it from you, do they?

A. They get it from us.

Q. Well, now, when you find out what an architect is willing to accept when he specifies a white pine, and he is willing to accept California white pine, thereafter, then, if he specifies white pine, what do you furnish?

A. We would furnish California white pine.

Q. Rather than northern, would you?

A. Rather than northern. We would have to do it in competition with competitors.

Q. Do you have occasion to meet these architects personally, or is this all secured by writing?

A. Usually through personal contact.

Q. You have a conference with them, do you?

A. I usually visit with them and show them the different woods.

Q. What do you do? Travel over to see them?

A. Most of them are right in our vicinity, there in the Twin Cities. It is only a matter of running over to see them.

1230 Q. Now, do you find that architects there are uniformly well informed as to the distinction between white pine and California white pine?

A. Not as a general rule.

Q. Is there confusion as to what those various classes of woods are and as regards their comparative durability?

Mr. MATTHEW. I do not think he is qualified to answer the latter part of your question.

Mr. BURR. He says he comes in contact with them.

By Mr. BURR:

Q. Counsel has interposed an objection. Let me ask you this first. Which variety of pine do you regard as the most durable where exposed to the weather for exterior use?

A. From our experience, northern white pine.

Q. In what category do you place Idaho white pine in that respect?

A. Well, we have not used as much Idaho white pine on account of being so close to the northern white pine mills, but an architect that knows anything about pine usually will accept the Idaho white pine as a substitute for northern white pine, considering it is in the same class.

Mr. MATTHEW. Well, I do not think that is quite responsive to the question as to durability.

By Mr. BURR:

Q. Do you regard the Idaho white pine as having a high
1231 degree of durability where exposed to the weather?

A. From our experience; yes.

Q. Now, then, do you find that among architects there is a confusion of ideas as to the respective merits of the so-called white pines, including the so-called California white pine, as regards their comparative durability for exterior use?

A. We find they know less about the California. They know northern white pine and usually that is what they want, the northern white pine. They know something more lately of the Idaho white pine, and will take the Idaho white pine.

Q. Well, do you find them confused as regards the California white pine and its status as a white pine?

A. They seem to be confused about that.

Q. Do you find there are architects who regard California white pine as a genuine white pine?

Mr. MATTHEW. Just a minute.

Examiner SHEPPARD. I think you are going a little too far. I do not know that this man can tell what all these architects know about these things. I will let him testify as to what he knows.

Mr. BURR. I think a man can find out in five minutes over the table what a man knows about the comparative values of these woods, just as we find out what the witness knows right here.

Mr. MATTHEW. But it is hearsay now, because I cannot
1232 examine these architects to which he refers.

Examiner SHEPPARD. I will let you testify, Mr. Lammers, as to what you think about these things, but I do not think your testimony as to the architects would do me much good.

Mr. BURR. I think the question is tantamount to a question that the examiner has permitted as regards confusion, where witnesses were allowed to testify as regards a confusion of mind in the trade.

By Mr. BURR:

Q. Do you find there is a confusion of mind among the architects with whom you actually confer with regard to these matters as to the status of the California white pine, as to whether or not it is a genuine white pine?

A. There seems to be this confusion.

Q. There seems to be what?

A. There seems to be a confusion.

Mr. MATTHEW. Isn't that the same question which the examiner ruled out?

Mr. BURR. I think it is more strongly fortified.

Examiner SHEPPARD. No; I let him testify in answer to that question, Mr. Matthew, because I think his experience in that will

enable him to have the knowledge necessary. That is the knowledge gained from coming in contact with these men.

1233 The WITNESS. There seems to be a confusion.

By Mr. BURR:

Q. How often in the course of the average year would you estimate you confer with architects orally on these matters?

A. That would vary, depending upon—oh, I would say on the average six or eight or ten times a year I am called in.

Q. Now, in your factory you make windows and exterior doors, do you—the frames for them?

A. We do.

Q. Have you had any experience as to the durability or lack of durability of California white pine or pondosa pine?

A. We have in pondosa pine right in our own factory. We have replaced windows in warehouses that have been in there approximately six years—between six and seven.

Q. Now, those were ponderosa, were they?

A. Those were ponderosa.

Q. Were they bought as California white pine or as pondosa?

A. They were bought as pondosa.

Q. Do you remember what mill you got them from, Mr. Lammers?

A. We made the windows ourselves in our own factory out of pondosa.

Q. Do you know what factory you bought your pondosa from?

A. I am not sure.

Q. You are sure it was pondosa, though?

A. I am sure it was pondosa. We also replaced some win-

1234 dows in another industrial building right in our city that were there approximately six or seven years that were made by another firm and shipped in there, and they rotted out so that they had to be replaced.

Q. How long had they been in place?

A. Approximately seven years.

Q. Did you testify how long those in your own factory had been in place?

A. Between six and seven years.

Q. Had those, do you know, been painted after they had been placed in?

A. They had been painted once in our plant after they had been in the building. In the other plant, I can not say.

Q. Now, how about the paint? Had that deteriorated?

A. The paint had peeled off.

Q. I beg pardon?

A. The paint had peeled off from the wood, causing the windows to rot.

Q. I beg pardon?

A. Causing the windows to rot; absorbed the moisture and the windows rotted.

Q. How much of that do you lay to the character of the ponderosa, and how much to the lack of paint?

Mr. MATTHEW. Is he qualified to answer that?

Mr. BURR. Yes.

1235 By Mr. BURR:

Q. Can you state that?

A. I could not say exactly. It possibly should have been repainted, but it was not, and rotted out.

Q. Have you had any opportunity to observe how northern white pine acts when it is not painted? Does that rot out rapidly?

A. I can tell from experience with the woods. Our boards there on the windows in camps and things like that, we would use rough boards there in particular, and they had lasted 18 years when I left there, and I don't how much longer.

Q. Unpainted?

A. Unpainted.

Q. Now, you mentioned two experiences with ponderosa pine, I believe. Have you had any others?

A. I was in a bank, the First National Bank at Stillwater, one time, talking with the president of the bank in his office, and he called——

Mr. MATTHEW. Pardon me just a moment.

Examiner SHEPPARD. Don't let us know anything about what he told you. That is hearsay.

The WITNESS. He called my attention to a frame that had rotted out. He asked me if we had furnished it. I told him, no; we had not. The sill had rotted out. I saw that. I also saw the

1236 wood after the frame was taken out, and later on he called my attention and asked me if it was northern pine and I told him, no. I took my knife and cut into the piece underneath the weather strip, and I could see it was ponderosa pine.

By Mr. BURR:

Q. Do you know of your own knowledge how long that building had been constructed?

A. Approximately from six to eight years.

Examiner SHEPPARD. That was at Clearwater?

The WITNESS. That was at Stillwater.

Examiner SHEPPARD. Stillwater, Minnesota?

The WITNESS. Yes.

By Mr. BURR:

Q. How much northern white pine do you buy in the course of a year, ordinarily?

A. Varying from ten to fifteen carloads.

Q. Do you have any trouble to get the northern white pine that you need?

A. We have not had any trouble so far.

Q. Are you able to get virgin northern white pine lumber?
A. We are.
Q. Are you able to get it in a satisfactory quality?
A. Yes, sir.
Q. From whom do you buy the northern white pine?

A. We buy from the International Lumber Company, Inter-
1237 national Falls; R. G. Chisholm Lumber Company, Ft. Francis; the Virginia & Rainey Lake Lumber Company; the Rushton Lumber Company; the Cloquet Lumber Company and the Northern Lumber Company at Cloquet; then we buy small mill shops.

Q. The Cloquet outfit is a Weierhaeuser outfit, isn't it?
A. Yes, sir.
Q. Are any of the others Weierhaeuser outfits?
A. I do not know what interest Weierhaeuser has in any of the other outfits.
Q. Now, is that all Minnesota white pine?
A. Minnesota and Wisconsin and some Canadian pine that goes into Ft. Francis there. I understand that stock is cut in Canada.
Q. Is any of this second growth?
A. I presume it is second growth in all northern pine today.
Q. In all northern pines?
A. In all northern pines. The stock we get is usually virgin stock, the type of lumber that we buy.
Q. You are not buying second growth?
A. We do not buy any common grades that the small stocks come out of. We buy some small mill stocks with second-growth stock.
Q. Well, now, would you be prepared to state that there is always a second growth, in spite of the fact that we have testimony here that the Weierhaeuser material is all virgin timber?

1238 A. There are young trees growing up all the time. I do not know whether you would call that second growth?

Q. Did you get that from hearsay, or is that your own personal experience?
A. I have seen it. It is personal observation.
Q. You have seen it?
A. I have seen the timber growing up—young timber.
Q. Oh, surely.
A. Well, now, that is second growth.
Q. Do you know whether second growth is really being cut?
A. I have seen small stocks cut.
Examiner SHEPPARD. That goes in the common grades, doesn't it?
The WITNESS. Yes.

By Mr. BURR:

Q. It is customary even in virgin timber to take the young growth, too, is it not?
A. Yes.

Q. Now, are you called in occasionally as a consultant rather than as a material man?

A. I have been by architects.

Q. What is your recommendation with regard to what should be used for exterior finish in the way of pine?

A. In the class of work that we have we usually specify northern white pine.

1239. Q. Well, I mean as a consultant.

A. Well, that would depend upon the building. Usually in real fancy house work northern white pine is specified.

Mr. BURR. You may cross-examine.

Cross-examination by Mr. MATTHEW:

Q. Is Idaho white pine lumber relatively a newcomer in your industry?

A. We have not used so much Idaho white pine lumber until just the last few years.

Q. Is your use of Idaho white pine lumber increasing relatively?

A. Yes.

Q. What accounts for your increase in the use of Idaho white pine lumber?

A. Getting in territory where it is specified.

Q. You are not intentionally substituting it for northern white pine lumber, I take it?

A. No.

Q. You use the Idaho white pine only in response to specifications for Idaho white pine?

A. We use it where Idaho white pine or northern white pine is specified sometimes. Other times we have Idaho white pine on hand, for certain work that we can use either, and then we use

1240 the Idaho white pine.

Q. You feel free to furnish either indiscriminately in that case?

A. Yes.

Q. Now, throughout what period of time have you been using Idaho white pine in your manufacturing operations to any substantial extent?

A. That would vary, depending upon the year. For approximately five or six years we have been getting considerable Idaho white pine.

Q. Does that represent substantially the extent of your experience with the Idaho white pine?

A. Yes.

Q. Then you have not, as far as your personal experience is concerned, been able to subject the Idaho white pine to as extended durability tests as northern white pine?

A. No.

Examiner SHEPPARD. Let me interject a question right there.

By Examiner SHEPPARD:

Q. As a matter of fact, Mr. Lammers, has a sufficient time passed by in your judgment for a test of any of these so-called substitute white pines as to durability?

A. Not in our factory.

Q. Doesn't it take years and years to tell whether a white
1241 pine would stand up as well as the old northern and eastern pines?

A. I can only speak just in our own case; that is all. We have been using the white pines for so many years.

Q. That is what I am talking about. Now, these other pines that are sold now in competition with the northern white pine have not had the opportunity to prove their value, have they?

A. I presume not in this territory.

Examiner SHEPPARD. All right.

By Mr. MATTHEW:

Q. That is true as to Idaho white pine and other western pines?

A. From our experience.

Q. Do you use any California sugar pine?

A. Yes, sir.

Q. For what purpose?

A. We use it for frames and sash.

Q. Do you use that interchangeably with the Idaho white and northern white?

A. Well, we have.

Q. How long have you used it?

A. Approximately ten years.

Q. Is its use in your factory increasing or declining?

A. That is hard to state, because our work varies.

Q. So far as your observation goes, you cannot tell whether
1242 your use of sugar pine has been increasing or declining during the past ten years?

A. No.

Q. Throughout what period have you been using California white pine in your manufacturing operations in any substantial measure?

A. Four years.

Q. I think you stated that you use the California white pine very largely for interior work?

A. Yes.

Q. Do you find it quite satisfactory for that purpose?

A. It is for paint work; yes.

Q. I beg pardon?

A. For paint work it is satisfactory.

Q. And for that purpose does it satisfactorily serve the same uses which were served by northern white pine?

A. We were not in this business at that time. Until we started using California pine we were not using northern white pine for this work.

Q. This is entirely new?

A. This is a new industry with us.

Q. And from the beginning, then, you have utilized California white pine?

A. And pondosa pine.

Q. And pondosa. Do you use them interchangeably?

1243 A. Yes.

Q. And you have no preference as between California pine and pondosa pine?

A. We do not sell it as California white pine.

Q. Under what name do you sell it?

A. Pine.

Q. And it goes into the trade, then, just under the designation of pine?

A. Pine.

Q. Do you use any southern yellow pines in such work?

A. Yes, sir.

Q. Just what is the nature of the use that you make of the southern yellow pine as contrasted with the use that you make of California white and pondosa pine?

A. We use southern white pine; it is specified usually in the window frames, in the jambs in window frames.

Q. You mean southern yellow pine?

A. Yes; and finish, the largest use of that item in our business.

Q. Southern yellow pine?

A. Southern yellow pine for interior trim and jambs for window frames.

Q. Just how would you distinguish the use of the southern yellow pine from the use of the California white pine and pondosa pine?

1244 A. That is specified in our specifications as to getting out our material by the architects.

Q. I see. Then you are merely complying with the architect's specifications?

A. We comply with the architect's specifications.

Q. Do you use more California white and pondosa pine than southern yellow pine in this interior work?

A. Yes, sir.

Q. How much more?

A. We only use approximately a hundred thousand feet of yellow pine a year, and we buy approximately three million to three and one half million feet of California white pine and pondosa pine a year.

Q. What proportion of that total of three million and a half feet is represented by California white pine and what proportion by the pondosa pine?

A. Seventy-five percent California white pine.

Q. Do you distinguish between the durability of heartwood and sapwood, respectively?

A. Do I personally?
Q. Yes.
A. Yes.
Q. Heartwood is the more durable?
A. From my woods experience.

Q. I will ask you if this is approximately a correct state-
1245 ment, that the northern white pine achieved its reputation for durability largely because of the predominant use of the heartwood?

A. Yes.
Q. You would not recommend the sapwood of any pine for exterior use unless it would be quite thoroughly protected, would you?
A. The architect usually specifies "no sap." As all our wood or material goes out in the wide, we could not conceal any sap with paint.
Q. Then, when the architects make such specifications—that is, which include the requirement "no sap"—are those specifications directed impartially both to northern white pine, Idaho white pine, and other varieties?
A. They are.
Q. In other words, it is an objection to the use of sap?
A. Yes.
Q. You spoke of an instance, Mr. Lammers, a case in your own factory, where portions of window sash had rotted out after six or seven years in the place. I think you stated that the original paint had peeled off at some time before this decay took place?
A. I said the paint had peeled off.
Q. Can you tell us whether the parts of the sash that decayed were represented by a sapwood or heartwood?

1246 A. I could not.

Q. Can you tell us whether they were adequately protected from moisture?
A. Any sash on the outside would be subject to weather elements.
Mr. BURR. What was that answer?

By the WITNESS:

A. I said any sash on the outside would be subject to the weather elements.

By Mr. MATTHEW:

Q. This decay took place entirely on the outside?
A. I do not recall that. I know they were just falling right to pieces.
Q. Now, you have never seen sash made out of Idaho white pine under similar circumstances subjected to the same test?
A. Not in our experience, because we have not had that experience in Idaho white pine.
Q. Then you gave the case of another building in your community in which some of the sash had decayed after six or seven years.

A. Yes, sir.

Q. You stated that there you did not know whether the sash had been painted or not?

A. I did not know whether it had been painted after it had been put in. They were painted originally.

1247 Q. Do you know whether the parts that decayed were of heartwood or sapwood?

A. I do not.

Q. Now, you gave another case which I think you identified as that of the First National Bank in Stillwater?

A. Yes, sir.

Q. You said the sill had rotted out in one of those?

A. The window frame.

Q. That is the lower rail of the window frame?

A. Yes.

Q. Was that of sapwood or heartwood?

A. I am not familiar enough to tell you.

Q. You made an examination of that?

A. I made an examination of the wood, but I do not recall whether it was sapwood or heartwood.

Q. How close an examination did you make? Did you just look at it?

A. Sufficient to cut a piece off with my knife to examine and tell the kind of wood it was.

Q. You just examined it at that time?

A. At that time.

Q. I assume you did not use a microscope?

A. No, sir.

Q. You just examined it with the eye—the naked eye?

A. Yes, sir.

1248 Q. And you decided from that that it was ponderosa pine?

A. Yes, sir.

Q. Are you satisfied that you can distinguish ponderosa pine from other pines from a mere inspection with the naked eye when the wood is in the decayed condition that you have described?

A. In a good many cases; not all cases.

Q. There is often difficulty in making that distinction, is there not?

A. There are certain pieces of wood that you cannot detect.

Q. Where you cannot detect, did you say?

A. Yes.

Q. Do you purchase any of your pondosa pine from the Weierhaeuser interests?

A. Very little.

Q. You cannot tell us what proportion of the northern white pine is obtained from companies in which the Weierhaeuser people are interested?

A. From memory I would say 75 percent of our white pine is not purchased from the Weierhaeuser interests.

Q. Do you include the Virginia & Rainey Lake Company?

A. Yes.

Mr. BURR. In which category?

The WITNESS. Not purchased from them.

By Mr. MATTHEW:

1249 Q. You say you do not purchase from them?

A. I say 75 percent was not purchased from the Cloquet or the Virginia & Rainey Lake.

Q. You know of the Weierhaeuser interests in the latter company?

A. The Virginia & Rainey Lake?

Q. Yes.

A. Only through hearsay.

Q. Well, do you consider the Virginia & Rainey Lake purchases in the 75 percent?

A. No, sir.

Q. Do you include them in the 25 percent?

A. Yes; in the 25 percent.

Q. I am not sure, Mr. Lammers, that I developed fully the reasons which prompted your company to use California white pine and pondosa pine primarily in this interior work.

A. We went into the eastern market where the California white pine and pondosa pine holdings were being sold for interior trim. We had to furnish the same stock that they were using. We use the California pine largely now on account of the percentage of cuttings that we get out of it. Approximately 65 to 70 percent of our cuttings are six-foot and longer, and that is the reason we use the California pine, so as to obtain longer cuttings than you can get out of pondosa pine.

Q. That is, you are using the lumber, of course, which is

1250 usually termed as the lumber of the shop grades?

A. Shop and short selects.

Q. Have you attempted to get any Idaho white pine in the shop grades?

A. We have used it.

Q. Have you found it as satisfactory for your purposes?

A. We have very little call for Idaho white pine trim.

Q. Do you know whether you can get as much as 65 percent of cuttings out of the Idaho white pine in the shop grades?

A. I know we cannot.

Q. You know you cannot?

A. We could not get it out of California white pine, either.

Q. I thought you said you could get 65 percent.

A. I said we bought it so we can get more. I said 65 percent and more of our cuttings are six-foot and longer.

Q. I misunderstood you. Can you give me the approximate percentage of cuttings which you get out of the shop grades of California white pine?

A. No, I cannot; because our specifications vary. We cut up the board to what the board will produce. We have different tests on different mills.

Q. Well, can you contrast the Idaho white pine with the California white pine in the shop grades with respect to the percentage of usable material in the boards?

A. We have not cut enough of the Idaho white pine to give
1251 you a definite answer as to the percentage of cuttings.

Q. Have you found that the California white pine in general satisfies your trade when furnished for these interior purposes?

A. Yes.

Mr. MATTHEW. That is all.

Redirect examination by Mr. BURR:

Q. I believe you said that it was sometimes difficult to distinguish pine and ponderosa from other varieties of wood on account of decayed condition. Is that true, that you so testified?

A. Not on account of decayed condition. I said it is hard to distinguish two different boards. Lots of times you can tell exactly whether it is California white pine or California sugar pine. However, you cannot distinguish every single board. I do not pretend to be expert enough to do that, although I do say I can distinguish a lot of different kinds of wood.

Q. Well, now, when you made a test there for the bank man—was that at Stillwater?

A. At Stillwater.

Q. Did you cut down below the decayed condition to get your information as to what variety of lumber it was?

1252 A. I took the underside of the sill and cut out as much as I could with my jackknife just to see if I could detect the kind of wood. He asked me my opinion as to the kind of wood.

Q. And you cut down below the decayed condition, did you?

A. The decayed condition was on top. This was on the under side of the board.

Q. Now, is there a greater percentage of sapwood in the California white pine, the northern white pine, or the Idaho white pine that you get?

A. Our experience is, in the California white pine.

Q. It has a greater percentage of sap?

A. Yes.

Q. Now, when you cut the northern white pine up for exterior trim purposes, are you able to get the sap portion so adjusted that it will not be exposed to the weather in most cases?

A. We find on the edges of the boards we occasionally have a little sap. We turn the board in then so as to not have the sap exposed to the weather when we rip the board out.

Q. Are you able to do that, in the main?

A. When they specify "no sap" we have to do it.

Q. It is feasible to do that, is it?

A. Yes.

Q. Well, now, is it equally feasible to place the sap portion of the California white pine boards so that it won't be exposed to the weather?

1253 A. Well, we do not run but very little of the California white pine into exterior moldings.

Q. So you do not make the attempt; is that true?

A. We do not make the attempt.

Mr. BURR. That is all.

Mr. MATTHEW. May I ask one more question, please?

Examiner SHEPPARD. Yes.

Re-cross examination by Mr. MATTHEW:

Q. Is the sapwood objectionable when the material is to be used for strictly interior purposes?

A. No, sir; we have never had any complaint on it.

Mr. MATTHEW. That is all.

Redirect examination by Mr. BURR:

Q. Do your specifications prohibit the use of sapwood for interior trim?

A. No; because it is generally always used for paint or enamel work. Sapwood is not objectionable there for interior.

Mr. BURR. For interior. I see. All right, sir.

(Witness excused.)

1254 JOHN MOELING was thereupon recalled, having been previously sworn, testified further as follows:

Cross-examination (resumed) by Mr. MATTHEW:

Q. Mr. Moeling, when you were on the stand this morning you were asked to consult your records with a view to informing yourself more definitely as to a certain case where complaint had been made to you that the bottom rails of certain window sash furnished by your company for the construction of a residence had decayed. Have you made that investigation?

A. I have.

Q. And what facts are you now able to report?

A. I talked to our mill manager, who had direct charge of the job, and had him call up the contractor who made the installation of the sash, and found out it was——

Mr. BURR. Wait a minute, now. This is all hearsay, is it not? Counsel is objecting to hearsay, and I think I will have to do the same.

Mr. MATTHEW. If you want to object to it, all right.

Mr. BURR. I think I will object to it.

By Mr. MATTHEW:

Q. Then there is nothing that you are able to report from your records or from your personal knowledge as to this particular failure?

A. I saw the sash after it came back, and we debated over
1255 what happened there, and that is as far as I can go. I have gotten most of the material from the contractor and the millman.

Mr. BURR. What do you mean by most of the material?

A. (By the WITNESS.) Well, we debated the reason for this sash went bad, that it rotted under the paint, and of course whatever I know is their view, so if that is hearsay, why, I could not talk on that point.

Mr. BURR. I do not believe I will ask for hearsay.

By Mr. MATTHEW:

Q. Well, now, to what extent was there failure in the sash in this particular incident? How many windows?

A. This particular case was one bottom sash, the bottom part of the sash that comes in contact with the sill, and that had entirely gone to pieces. The paint on the outside was in a good state of preservation, and yet the wood on the inside was punky. You could stick your knife in it, like that [indicating].

Q. What was your independent conclusion as to the apparent cause for the failure?

A. That moisture was in that particular piece of wood in some way, and it was sapwood.

Q. It was sapwood?

A. And that moisture was in that and it caused it to go to pieces under the paint.

1256 Q. That was the only sash in this particular job which failed?

A. This one job, that was the only sash, yes, that I know definitely of.

Q. Now, did I ask you to inform yourself about any other cases?

A. We have another case where I personally saw the job. The sash had just simply been varnished on the job to give a light effect in the room. They were not painted on the inside, but simply varnished—that is, with a colored paint—and the sash turned black. All the sides, both top and bottom, of the sash had turned black under the varnish, and we investigated that case very closely.

Q. Was that failure due to improper painting?

A. That is our opinion. We investigated the job.

Mr. BURR. Did you investigate it personally?

The WITNESS. Personally; yes.

Mr. BURR. All right.

The WITNESS. Although the contractor says it was——

Mr. BURR. Wait a minute, now. I do not care for what the contractor said at all.

Q. (By Examiner SHEPPARD.) I want to ask you, is this last instance that you were narrating here covered in your testimony this morning, or is it another one?

1257 A. I spoke of six or seven sash that I had heard about, and the one I mentioned here was one that I had seen. Now, these cases, I brought up that these were the only two jobs I could definitely say did happen and could give the addresses and contractors.

Examiner SHEPPARD. All right, proceed.

By Mr. MATTHEW:

Q. These are the only two cases which you have been able to find in your record of which you have any personal knowledge, as I understand it?

A. Yes.

Q. Can you give us the name of the contractor in each instance?

A. Yes.

Q. Will you, please?

A. The one in the first instance of the bottom part of the sash rotting out was Mr. John Tenninga. His address is 32 West 111th Place.

Q. Chicago?

A. Chicago, and the job address is 12232 Eggleston Avenue.

Examiner SHEPPARD. Chicago?

The WITNESS. Chicago; yes. And the contractor in the second instance was Mr. B. Peonie, who, incidentally, has gone bankrupt in the past year.

Mr. BURR. I object to that.

1258 Examiner SHEPPARD. Just leave out the bankruptcy proceedings.

The WITNESS. The job was at 102nd and Emerald. I could not get the exact address. When it was put in, there were two houses around there, and we did not have it on our books.

By Mr. MATTHEW:

Q. Mr. Peonie was the contractor, as I understand, in that case?

A. In that case; yes.

Q. Were you able to form any conclusion of your own as to the reason for this sash turning black in the second instance?

A. Moisture had come up through the bottom part of the sash and had affected the sash.

Q. Then, it had been inadequately protected against moisture?

A. Yes.

Mr. MATTHEW. That is all.

Redirect examination by Mr. BURR:

Q. Have you consulted at all with Government counsel with regard to your testimony?

A. No; I have not. To tell you the truth, I do not know how I got up here.

Q. You came up under subpoena, did you?

1259 A. Under subpoena; yes.

Q. And you consulted with nobody before you first appeared?

A. No. My father and I talked it over, and I was trying to find out how I was called up.

Q. Did you consult with counsel for the defense during the period between your first testimony and the second testimony this afternoon?

Mr. MATTHEW. Now, that is immaterial. I have no objection to it, but I imagine that the examiner will deem it absolutely immaterial.

Examiner SHEPPARD. Yes; I am not interested in that one way or the other, Mr. Burr. I think that attorneys on both sides have a perfect right to talk to their relative witnesses, one way or the other.

(Discussion out of record.)

(Witness excused.)

CHARLES H. HAMMOND was thereupon called as a witness and, having been duly sworn, testified as follows:

Direct examination by Mr. BURR:

Q. Your name, please?

A. Charles H. Hammond.

Q. Mr. Hammond, you are an architect, are you, sir?

1260 A. Yes, sir.

Q. You are with Perkins, Chapman & Hammond, are you?

A. That is correct.

Q. Are you a member of the American Institute of Architects?

A. I am.

Q. Do you hold any official position in that organization?

A. I am president.

Q. How long have you been president? Just during the current year?

A. No; going on the second year.

Q. How long have you been an architect in the city of Chicago?

A. 22 years.

Q. What is the nature of your work, sir, residence work or otherwise?

A. All classes of work.

Q. Do you have occasion to specify any variety of pine for exterior purposes, Mr. Hammond?

A. Yes, sir.

Q. What do you generally specify for that purpose?

A. White pine.

Q. Do you have any means through your own organization of checking up as to what is delivered when you specify white pine, or do you rely upon the character and standing of your contractors?

A. That is about the only way you have, it seems to me,

1261 these days.

Q. The latter?

A. The latter; yes. We have our superintendents that check up on those things. If we have any question arise, we take steps to get an expert to determine.

Q. Now, when you specify white pine, do you regard northern white pine as a compliance, if the grade and quality and appearance are satisfactory?

A. Yes.

Q. Do you regard Idaho white pine as a compliance under the same circumstances?

A. I do.

Q. Do you regard California white pine as a compliance?

A. It all depends. We naturally think that the northern pine, and I imagine from my own knowledge that Idaho and northern pines are about the same thing, as far as I know.

Q. I see.

A. The California pine is a cheaper pine.

Q. Well, if you are given the rate for California white pine, the cheaper rate, and if the quality as regards grade, appearance, and so forth, is in accordance with specifications and is satisfactory, would you regard the California white pine delivered on the job as a compliance with the specification for white pine?

A. We would unless we specified northern white pine. If
1262 we want the best, we specify northern white pine.

Q. You do, on occasion, specify the word "northern" with your white-pine specification?

A. Yes, sir.

Q. And sometimes is it true that you do not so specify but just say "white pine"?

A. Yes.

Q. And when you specify white pine, would you regard the California white pine, if the grade were satisfactory, as a compliance?

A. Yes, sir.

Q. Do you distinguish, as regards the reputation for durability for exterior purposes, do you distinguish between Idaho and northern white pine, on the one hand, and California white pine, on the other?

A. That is a pretty difficult question. I think that northern pine is the best. Now, to my knowledge, I would not know whether the California pine had the same life that the Idaho pine had, but I believe that the northern pine is the best pine that is made that we get.

Q. Now, with regard to the so-called "pondosa pine", if you specify white pine without using the word "northern", and pondosa pine of a satisfactory appearance and compliance with grade were furnished, would you regard pondosa pine as a satisfactory compliance?

1263 A. No, sir.

Q. Why not?

A. Because it has not the wearing qualities.

Q. Do you distinguish between the wearing qualities, where exposed to the weather, of pondosa pine with California white pine?

A. Well, I would never specify pondosa pine, and if we thought we were getting it we would throw it out.

Examiner SHEPPARD. How about white pine, I mean the California white pine?

The WITNESS. Well, if I specified northern pine and I could determine that I was getting California pine, I would throw out the California pine.

Examiner SHEPPARD. You do not make any distinction, then, between the California white pine and the pondosa pine?

The WITNESS. No.

By Mr. BURR:

Q. Well, if you specify white pine and do not specify northern white pine, but merely white pine, and California white pine of a satisfactory appearance and compliance with grade were furnished, would you accept that?

A. That might be true, but I think that would be rather a loose specification.

Mr. BURR. That is all.

1264 Cross-examination by Mr. MATTHEW:

Q. Mr. Hammond, did the term "white pine" originally denote just the northern white pine?

A. I think it denoted the pines that are all through the northeastern part of this country and up along through the northern part of the Great Lakes and Minnesota and through there.

Q. Yes. That is the true northern white pine that you have referred to in your testimony?

A. Yes.

Q. More recently the term "white pine" has come to include Idaho white pine in common acceptance?

A. I believe it has.

Q. And when you want to make certain that you will get the original northern white pine, you specify it by that term, northern white pine?

A. Yes, sir.

Q. Do you ever specify Idaho white pine under that name?

A. Not that I remember.

Q. Or California white pine?

A. No; but you can buy California white pine if you call for it.

Q. I mean do you ever specify it?

A. No; we do not.

1265 Q. Do you ever specify California sugar pine?

A. Not to my knowledge.

Q. Are you familiar with the sugar-pine lumber?

A. Just in a general way, that is all. I do not know that I could determine the difference between the two.

Q. Between sugar pine and California white pine?

A. Yes, sir.

Q. I take it you are not personally informed as to the botanical classification of these several trees?

A. No, sir.

Q. Your interest as an architect is in the quality and utility, including, of course, the durability of the lumber that is furnished for your work, I take it?

A. Yes, sir.

Q. And you are not particularly interested in botanical classifications?

A. No, sir.

Q. Now, you said that you would accept either the northern white or the Idaho white upon specifications calling for white pine, and you also stated that for certain purposes you would accept California white pine which appeared to be of a proper grade and appearance. Is that correct?

A. That is correct.

Q. Have you found that California white pine satisfies your requirements for certain purposes?

1266 A. Yes; it does.

Q. Do you use it for interior work?

A. Very little.

Q. For what purposes mainly do you employ California white pine?

A. I was speaking of the white pines in general.

Q. The California white pine.

A. Well, we might use it for basement work where there was some dampness, or something of that kind, on occasions, or use it for sash or things of that kind.

Examiner SHEPPARD. Exterior work?

The WITNESS. Exterior work.

By Mr. MATTHEW:

Q. That is California white pine?

A. Yes, sir.

Q. Do you distinguish between the durability of heartwood and sapwood, respectively?

A. Yes, sir.

Q. Is it your understanding that the reputation of northern white pine for durability is largely based upon the use of heartwood?

A. Well, the absence of sap.

Q. Or the absence of sap. Throughout what period have you been acquainted with the use of Idaho white pine?

A. It is only for the last few years.

1267 Q. Just about what do you mean by a few? Four or five?

A. I would say so; maybe five or six years.

Q. And throughout what period have you been familiar with California white pine?

A. Over a period, I should say, of less than that.

Q. Would you say three or four years?

A. Yes, sir.

Mr. MATTHEW. That is all.

Redirect examination by Mr. BURR:

Q. Do you regard certain of the pine family as belonging to the white pines?

A. Yes, sir.

Q. Which would you say belonged to the white pines of the commercial varieties of lumber?

Mr. MATTHEW. Do you mean botanically speaking?

Mr. BURR. I mean, the word "white pine" is not merely a botanical but also a utility classification, I take it.

Mr. MATTHEW. I think you really ought to distinguish in the question. I have not been captious heretofore, but I think you should do that.

Mr. BURR. I do not want to take any advantage of anybody, and because the question is not satisfactory from the ideal standpoint I will withdraw it.

1268 By Mr. BURR:

Q. Do you regard northern white pine as a genuine white pine?

A. Yes; I do.

Q. Do you regard Idaho as a genuine white pine?

A. Yes; I do.

Mr. MATTHEW. Do you mean botanically?

The WITNESS. I mean in the book that is gotten out by the National—by the Bureau of Standards; they classify them about the same way; that is, they list them together, the northern white pine and your California pine and your Idaho pine and the Canadian pine.

By Mr. BURR:

Q. You regard all of those as white pine, do you?

A. Yes, sir.

Q. I see. Where do you place pondosa pine? Do you regard that as a white pine?

A. I regard it as an inferior grade of white pine.

Mr. BURR. That is all.

Re-cross-examination by Mr. MATTHEW:

Q. When you speak of white pine do you mean white pine for the purpose of utility rather than the mere botanical classification?

A. Yes. I do not know what the botanical classification is

1269 at all, sir.

Q. Then you had in mind just the general utility of the lumber?

A. The utility of the lumber; the classification that is known to the trade.

Mr. MATTHEW. That is all.

(Witness excused.)

S. L. SPEISE was thereupon called as a witness and, having been duly sworn, testified as follows:

Direct examination by Mr. BURR:

Q. What is your name, please?

A. S. L. Speise.

Q. Mr. Speise, you are with the Speise Lumber & Coal Company, are you?

A. Yes, sir.

Q. What position do you hold with that firm?

A. Sole proprietor.

Q. And how long have you been in the lumber business in that way, Mr. Speise?

A. For the last five years.

Q. Located right here in the city of Chicago?

A. Yes, sir.

Q. Mr. Speise, what types of lumber do you carry? I refer now to the softer of the pines.

1270 A. Well, the southern yellow pines.

Q. Those are pretty hard, are they not?

A. They are harder than the white pines.

Q. Yes. Well, now, which of the white pines, say, do you carry?

A. We carry mostly the California white pine.

Q. Yes.

A. And some northern white pine, and a very little pondosa.

Q. Any Idaho?

A. None at all.

Q. Where do you buy your California white pine?

A. From the Longbell Lumber Company.

Q. Practically all of it from them?

A. Practically all of it.

Q. Where do you buy the little pondosa that you do carry?

A. Well, I remember buying one car from Brooks-Scanlan.

Q. From whom do you buy the northern white pine?

A. From the Hines Lumber Company.

Q. I beg pardon.

A. From the Hines Lumber Company. It comes from the Virginia & Rainey Lake district.

Q. Is that an original growth or is that second growth?

A. Well, I should judge, in my opinion, it would be the—well, I really cannot say definitely.

Q. You are not sure?

1271 A. I am not sure.

Q. Now, do you have orders for white pine occasionally?

A. Well——

Q. I mean where the order asks for white pine?

A. When they say white pine, my contractors as a general rule do not distinguish between any particular species of white pine.

When they specify white pine, we sell mostly the California white pine, and if we are out of any particular size of the California white pine we may have it in the northern white pine.

Q. The northern white pine is somewhat higher in price, is it not?

A. Not the kind we buy; in fact, we find that the northern white pine, some sizes are cheaper than the California white pine. For instance, the 1 by 4 in practically all lengths is approximately from three to four dollars per thousand cheaper than the California white pine would be in the same size.

Q. And that is Northern white pine that you buy from these concerns that you mentioned, is it?

A. Yes. We buy the smallest size. But when it comes to the 1 by 12, for instance, why, then the Northern white pine would be a good deal higher, and we buy that mostly—we buy the California white pine.

Q. Well, now, you have calls for exterior trim lumber, do you?

A. Yes; a good deal of it.

1272 Q. And where they ask for white pine, as a rule they get the California white pine, do they?

A. The California white pine.

Q. Or the northern white pine, whichever you have in stock; is that true?

A. Whichever we have more of.

Q. On a specification for white pine?

A. Yes; on a specification for white pine. My contractors seem to prefer the California white pine because it is softer.

Mr. BURR. That is all.

Cross-examination by Mr. MATTHEW:

Q. Throughout what period have you been in business, Mr. Speise, here, did you say?

A. Five years. For myself, for the last five years, and previous to that I was connected with another concern for about seven years.

Q. How long have you been familiar with the trade name "California white pine"?

A. Oh, ever since I have been in business.

Q. Is the term well known to the trade?

A. No; it is not.

Q. It is well known to the lumber dealers, I take it.

A. The lumber dealers are familiar with it.

1273 Q. Now, am I correct in an understanding that in the 2 by 4 size you can furnish the California white pine?

A. Not the 2 by 4's. I said 1 by 4's.

Q. Pardon me. You can furnish the 1 by 4's in California white at a lower price than the northern white pine?

A. Not as a rule. We buy a car of the northern white pine—we bought some Norway timbers for instance. Timbers come from the same district which we term as "Norway." And if the car

is not sufficiently large enough, we will fill in with some other sizes, like, for instance, the 1 by 4's of the northern white pine, which is somewhat cheaper in price than the 1 by 4's of the California white pine.

Q. Well, now, did your testimony relate to Norway pine?

A. Well, I did mention that we buy timbers like 6 by 6 and 4 by 6 and 4 by 4.

Q. That is Norway, is it?

A. That is Norway.

Q. Well, now, do you buy the northern white pine, too?

A. Yes; in the very same car we get both kinds.

Q. Both Norway and northern?

A. We get Norway and northern white pine.

Q. Now, the Norway is used where you need strength in the timber?

A. Exactly.

Q. But the northern white pine, you buy that variety, too, 1274 do you?

A. We buy that where softness is required.

Q. And your testimony as regards your furnishing under a specification for white pine either northern white pine or California white pine relates to that northern white pine rather than to the Norway, does it?

A. Yes. For exterior work we never furnish any Norway, only where strength is required, and that is bought mostly in timbers.

Q. And where they specify white pine you would furnish northern white pine or the California for exterior trim purposes?

A. For exterior trim.

Mr. MATTHEW. That is all.

(Witness excused.)

WILLIAM ZEIGLER NOURSE was thereupon called as a witness and, having been duly sworn, testified as follows:

Direct examination by Mr. BURR:

Q. Mr. Nourse, you are in the profession of architects, are you?

A. Yes, sir.

Q. And how long have you been practicing that profession?

A. Oh, about 22 years, I guess.

Q. And have you been in Chicago during that time?

1275 A. Yes; all of that time.

Q. Your present connection is with the Howard Shaw Associates; is that true?

A. Yes.

Q. How long has that concern been in existence?

A. Well about three years, since the death—a little over three years, after the death of Mr. Howard Shaw.

Q. And his was a firm that had been in existence for some time, was it not?

A. Oh, yes. He practiced simply under his own name. There was no firm of Howard Shaw. Then after his death five of us who had been with him for some time arranged for the name and have carried no since.

Q. Now, Mr. Nourse, your work is largely residences of what type of structure?

A. Well, perhaps I ought to say that ours is more largely residence than it is the other, although we have some very large commercial work and some theatre work.

Q. Do you have occasion to specify any variety of pine?

A. Yes, we do.

Q. For exterior trim purposes?

A. For exterior and interior.

Q. What variety do you generally specify, and in what terms?

A. Well, for exterior work we are quite particular about the
1276 sash and the doors being the northern white pine, solid, and then the rest of the exterior millwork, all depending upon the amount; that is, there is on the building and on the effect we are after, if it is a residence. You see, sometimes we use oak, sometimes cypress, and sometimes northern white pine, or sometimes just pine, all depending also upon the appropriation that we have to spend for the building.

Q. Now, you do not specify merely white pine for exterior trim, is that true?

A. Sometimes we do, or sometimes we simply say pine. As I say, it all depends upon the character of the house and the amount of money that we have to spend.

Q. Well, now, how do you distinguish? If a man has not got much money to spend, it is then, is it, that you specify merely pine?

A. Well, it depends upon how much we have on the outside, you see. If there is going to be a great deal of timber work, sometimes we do want that in pine, then again we will take it in oak or cypress. But in general we are after the northern clear white pine for exterior work.

Q. I understand sometimes for exterior work you specify pine and sometimes northern white pine?

A. Yes.

Q. Now, then, you said it was a question of finances to some extent?

A. Yes; surely.

1277 Q. Now, then, if the builder does not desire the higher price, then you specify pine rather than northern pine, is that true?

A. Yes; exactly.

Q. The northern pine you find to be higher in the market, do you?

A. Well, I cannot answer that definitely. It often depends on the mills. Many times, in talking with mills about different kinds of woods, we find that one will be higher on one kind of wood of which they may have a stock and another one may be lower.

Q. Now, when you specify northern white pine, have you at times found that some other variety was actually delivered on the job?

A. Well, I cannot answer that definitely. I do not think we have, because we aim—we are very particular about the mills that do the work for us, and any mill that we are not acquainted with, we insist upon their sending down a piece of the wood that they are going to use.

Q. I see.

A. And we often do that with the mills that we are very well acquainted with.

Q. Well, are you prepared to competently check up as to whether or not California white pine or northern white pine has actually been furnished when you get your sample?

1278 A. You say, are we able to do that?

Q. Yes. Do you find it feasible in your own organization to check that up? Have you the expert wood technology that would enable you to do it?

A. Well, I do not believe we have; that is, right offhand. Usually when there is any question we bring a piece of it back, you see, and then call in some of the experts. But we have never had to do that on any job. Perhaps we have received some things that we should not have received.

Q. Well, now, if California white pine were delivered on the job, of satisfactory grade and appearance, do you think you would be able to detect whether or not it was northern white pine or California?

A. I personally would not.

Q. Well, do you have——

Mr. MATTHEWS. May I offer an objection there? The witness has stated that as far as he knows he has had no case where California white pine has been furnished upon a specification for northern white pine.

Mr. BURR. I want to find out whether he has the facilities for knowing in case there were a substitution. He says he does not know whether there has been a substitution or not. Now, I want to find out whether in case California white pine were actually delivered on the job he would be able to detect it.

1279 The WITNESS. We simply, as I say, would bring that back, the same as we would bring back a piece of wire or a piece of pipe, and if we thought it was different from our specifications or it could not be proved it was out specifications, we would call in experts. That is always the way we do with wire. But you see that you may not be able, because you are not doing that kind of work all the time, to pass on it.

By Mr. BURR:

Q. Well, if the wood delivered on the job is up to grade and appearance, are you prepared to say whether or not you could tell that

it was northern white pine as contradistinguished with California white pine or Idaho white pine?

A. No; I personally could not, because I personally do not go out on jobs enough and I am not looking at these three pieces of lumber, northern and Idaho and California, enough to actually tell you that.

Q. Well, do you leave it to the character and standing of your contractor, or have you a man in your organization that can tell——

A. Well, our own——

Q. Pardon me just a moment. Or have you a man in your organization who is competent to tell whether it is California white pine or northern white pine or Idaho white pine?

A. Yes; I think two of our partners are competent to tell

1280 right at the start.

Q. Are they the men that go down and look at the lumber that is actually on the job?

A. They are the ones that are on the job oftener than I am.

Mr. BURR. That is all.

Mr. MATTHEW. No cross-examination.

(Witness excused.)

HARRY L. STREET was thereupon called as a witness and, having been first duly sworn, testified as follows:

Direct examination by Mr. BURR:

Q. What is your name, please?

A. Harry L. Street.

Q. Mr. Street, you are in the retail lumber business, are you, sir?

A. Yes, sir.

Q. How long have you been in the retail lumber business?

A. About 35 years.

Q. All the time here in Chicago?

A. Yes, sir.

Q. That is the Street Chatfield Lumber Company, is it, sir?

A. Yes, sir.

Q. And what is your position with that company?

A. President of the company.

1281 Q. Now, do you handle Idaho white pine?

A. Very little.

Q. You do handle some, do you?

A. Occasionally.

Q. But it is practically negligible?

A. Practically negligible.

Q. Do you handle northern white pine?

A. We do.

Q. Do you handle California white pine?

A. In a small way.

Q. Where do you buy that from?

A. Well, we have bought some from the Pickering Lumber Company, and we have bought some from Longbell. That would be my recollection.

Q. How about sugar pine? Do you carry that?
A. No. Very, very little, if any.
Q. Do you handle pondosa pine?
A. We do handle some more of that than of the sugar and California pine.
Q. Now, where do you get your pondosa from?
A. Well, I have not the list right in my mind, but I suppose we buy it of any good mill, for instance, Shevlin-Hixon.
Q. Where do you get the northern white pine?
A. Well, we buy that of practically every mill up there. We buy it where we can buy it to the best advantage, practically
1282 any white-pine mills.
Q. Now, when you get orders for white pine, which of those three varieties that you handle most of, the northern, pondosa, and California white pine, do you furnish, or do you furnish any of them? What is the situation?
A. Well, it depends. That question depends upon whether you are technical or not. The Chicago retail trade——
Q. Well, I want your practice on it. I am not the man who is ordering. Somebody orders white pine.
A. Well, the Chicago retail trade very seldom orders white pine. A contractor brings in an estimate and on it are a certain number of pieces of 1 by 4, no. 1 common S 4 S, and so on, 1 by 6, 1 by 8, 1 by 10, and 1 by 12. That is about the way it runs. Now, 1 by 12 is largely used for interior work, for shelving. That we carry quite largely in pondosa pine. The 1 by 4 and 1 by 6 for outside cornice stone, we carry that more in either cypress or white pine or Canadian white spruce, and we carry no shop or cut-up lumber, because we do not handle millwork in that sense.
Q. Well, now, for exterior trim, do you not have specifications for white pine on occasion?
A. If we did we would furnish white pine.
Q. And when you furnish white pine, what would be furnished?
A. Either northern or Idaho or California. We would not distinguish.
1283 Q. How long has that been your policy?
A. Well, as long as the California and Idaho pines have been coming into this market.
Q. And about how long is that?
A. Well, I would roughly estimate 10 or 15 years; it seems to me, for some time.
Q. Would you furnish pondosa in the same fashion?
A. Not if they call for white pine, strictly white pine.
Mr. BURR. You may cross-examine.

Cross-examination by Mr. MATTHEW:

Q. When you have an order for white pine, how do you determine whether you will furnish the northern white pine or Idaho white pine or California white pine?

A. Northern, California, or Idaho?
Q. Yes.
A. It would depend quite largely on the stock we had on hand. We would consider the three interchangeable.
Q. Have you found them satisfactory to your trade?
A. I do not recall any complaints.
Examiner SHEPPARD. All for outside exterior use?
The WITNESS. Yes.

By Mr. MATTHEW:

Q. You also stated that the Chicago retail trade very sel-
1284 dom orders white pine, and then you explained the form in which the orders are received; I was not clear as to just what you meant by that part of your explanation, Mr. Street. Is the variety of lumber indicated at all in these orders?

A. Chicago is in rather a peculiar position. We have to handle yellow pine, hemlock, fir, spruce, all those woods that come in here on freight rates that are sufficiently equal so we have to handle them. One time we can buy one cheaper than the other. The trade here is accustomed—a no. 1 common dimension—for instance, 2 by 4 or 2 by 6, a contractor that would specify no. 1 common, we feel at liberty to furnish either yellow pine or hemlock or fir; any one of those three. We do not state on the estimate that it is one or the other; we simply say 2 by 4, no. 1 common.

Q. You do not say no. 1 common pine?

A. No; just 2 by 4, no. 1 common. That is for the rough dimension. For the finishing lumber, if it is specified no. 1 common S 4 S, we feel at liberty to furnish either a Canadian spruce or a northern white pine or Idaho white pine or California white pine. If it is a very long-grade building, some of the cheaper class of buildings, we would feel at liberty to furnish the pondosa pine.

Q. Then you distinguish between pondosa pine and California white pine in filling orders?

1285 A. We have to to some extent, because there is a less price on the pondosa pine.

Q. Is that the principal reason for the distinction?

A. In the offer it is. It is a case of dollars and cents.

Q. Do you find that there is some distinction in quality or appearance between the lumber which you purchase as pondosa pine and that which you purchase as California white pine?

A. Why, the appearance of the pondosa pine to me is more on the order of the southern yellow pine. It has got that little pitchy streak in it that seems to differentiate it quite easily from the other pines—the softer pines.

Q. Do you classify the California white pine as one of those softer pines in your answer?

A. Yes; I would.

Q. In general, then, you find the California white pine is softer than the pondosa?

A. Yes.

Q. And less pitchy?

A. It has some pitch pockets in it, but the pondosa pine has a sort of a resinous streak in it—a little more so, excepting the sapwood—than the other pines.

Q. I think you testified that you deal little, if at all, in sugar pine?

A. Practically not at all. That is almost entirely a cut-up wood for mill sash and door houses.

1286 Q. I take it that you are not familiar with the botanical classification of the various trees from which this lumber is obtained?

A. Well, no. In a general way I am; but I think I would say no to that.

Q. Well, you are not interested in the botany of the trees?

A. No.

Q. Your interest is in the quality?

A. The practical use to which it is to be put.

Q. Yes. And you find that your trade is satisfied with the California white pine which you furnished?

A. Yes; and they are satisfied with the—in fact, I could frankly say they are satisfied with any pine. Ninety percent of the building is speculative building in Chicago, and I presume that possibly only 25 percent of it has an architect connected with it, and those men will specify simply no. 1 common, four sides, and they will accept either, as I say, spruce or any pine or cypress.

Q. Either pine or spruce or cypress?

A. Or pondosa. They will accept what we give them, really, on that class of a job.

Q. Then it is your task, I take it, to satisfy what you understand to be your customer's wishes and needs?

A. Yes; and the contractor's job, where it is specified strictly
1287 white pine, where white pine is specified, of course we furnish the white pine.

Mr. MATTHEW. Yes. That is all.

Redirect examination by Mr. BURR:

Q. What do you mean by a strict specification?

A. Well, we get perhaps one out of twenty estimates that we figure, or one out of twenty-five. It may be a building on which an architect is employed, and he may make certain specifications; for instance, for no. 1 white pine, and we will ask the contractor does he mean he wants regular northern or Idaho white pine on that, and he says yes he does; it is their job; all right, we will furnish that. In another case we might ask the contractor, "Is this just the ordinary specification? Do you just mean the common no. 1, four sides?" And the contractor will say yes.

Q. Well, now, ordinarily in cases where they do specify white pine, you would furnish either the California or the northern pine, as you might have them in stock; is that true?

A. Yes.

Mr. BURR. I think that is all.

Re-cross-examination by Mr. MATTHEW:

Q. How do you determine whether the specification called
1288 for the northern white pine or for white pine generally, or can be satisfied by supplying any one or two or three numbers?

A. Generally by the character of the building. You take a residence out in the country, where it is largely frame, with a great deal of pine outside trim and all, we naturally suppose the architect wants a white pine trim on that. On a brick house in town, where there is very little trim on the outside of any kind, why, of course, anything in the pine line will be satisfactory. The main point as I see it is more in the sash and doors and those items which we really do not handle very much of.

Q. When it is your understanding that the true northern white pine is desired, you furnish that?

A. We do.

Mr. MATTHEW. That is all.

(Witness excused.)

ALLEN E. ERICKSON was thereupon called as a witness and, having been duly sworn, testified as follows:

Direct examination by Mr. BURR:

Q. What is your name, please?

A. Allen E. Erickson.

Q. Mr. Erickson, you are an architect, are you, sir?

A. Yes, sir.

1289 Q. With what concern are you affiliated?

A. Individually in practice, licensed since 1920, also director of the Architects' Small House.

Q. How long have you been an architect?

A. Since 1920.

Q. And your work is largely for residence purposes, is it?

A. Yes, sir; 95 percent.

Q. Now, do you have occasion to specify white pine for exterior trim on occasion?

A. Yes, sir; quite frequently.

Q. And when you so specify, how do you word your specification?

A. Heretofore it has occurred that we specified merely clear white pine. I believe now we specify northern white pine if we intend and wish to have that on the job.

Q. What led you to change the wording of your specification?

A. Because instances had occurred where particularly the siding as specified was delivered in California sugar pine instead of the northern white pine which we expected and which we did have on some of the window frames, trim, and doors.

Q. Now, how did you ascertain that it was not northern white pine?

A. The instances were very specific. It was my own home, in 1927, and I specified the best, as I say, clear white pine, and ex-

pected to pay for it, and I did pay a high price, and I
1290 found when it was delivered to the job, part of it go on quickly and naturally I hated to have it ripped off, and I argued with the Chicago retail lumber dealer who happened to furnish it, but could get no satisfaction from him. He said, "That is all the pine siding, beveled siding, ten inches, that we have. Do you want it or don't you?" So tentatively I accepted it, but had to replace quite a few doors, and today it is in such a shape that I wish it was never put on, because it is bowed out in a concave manner and is entirely unsatisfactory.

Q. Unsatisfactory?

A. To me, yes, as an architect.

Examiner SHEPPARD. Did you say that was sugar pine?

The WITNESS. California sugar pine.

By Mr. BURR. California sugar pine?

A. Yes.

Q. Whom did you get that from, do you know?

A. The Morton Grove Lumber Company.

Q. Where are they located?

A. Norton Grove, Illinois.

Q. Illinois?

A. Yes.

Q. Do you know where in the West it came from?

A. I do not know; no.

Q. You know it was sugar pine and not California white
1291 pine, do you?

A. I was told so, and it had the characteristics of sugar pine, everything I could think of.

Q. Now, if California white pine were delivered when you specified northern white pine, would your firm require that it be pulled out or would you accept California white pine?

A. Not from now on; we would not accept it.

Q. I beg pardon?

A. I would not accept the sugar pine.

Q. I did not say sugar pine, I said California white pine; if California white pine were delivered on the job.

A. I do not believe I would accept it if I specified northern white pine; no.

Q. Well, now, prior to this experience that led you to specify northern white pine, did you have any means for ascertaining whether your specification was lived up to and white pine was delivered?

A. The means was purely the means I have of knowing anything which I do; just my personal experience, up to the time of that experience.

Q. Were you, up to the time of that experience, competent to tell the difference between northern white pine and California white pine?

A. I would say no; I had not studied or looked into the difference in them.

1292 Q. You think you can tell by inspection today, do you, the difference between northern white pine and California white pine?

A. I would not say I am positive that I could.

Q. Would you accept Idaho white pine if you were informed that that had been delivered on the job when you asked for northern white pine?

A. No; I would accept no substitutes.

Q. You would accept no substitutes after your experience?

A. After putting in the specification "northern."

Mr. BURR. That is all.

Mr. MATTHEW. No questions.

(Witness excused.)

O. M. BARR was thereupon called as a witness and, having been duly sworn, testified as follows:

Direct examination by Mr. BURR:

Q. Your name, please?

A. O. M. Barr.

Q. Mr. Barr, you are an architect, are you, sir?

A. No, sir; I am not.

Q. You are a retailer of lumber, are you not?

A. I am a retailer of lumber, sir.

Q. How long have you been in that business?

1293 A. 42 years.

Q. Constantly in the city of Chicago during that period?

A. Cook County; yes.

Q. Now, do you do any millwork?

A. I have done it. I am not engaged in that at the present time, though.

Q. When were you last engaged in millwork operations?

A. I closed the mill about six years ago.

Q. What varieties of soft pine did you carry?

A. You mean when we were engaged in the millwork?

Q. No; I mean in the retail business today.

A. We carry principally northern pine, both white and Norway, some Idaho white, we call it, and some western pines.

Q. Western pines?

A. Yes.

Q. Now, what do you mean by western pines?

A. I mean pondosa pine. I will change that, sir.

Q. All right, sir.

A. The name pondosa pine, as I understand it, applies to that within the last, well, ten years, anyhow. We used to call it western pine. We call it pondosa pine now as a matter of definition or trade name, I suppose.

Q. And do you carry California white pine?

A. I have carried it. Not at the present time, though.

Q. You do not carry any California white now?

1294 A. I think we have a little in operation.

Q. You used to use it more heavily than you do at present?

A. When we had the mill I used it for shop purposes; yes.

Q. Oh, I see. Your change to the present status of using very little California white was made as the result of your giving up the mill operations?

A. Yes, sir.

Q. Now, then, Mr. Barr, do you have orders on occasion for white pine without further specification, for exterior trim, I am referring to particularly?

A. I think I might say we do.

Q. What do you furnish when you get orders for white pine without any further description of what is desired?

A. Well, that is a hard question to answer, young man. What do we furnish if we have an order for White Pine and do not have it; is that what you mean?

Q. No; what do you furnish when you get an order for white pine and the specification does not say what kind of white pine is desired, where they just say, "We want so much white pine", with a description in the specification of what it is to be, and the grade, and it does not say whether they want northern white pine or Idaho white pine or California white pine? What do you furnish them?

A. I think, if the customer is discriminating, we would tell him what we had; and if it suited him, we would give it to him.

1295 We might have Minnesota pine, we might have Idaho white, or we might have California. But the customer as a rule would not be able to distinguish between two of those woods, anyhow.

Q. Which two?

A. Well, the Minnesota and the Idaho white.

Q. You mean if he were to see them on the job?

A. Yes; I would say he cannot distinguish the difference.

Q. Do you think he could distinguish the difference between Idaho and California?

A. I think he could if he was anything of an expert.

Q. Well, is your customer much of an expert?

A. Well, the average mechanic cannot be called an expert except in his line of business.

Q. Yes. He cannot be called an expert as a lumberman, can he?

A. Not as a lumberman; no.

Q. Well, now, if your customer were delivered California white pine and it was up to grade and appearance and was satisfactory in other respects, do you think that he would be able to say that it was not genuine white pine?

A. I would think the average man would be able to say so; yes.

Q. Well, now, once again, what do you generally do when somebody asks for white pine and does not specify further? What do you let him have?

A. Well, I would say this, that if a man called for a 12-inch
1296 board, 16 feet long, white pine clear, we would frankly tell him that we did not have it, or if we had it in California pine we would give it to him.

Q. I see. Well, now, is that true of other dimensions besides 12-inch boards? Why specify 12-inch boards as part of your answer?

A. Well, because the most difficult item, perhaps, to furnish in strictly white pine on the list is that dimension.

Q. Well, now, how about the exterior trim? If he asks for white pine, do you handle that?

A. That is what it would be used for.

Q. I beg pardon?

A. That is what it would be used for, probably, yes; for exterior trim. I would say that is what it would be used for, and I would say if they got a good piece of California pine that was not full of blue sap, that they got what they wanted.

Q. You would regard that as a compliance with his specification for white pine if you gave him California white pine, would you?

A. I would not; no.

Q. You would not?

A. No; I do not think I would. If it suited the man all right or suited his customer, if he took it and it suited him, that is enough, ain't it?

1297 Q. Well, I am not on the witness stand, you know. Do you distinguish in point of durability between California and northern white pine?

A. Do you mean whether I can?

Q. Yes. Do you regard the two as varying in quality of durability where exposed to the weather?

A. I will say I can distinguish them; yes.

Q. Which do you think is the more durable?

A. Well, you mean grade for grade?

Q. Yes; grade for grade. If the grades were satisfactory, which is more durable, in your judgment, the northern white pine or the California white pine?

A. Well, I would say that if I was selecting it for myself to use on my porch, I would take the northern white pine.

Q. How about the contrast, if there is any, between Idaho white pine and California? Which would you select?

A. I would select the Idaho for my own use, understand. Now, you know why I do that, don't you?

Q. I think you think it is more durable, I don't know; is that true? I will ask you.

A. Well, now, here, there is one thing that will preserve wood, and that is paint.

Q. Paint?

A. Yes. Now, the wood that will take the most paint will last the longest, won't it?

1298 Q. That will take the most paint?

A. The soft board will take the most paint, won't it?

Q. Which do you call the soft board?

A. The Idaho pine board.

Q. It will take paint more than the California pine; is that true?

A. It will absorb more paint. That is the reason I would select it; not because it grew in Idaho or Minnesota or California but from the standpoint of durability. That is what I mean.

Q. Which, if neither was painted, would stand up the longer?

A. If neither was painted?

Q. Yes.

A. Well, we do not take lumber out where it is not painted.

Q. There is not any such animal?

A. Well, they might do it in some places, but we do not do it around here. A man who does not paint his screen door has no business to have a screen door.

Mr. BURR. I think that is all, sir.

Cross-examination by Mr. MATTHEW:

Q. Throughout what period have you been familiar with California white pine?

A. Well, as shop lumber, I would say for fifteen years.

1299 Q. And throughout what period have you been familiar with Idaho white pine?

A. About the same period. You understand that it is within the last fifteen or twenty years that those western woods have been coming into this market. Prior to that time we bought everything in Wisconsin and Minnesota. Now, as those western woods have started coming in here, naturally we have been buying them, because, perhaps, we thought we got better lumber or because we got it for less money. That is the reason we bought them.

Q. Well, are the western pines being marketed in the Chicago area in greater volume today than the northern white pines?

A. When you say western you mean anything west of the Mississippi River, do you?

Q. I will take the Idaho white pine and the California white pine and pondosa pine, the Pacific slope pine.

A. I think there would be more of those handled than the northern; yes.

Q. What is the explanation for that change?

A. Well, in the first place, there is more of it. In the second place, having naturally more of it, it does not cost so much; grade for grade, I am speaking.

Q. That was my understanding. Then the supply of northern white pine has become somewhat diminished in recent years?

A. Yes, sir; I think so.

1300 Q. I assume, Mr. Barr, that your apparent familiarity with the Idaho white pine and the California white pine has not been sufficiently extended for you to have any definite opinion as to their relative merits for different purposes or as to their relative durability as compared with the old northern white pine?

A. That might be so. At the same time I have had considerable experience with those very woods.

Q. Yes; I understand.

A. You understand, for shop purposes.

Q. Yes.

A. Now, the California white pine is an excellent shop lumber. By that I mean you make doors of it, you make sash of it, you make screens of it, you make all kinds of material. Idaho pine is used more for exterior work, like porches and cornice boards and that kind of stuff.

Q. Now, you found the California white pine quite satisfactory for the shop purposes which you have specified?

A. Yes, sir.

Q. Now, will you explain a little more fully why the Idaho white pine is not used to a similar extent for those same shop purposes?

A. Grade for grade it costs more money. That is one reason.

Q. Is it available in the same quantity in the shop grades?

A. I don't think it is.

1301 Q. Does it furnish the same cutting values as California white pine in the shop grades?

A. I would say it does not.

Q. Then is it a fair conclusion that the California white pine finds greater use than Idaho white pine for shop purposes because it is better adapted to that use?

A. I should say it cuts up better. It has a little different character of knot. You know what I mean by knot?

Q. Yes.

A. The Idaho pine board may be a valuable board, but it may look as if it had the smallpox, but it won't make a good door. That is the idea.

Q. And it is for that reason that the California white pine is used to a greater extent than the Idaho white pine in making doors?

A. That is the idea.

Q. And the Idaho white pine is hardly an effective competitor of the California white pine in the shop grades?

A. Not for me it ain't.

Mr. MATTHEW. I think that is all.

Redirect examination by Mr. BURR:

Q. Would you recommend California white pine for exterior door purposes?

1302 A. I would use it for my own use.

Q. For exterior doors?

A. Yes.

Q. Do you regard it as durable for that purpose?

A. You are talking of door styles now, aren't you, and rails?

Q. I am talking about the doors themselves where exposed to the weather, exterior doors.

A. Yes; I would recommend it.

Q. Do you think it is as durable as northern white pine for exterior purposes?

A. Well, I told you why I did not think it was a little while ago. It is a little bit coarser-grained wood. There is a little bit more pitch in it, and that part of the door don't take the paint; therefore I would say that the soft-pine board is the best board for the purpose.

Q. For outside use?

A. For outside use.

Q. Well, doesn't that apply then also to doors as well as to other exterior things?

A. Yes; it applies to doors, the outside of the door; yes.

Mr. BURR. That is all.

Recross-examination by Mr. MATTHEW:

Q. If a door manufactured properly from California white
1303 pine is adequately protected by paint, would it, in your opinion, have substantial durability when utilized for outside purposes?

A. You cannot get anything better. For door purposes, you said, didn't you?

Q. Yes.

A. All right; that is my answer.

Mr. MATTHEW. That is all.

Redirect examination by Mr. BURR:

Q. Are you referring there to exterior door purposes?

A. For general door purposes.

Q. General door purposes?

A. Yes.

Q. Well, now, I will make it specifically for outdoor purposes, where they are exposed to the weather?

A. Well, there are two sides of a door. The inside would be all right. The outside might be affected by the weather.

Q. Then you would prefer a finish on the outside of the door where exposed to the weather of northern white pine, would you?

A. Yes.

Q. That is all.

A. And I told you why, old man.

Mr. BURR. Yes; I know you did.

1304 Re-cross-examination by Mr. MATTHEW:

Q. I suppose that the California white-pine doors have not been tested for a sufficient period of time and under a sufficient variety of conditions to enable you to pass final judgment as to their real durability?

A. Well, fifteen years is a pretty good test.

Q. Well, they have answered the test of that period of time quite satisfactorily?

A. We very seldom have any complaint on them.

Mr. MATTHEW. That is all.

Mr. BURR. That is all.

(Witness excused.)

Examiner SHEPPARD. Is that all, Mr. Burr?

Mr. BURR. Yes; that is all.

Examiner SHEPPARD. Adjourn this meeting to the city of Madison, Wisconsin, to convene in the Federal courtroom which is in the Post-Office Building, at ten o'clock, on the morning of the 21st of October.

(Thereupon an adjournment was had until 10 o'clock, a.m., October 21st, 1929, at Madison, Wisconsin.)

1305 Docket Nos. 1620–1669, inc.

MADISON, WISCONSIN, *October 21, 1929.*

Met pursuant to adjournment, 10:00 o'clock a.m.

Before William W. Sheppard, examiner.

Appearances:

Mr. Eugene W. Burr, for the Commission.

Messrs. Matthew & Mr. Wheat for the respondents.

Examiner SHEPPARD. Well, gentlemen, if you are ready, we will continue the hearing pursuant to the adjournment taken in Chicago on the 16th.

Mr. BURR. Call Mr. Koehler, please.

A. KOEHLER was thereupon called as a witness and, having been duly sworn, testified as follows:

Direct examination by Mr. BURR:

Q. Mr. Koehler, what is your profession, sir?

A. I am a wood technologist employed by the Forest Service.

Q. How long have you been in that employ?

A. Eighteen years.

Q. And have you been all that time with the Forest Products Laboratory?

1306 A. No. The first two years I was in Washington with the Forest Service.

Q. During the remaining sixteen years or thereabouts you have been with the Forest Products Laboratory?

A. Yes, sir.

Q. That is with the Department of Agriculture, is it?

A. Yes.

Q. What have your duties been in connection with your work for the Forest Products Laboratory here; just roughly outline, if you will, please, sir?

A. Largely to become familiar with the cellular structure of wood for purposes of identification; and to determine the variations in the cellular structure in each species that is important.

Q. To whom do you report?

A. To Mr. Winslow, the director at the laboratory.

Q. Now, in connection with that line of work, will you state whether or not you had occasion along about 1923 to examine a specimen which was furnished you by Mr. Aymar Embury II?

A. Yes, sir. I recall I had such occasion.

Q. Hand you Commission's exhibit for identification, no. nine. Will you state whether that is copy of a letter which you wrote in connection with the matter that I have just referred to and, in that connection, will you also be kind enough to consider before you
1307 answer the letter which purports or is apparently a carbon copy of certain correspondence?

A. Yes. This appears to be a true copy of a letter which I wrote.

Q. Referring to Commission's exhibit no. 9 before you——

A. Yes.

Q. The report which you then made was accurate insofar as you were able to determine, was it?

A. I identified the wood as western yellow pine and I think I will have to go into explanation here.

Q. All right, sir, I wish you would. Now is as good a time as any.

A. It is possible to divide the pines into two distinct groups which are called by various names, but Forest Service uses the names yellow-pine group and white-pine group. We identified this wood very distinctly as it belonged to the yellow-pine group. Its soft texture indicated that it belonged to the western group of the yellow pines, and since western yellow pine is the principal species by far of that group which is cut into lumber, we pronounced this wood as western yellow pine.

Q. Now this western yellow pine goes botanically under the name of Pinus ponderosa, does it not?

A. It does.

Q. Is it possible to distinguish Pinus ponderosa lumber from the other species of yellow pines if taken in large quanti-
1308 ties, say by the carload lot, would you be able to distinguish Pinus ponderosa from Pinus echinata?

A. Yes; in large quantities.

Examiner SHEPPARD. Is that the southern yellow pine?

Q. That is the Arkansaw soft pine, so-called, is it?

A. Yes.

Q. What other local name has the Pinus echinata?

A. Shortleaf pine.

Q. Would it be possible for you to determine the difference between Pinus ponderosa and longleaf southern pine?

A. Yes; in large quantities.

Q. What of the Pinus palustris?

A. Yes.

Q. How about the loblolly, would you be able to detect in large quantities this difference?

A. Yes.

Q. Now, it is possible for you to receive a small sample of each of those varieties and tell infallibly which it is?

A. No, it is not.

Q. What is that, if you please?

A. Each wood of each species of pine varies more or less, depending upon the conditions under which it grew and the age of the tree; and it is possible to obtain small pieces from the outer part of any of the southern pines which looks so much like the wood of
1309 the western yellow pine that we cannot be sure as to which species is represented by a sample.

Q. Now, if a piece of heartwood were given you, got from the outside, but from the heartwood, would you be able to microscopically, as a wood technician, to say this is Pinus ponderosa and this other one is Pinus echinata?

A. Not always.

Q. So it is not merely the outside of the log but a specimen from the interior of the heartwood itself; is that true?

A. Yes.

Q. Can you infallibly by microscopic tests distinguish between the small part of either the heartwood or the sapwood of any one of the so-called yellow pines from any one of the so-called white pines; is that feasible?

A. Yes; without question.

Q. How about the white pines? Which do you regard as belonging to the white pine group? That is, I refer to commercial white pine species and natives of this country only.

A. The white pine group consists of a number of species of which the commercially important ones are northern white pine——

Q. Botanically named——

A. Pinus strobus. Western white pine, Pinus monticola; sugar pine, Pinus lambertiana; those are the three important species.

1310 Q. Now, when you receive a specimen or sample of pine can you ascertain definitely whether that sample grew on a genuine white pine tree?

A. Yes.

Q. Are you able to determine from a small sample which species of the white pines you have mentioned such sample belongs to?

A. No. Not from a small sample.

Q. Would you be able to determine in large quantities, a truck load, the difference between monticola, lambertiana, or strobus, as the case may be?

A. We believe we can.

Q. Can you outline for me the distinguishing marks—if you can do so without being technical so much the better—can you outline for me what your tests are that enable you to say this piece is white pine and other piece, we will say, is yellow pine?

A. The most reliable test for identification is that in the yellow pines there are certain cells which run horizontally in the tree known as the ray cells which have projections extending inward from the outer walls; whereas, in the white pines these projections are entirely absent in the ray cells.

Examiner SHEPPARD. Is that revealed by the eye or the microscope?

A. By the microscope only.

1311 Q. Now, how long has that distinction been recognized among wood technologists?

A. I cannot give the exact date, but I know it was recognized in Europe before the forest service in this country ever did any work on it.

Q. Do they, in Europe, divide pines into white and yellow groups?

A. I am not certain of the designations they use for their pines. They have no native white pine of their own. All the European pine belongs to the yellow-pine group so I am not certain as to what designations they use.

Q. The division of the species that you gave a few moments ago I would ask whether that is recognized by botanists generally and wood technologists generally in this country?

A. You mean the differences I pointed out?

Q. The division of the pine trees into white and yellow groups and woods that you have mentioned in each of those respective groups; is that true?

A. Yes. That is generally recognized by botanists.

Q. I believe the examiner had in his custody a couple of samples that we had from Indianapolis. They have now been produced this morning and I would like to ask you to determine, as nearly as you may, what wood these samples that I now hand you are.

Examiner SHEPPARD. The examiner wants to state that

1312 the two samples of wood that were handed to me by Mr. Burr on the morning of the 16th of October in Indianapolis, Indiana, when the examiner and the attorneys in this case inspected the Cadle Tabernacle are the two pieces of wood that I hand to Mr. Burr and which he now puts before the witness.

A. I might say this will take a few minutes.

Q. Take all the time you want.

Examiner SHEPPARD. Go to the light if you want to.

Mr. BURR. You can retire to the other part of the room if you want to and put a microscope on there or whatever you please.

Q. Have you made an examination of the specimens furnished by the examiner, Mr. Koehler?

A. I have.

Q. What do you find it to be?

A. I find they both belong to the yellow-pine group.

Q. Now, can you tell whether they more nearly approximate the average of Pinus ponderosa or more nearly approximate the average of the southern pines as to the texture and hardness and so forth?

A. They are nearer the Pinus ponderosa.

Q. But you cannot identify them definitely as Pinus ponderosa by the use of the microscope, as I understand your testimony; is that correct?

1313 A. No. I cannot.

Examiner SHEPPARD. You mean the two samples are nearer similar to the Pinus ponderosa than they are to the yellow pine long-leaf?

A. Yes.

Q. You are certain they are not any of the white pines, are you?

A. I am certain.

Q. Are they sapwood or heartwood; can you tell that?

A. I cannot tell. They are discolored. It is not possible to say definitely.

Q. The passage of time is such you cannot identify them in that respect?

A. Yes.

Mr. BURR. If the examiner please, I will offer those as Commission's exhibit 12 and 12-a and ask they be received in evidence.

Examiner SHEPPARD. Any objection?

Mr. MATTHEW. None.

Examiner SHEPPARD. Receive them in evidence.

(Two pieces of wood received in evidence marked "Commission's Exhibits 12 and 12-A.")

Mr. MATTHEW. May it be understood, Mr. Examiner, that the objection which we made to the testimony given at the Indianapolis hearing as to the specifications of the architects as to the mate-

1314 rials to be furnished has not been waived by our offering no objection to the tender of these specifications. In other words, we understand counsel for the Commission intends to connect up these various facts appropriately?

Examiner SHEPPARD. Yes. I understand that.

Mr. BURR. I am going to try to connect them up and I think in all probability I can do so. If the examiner please, I neglected to offer Commission's exhibit for the record no. 9.

Examiner SHEPPARD. It has already been identified?

Mr. BURR. It has already been identified.

Mr. MATTHEW. As to that, if the examiner please, if I understand the correct practice, the letter written by the witness is not proper to be introduced in evidence, but that may be used to refresh his recollection. He can state what he found to be the fact when he examined the specimen of wood that was submitted to him, if I understand the practice correctly.

Examiner SHEPPARD. Let me get the facts right. Is this the gentleman who wrote the letter himself?

Mr. BURR. Yes, sir.

Examiner SHEPPARD. Get the facts from him. There is no use to put the document in when we have the witness before us.

Q. You may refresh your recollection, Mr. Koehler, by the
1315 use of Commission's, for identification, no. 9 and state what you found and reported to Mr. Aymar Embury Second?

Examiner SHEPPARD. That is the proper practice.

A. As I recall from an examination of the correspondence, this sample of wood which was submitted was identified as belonging to the yellow-pine group.

Mr. MATTHEW. Identified by you?

A. By myself, because it had the soft texture of the western yellow pines and because the species Pinus ponderosa is the principal one of those cut into lumber were pronounced it as Pinus ponderosa.

Q. Do you recall whether or not the texture and degree of hardness or softness indicated to you as to whether or not it approximated more nearly an average of Pinus ponderosa than it did to the average of the southern yellow pines?

A. I do not recall the sample, but I would not have stated that it was the western yellow pine unless it did.

Examiner SHEPPARD. In other words, it was more near the ponderosa than the longleaf?

A. Yes.

Mr. MATTHEW. Are you stating your recollection now after refreshing it by examining the copy of your report, Mr. Koehler? Is that so, do you now recall the matter?

A. I do not recall the sample itself.

Mr. MATTHEW. Do you recall making an examination of
1316 of the sample and making a report on it?

A. Yes.

Mr. MATTHEW. And having read a copy of the report you recall its substance?

A. Yes.

Q. Mr. Koehler, do you recall a trip that you made to Detroit the latter part of January or first of February of the year 1927 with regard to certain outside finish for the Detroit Community Fund building?

A. I recall the trip, but the wood in connection with which I made the trip was not outside finish, it was window sash.

Q. Window sash?

A. Yes.

Q. Now, the window sash is exposed to the elements, is it?

A. Yes.

Q. It is on the outside of the building but not classified as outside finish?

A. Yes.

Q. I see. Have you refreshed your recollection by the use of the report that you made at that time?

A. I have.

Q. Will you state what occurred at that time; why you went down there and what you found to be the case?

A. We were asked to send some one—we were asked by the Martin Crossman Company of Detroit to send some one to Detroit to
1317 to examine certain window sash which were in place to see whether or not they were white pine as the specifications specified. I examined a number of slivers taken from these sash under the microscope and found them to belong to the yellow pine group and the fine texture of the wood indicated strongly that they were western yellow pine.

Q. Was there any indication as to whether they were sapwood or heartwood?

A. As I recall, I was not asked to pass on that and I don't remember now.

Examiner SHEPPARD. You can refresh your recollection if you want to from the paper here; if you so desire, Mr. Koehler, glance through it and see if you can answer Mr. Burr's question more definitely as to the sapwood.

A. There is nothing in the report on the question of sapwood and heartwood and I do not recall that that question was asked.

Q. Do you know what was actually done as the result of your report or what disposition was made of the matter?

Mr. MATTHEW. Just a minute, is not that hearsay, as far as this witness is concerned?

Q. Do you know of your own knowledge?

A. No; I do not.

Q. You made your report down there to the persons interested, did you?

1318 A. Yes. I made a verbal report to them.

Q. Along the same lines that you just testified that you found it to be that type of lumber?

A. Yes.

Q. Was that a verbal or written report?

A. It was a verbal report I made to them.

Q. At a meeting of those interested, was it?

A. Yes.

Mr. MATTHEW. As I understood it, Mr. Burr, you were showing the witness what purported to be a written report?

Mr. BURR. Now. It is a written report to his chief.

Q. Is it not?

A. Yes.

Mr. BURR. Would you like to see it, sir?

Mr. MATTHEW. Yes. May I look at it, please?

Mr. BURR. You may wish to cross-examine with that in hand.

Q. Now, have you had frequent occasion to report as to the identity of samples of pine furnished you where there were complaints made to you as to the lack of durability?

Mr. MATTHEW. May I have the first of that, please?

(Question read.)

A. We have had a number of such inquiries. I do not know whether they can be called frequent or not.

1319 Q. Well, there have been a number of such cases, and you made a report to what effect?

A. In most cases where window sash was submitted as pine which decayed it was identified as belonging to the yellow pine group, and the soft texture indicated that it was probably western yellow pine.

Q. Have you loaned to counsel for the Commission the correspondence in a number of such matters?

A. I have.

Mr. BURR. Now, if opposing counsel is agreeable we can put these in. If he objects, I think his objection is well taken. Do you care to take it under advisement?

Mr. MATTHEW. Well, I think the tender is objectionable, Mr. Burr. If you will allow me the correspondence to glance through it during the noon hour——

Mr. BURR. I will be very glad to do it. I think the witness will have no objection loaning them to you, as he loaned them to me.

Examiner SHEPPARD. He cannot object to them intelligently without an examination, so take them and look over them. I do not mean you need to do it at this time.

Mr. BURR. Now, if the examiner please, I intended until my recent conference here to put in statistics, compilations, and figures of the Forest Products Laboratory, but after consultation with the

1320 many members of the force and consideration of the figures themselves I am inclined to think that the issues are sufficiently clear and it merely complicates the situation to put these in. Now, we are here, and opposing counsel have been under the impression, for which I am responsible, that I was planning to put in all these figures.

In view of the fact that I think it will serve merely to confuse the Commission rather than to clarify the situation, counsel perhaps are taken at a disadvantage, and I think they should have the same opportunity that I have had to see, while we are here, if they desire to put in these figures; and if they desire to make any motion which will look forward to their having an opportunity to go into the matter and reach a decision I will be glad to join them in such motion.

I would say, however, that I have nine witnesses this afternoon from Madison, so that we will have to go on this afternoon, but if opposing counsel desire to go into the matter the rest of the morning and part of tomorrow or if they can decide earlier than that that they do not want to put them in, why that is agreeable.

Examiner SHEPPARD. Off the record a minute.

(Discussion off the record.)

Mr. BURR. I will say further for the record, the figures
1321 which I was most interested in were the compilations on durability, but I find after consultation that they are not disposed to stand upon them and regard them as not satisfactory from the standpoint of comprehensiveness or accuracy, or both, and that those durability figures would be subject to grave doubt, and I think perhaps some of the other figures might be subject to doubt as not having been sufficiently comprehensive.

I think opposing counsel will want to take the whole matter under advisement just as I have and see what they desire to do.

Examiner SHEPPARD. All right.

Mr. MATTHEW. Referring to the durability reports, have you in mind particularly Bulletin No. 173?

Mr. BURR. No. I do not think I have. I have got in mind everything they have on the subject of durability.

Mr. MATTHEW. Isn't that one of the reports?

Mr. BURR. I am not sure of the number. I think Mr. Koehler can tell you.

Q. Isn't that one of the bulletins dealing with durability?

A. Yes.

Q. What number?

A. 173.

Q. Mr. Koehler, there has been a compilation on durability that has been recalled, as there, after having been issued?

A. I believe so, but I am not an authority on that subject
1322 and, therefor, would not wish to testify.

Mr. BURR. If counsel want to go into it, I would like, Mr. Winslow, if you will make available such memoranda as you prepared for my benefit to opposing counsel.

Mr. WINSLOW. I will be extremely glad to do so.

Mr. BURR. While we are here let us put them in rather than return here at a later date, if counsel desire to.

Mr. MATTHEW. I do not know as we shall, Mr. Burr, but I think it is very courteous of you to give us this opportunity.

Mr. BURR. Oh, not at all.

Mr. MATTHEW. But, we will try to advise you at the first opportunity today.

Examiner SHEPPARD. Take your time, Mr. Matthew. If you want to all right, and if not, all right.

Mr. BURR. I have nothing more until two o'clock.

Examiner SHEPPARD. We have a cross-examination.

Cross-examination by Mr. MATTHEW:

Q. Mr. Koehler, you stated toward the latter part of your testimony upon direct examination that in most cases where you had been furnished with samples of window sash which had decayed you found that they had been made of yellow pine and probably of the

1323 western yellow pine. I would gather from that that in some instances you found that they had been made of some other woods?

A. I modified my statement that where the sash were pine and had decayed they were found to belong to the yellow-pine group.

Q. Did you say that in every instance where pine sash was found to be decayed you found it belonged to the yellow-pine group?

A. I would like to refresh my memory if I can see that correspondence over there.

Q. My impression was you said that in most cases that had been found to be the fact?

A. This does not give the information on cases where some other pine besides wood of the yellow-pine group was concerned, and I cannot recall definitely whether we received any samples of sash which decayed and belonged to the white-pine group. That may be possible.

Q. You just do not recall?

A. Yes. Can I say, by word of explanation——

Q. Certainly.

A. That I do not handle the decay work. Someone else in the laboratory does that. It is just when the question of the identity of the wood was concerned that I would have anything to do with it.

Q. Have you had any cases where the wood submitted has
1324 proved spruce?

A. I don't recall it now.

Q. All you have in mind now is cases where you found the wood belonged to the yellow-pine group?

A. Yes.

Q. Counsel asked you as to the Arkansaw soft pine which you identified botanically as the Pinus echinata, I believe.

A. That is its name.

Q. The Pinus echinata has quite a wide range throughout the South?

A. Not necessarily wide rings.

Q. No. Wide range?

A. Oh, range; yes.

Q. Does it vary as to its quality quite materially throughout its range?

A. Enough so that the pine from Arkansas is, to a large extent, graded separately commercially and called "Arkansas soft pine."

Q. In some sections of the southern yellow-pine belt does the lumber yielded by Pinus echinata so resemble the lumber yielded by the longleaf yellow pine or Pinus palustris, I believe you termed it, that they are thrown together for commercial purposes?

A. Yes.

Q. Could you be certain that in these several instances where you have identified wood as yellow pine that it is not
1325 Arkansas soft pine or Pinus echinata?

A. In some cases we couldn't be certain at all. In other cases the chances are ninety-eight out of a hundred, I might say, that it is not Arkansas pine.

Q. How are you able to satisfy yourself that a given specimen of wood is Pinus ponderosa rather than Arkansas soft pine?

A. Because Pinus ponderosa, in general, has a finer texture than the Arkansas soft pine.

Q. But individual specimens quite closely resemble one another, you stated, I believe?

A. They do; yes.

Q. You could not say positively now that any of these wood samples which you examined came, in fact, from the Pinus ponderosa tree rather than from the Pinus echinata tree in the Arkansas soft-pine belt?

A. In most cases not; only because small specimens were submitted.

Q. In the early part of your direct examination you were asked to give the important tests of distinction between the pines which belonged in the white-pine group, and those which belonged in the yellow-pine group, and you gave one which you regarded as the most reliable test. In that connection may I ask you, Mr. Koehler, whether the term white pine is to be regarded as a botanical term?

A. It is used by botanists.

1326 Q. And the word "yellow pine" similarly is used by botanists?

A. Yes.

Q. Is it, technically speaking, in either instance, a technical term?

A. Yes. When the technical terms are not used those are the terms that are commonly used.

Q. That is the common and popular term in the absence of the technical term or in the alternative?

A. Yes.

Q. What is the technical term which is the alternative of white pine?

A. There is no technical term for the whole group, but the species have their technical name in each group.

Q. Is there any technical term which is the alternative of yellow pine?

A. No.

Q. The most we can say is that certain of these pines have been conveniently grouped together and termed members of the white-pine group and others have been grouped together for convenience and termed members of the yellow-pine group; is that a fair statement?

A. Yes.

Q. What are the main features which distinguish the pines which belong in the white-pine group from those which go into the yellow-pine group?

1327 A. You mean the tree, as a whole, or the wood?

Q. What determines whether it is to go into one group or the other?

A. As I have already stated, in the wood all the species of the yellow-pine group have projections of the cell wall extended inward into the cell; whereas the white pine they are entirely absent.

Q. I got that point. Perhaps I should have added I wanted to get the other factors which are regarded as distinguishing.

A. In the leaves, the needles of the yellow-pine group have what is called two fibro-vascular bundles; whereas in the white-pine group they have one bundle in each leaf. That is the principal characteristic difference in the leaves that holds in all cases. There are other characteristics which hold in most cases, but not in all cases.

Q. You have in mind, for example, the number of leaves of a bundle?

A. Yes. The common white pines have five needles in a bundle.

Q. And the yellow pine?

A. The yellow pine, it varies from usually two to three, but two of them also have five needles in a bundle.

Q. Is there a white pine known as the "Pinus quadrifolia"?

A. There is such a species, and we classify it as belonging to the white-pine group.

Q. How many leaves are there in a bundle in that instance?

1328 A. Four.

Q. That is indicated by its Latin name, of course?

A. Yes.

Q. Is there any other that has only one leaf?

A. Yes.

Q. What is that termed?

A. Pinus monophylla.

Q. That is recognized as white pine, as well?

A. There is some difference of opinion as to whether it should be called white pine or pinion. Some authorities classify all the white pines together, including the pinions as white pine; others subdivide the white pines so as to make a separate group out of the pinion pines.

Q. Now, the characteristics which you have stressed as distinguishing features may be regarded as botanical features, may they not? That is, the elements which would be stressed for the purposes of botanical classification?

A. Yes.

Q. Are the mechanical properties of these woods considered at all in determining their classification?

A. No.

Q. Why not?

A. Because they vary and overlap.

Q. You are familiar with the mechanical properties of these several pines that are under discussion?

1329 A. Only in a general way. I am not an authority on the subject.

Q. Your work does not carry you into a consideration of the mechanical properties?

A. No.

Q. Then you are unable to state whether the consideration of the mechanical properties of this wood, considered as wood, would throw a particular species into one group or the other?

A. I think I am enough familiar with it to say that it does not enter into it.

Q. I do not think you, perhaps, got the purpose of my question. I will reframe it. Let us address ourselves directly to the lumber which comes from Pinus ponderosa and consider it solely with reference to its mechanical properties. Now, in turn, let us consider the mechanical properties of the pines which are usually thrown in the white pine group and, in turn, the mechanical properties of the pines which are characteristic of the yellow pine group. Now, in considering the wood from that point of view, can you state whether or not the lumber yielded by the Pinus ponderosa tree belongs more appropriately in the white pine group of lumber or in the yellow pine group?

A. I would rather not answer that question, because I am not an authority on that subject.

Q. That is really outside of your proper field?

1330 A. Yes.

Q. Can you tell us who there may be here in the Government service who is an authority on that particular question, namely, the mechanical properties of these pine lumbers?

A. Mr. Newlin, of the Forest Products Laboratory.

Q. Mr. Newlin is a resident here at the present time?

A. Yes.

Q. Is there a Mr. Wilson who is likewise in the service here?

A. Yes, sir.

Q. Is he a resident here likewise?

A. Yes, sir.

Q. You stated, Mr. Koehler, upon your direct examination that you encountered considerable difficulty in identifying small specimens of heartwood, but that when you were supplied with samples of sapwood you have no difficulty in distinguishing the sapwood of the yellow pine from the sapwood of the white pine?

A. No. I believe you are mistaken there.

Q. Will you clear me up on that? I am not sure I got your testimony correctly.

A. I said that in either case, sapwood or heartwood, if I have only small specimens available, I cannot positively say whether it is western yellow pine or one of the southern yellow pine.

Q. But you did state that you could infallibly distinguish

1331 the sapwood of any yellow pine from the sapwood of white pine?

A. Yes.

Q. Then I also understand that you can infallibly distinguish the heartwood of yellow pine from the heartwood of white pine?

A. Yes.

Q. Then I misunderstood your testimony upon direct.

Mr. MATTHEW. May it be understood, Mr. Examiner, that we may reserve further cross-examination until we have had a chance to look over this material which you have furnished us?

Mr. BURR. Certainly.

Examiner SHEPPARD. Yes. Just hold yourself in readiness until you are recalled.

Mr. BURR. If the examiner please, I suggest we get the reporter to stick one of my stickers on each of these and we will have them marked for identification first.

(Eight pieces of wood marked "Commission's exhibits 13 to 20, both inclusive, for identification.")

Mr. BURR. Let the record show that some eight samples have now been marked for identification, "Commission's exhibits for identification nos. 13 to 20, inclusive."

Redirect examination by Mr. BURR:

Q. Mr. Koehler, all of these are samples of cross sections of
1332 various specimens of certain species of pine, are they not?

A. They are.

Q. From near the bark or including an edge of bark to and including the center of the tree?

A. They are.

Q. In each case?

A. Yes.

Q. Now, will you state what the Commission's exhibit for identification no. 13 is?

A. No. 13 is a sample of longleaf pine.

Q. Do you regard that as an average sample or is that a sample to illustrate variation or what is the nature of the sample that is so marked?

A. I picked Commission's exhibit 14——

Q. 13 and 14 you mean?

A. Yes; 13 and 14 as showing approximately the range in the texture of the southern yellow pine.

Q. Is that to say they are both Pinuc palustris?

A. No. Sample no. 13 is longleaf pine and sample no. 14 is shortleaf pine. I might say that these do not necessarily represent the extreme range. They were taken from samples which we had in our collection, but represent approximately the range in texture that may be obtained from the southern yellow pines.

Q. Does that show the range of pitch?

1333 A. No. Not pitch.

Q. But by texture you mean what, hardness or softness or smoothness or what?

A. By texture I mean the percentage of the hard grain as it is commonly called in comparison with the softer portion of the grain.

Q. Do these two samples that you refer to contain both heart and sapwood?

A. They do.

Q. How is the sapwood to be distinguished from the heartwood in these two samples?

A. The sapwood is lighter colored in part than the heartwood and in these two samples it also contains some blue stain.

Mr. MATTHEW. That is, the sapwood does?

A. Yes. In these two samples it is confined to the sapwood.

Q. Now, will you describe the next group of Commission's exhibits for identification?

A. Samples 15, 16, and 17 show a range in the texture of Pinus ponderosa again as we happen to have it in our collection and not necessarily a complete range in texture.

Q. Commission's exhibit 15 seems to have wide annual rings. Is that characteristic?

A. No. You may obtain wide rings or narrow rings in any species.

1334 Q. Depending upon the rapidity of growth, is that true?

A. Yes.

Q. That depends upon the fortuitous circumstances of climate and conditions, on the side of the hill, and so forth?

A. Yes.

Q. And how many close neighbors the tree has?

A. Yes.

Q. Where does one distinguish in Commission exhibit 15 as to where heartwood and sapwood come?

A. Again by difference in color, the sapwood being lighter colored than the heartwood.

Q. And the same is true of 17 and 18, is it?

A. Yes.

Examiner SHEPPARD. They are easily distinguishable in 17 and 18.

Q. How are 18, 19, and 20 to be classified?

A. Samples 18, 19, and 20 represent three specimens of Pinus monticola, also showing a range in texture as we had them available.

Mr. BURR. If the examiner please, I desire to offer for the record these samples that have been so identified as Commission's exhibits 13 to 20, inclusive.

Examiner SHEPPARD. Any objection?

Mr. MATTHEW. None at all.

Examiner SHEPPARD. Let them go into the record as

1335 exhibits 13 to 20, inclusive.

Q. Did you select these specimens in part as representative of the heart and sap wood content of these species or did not you have that in mind?

A. No. I did not have that in mind when I selected them.

Q. I think I will ask you the general question whether you have anything in the way of further comment upon those specimens?

A. I selected them particularly to show the variation that may be obtained in Pinus ponderosa so far as the texture is concerned. Sample no. 15 has a coarser texture as is indicated by the width of these dark bands of hard grain as they are commonly called than

sample 16, which is more nearly the average for western yellow pine; whereas sample 17 has very narrow bands of the hard grains making them rather inconspicuous.

I selected the southern pines to show approximately the extremes that are obtained in the southern pines as a whole for comparison, and I selected some samples of Pinus monticola showing different types of texture also for comparison. It will be noticed that in the Pinus monticola the hard grain is not so pronounced as in the Pinus ponderosa or southern yellow pines whether the rings are narrow or wide.

Q. Can you tell from what sections or section the samples of Pinus ponderosa were secured from?

1336 A. You mean section of the country?

Q. Yes; section of the range of the species?

A. I can by referring to my notes, if I may.

Q. I wish you would. I wish you would tell us where all eight of the samples came from.

Examiner SHEPPARD. Yes. I would like to know it. Begin with exhibit 13.

A. Exhibit 13 came from near Jacksonville, Florida. Exhibit 14 from near Liberty, North Carolina; exhibit 15 from near Castle Rock, California; exhibit 16 come from the same tree as exhibit 15; exhibit 17 came from near Missoula, Montana; exhibit 18 came from near Haugen, Montana; exhibit 19 came from also near Haugen, Montana; exhibit 20 also near Haugan, Montana.

Q. Now, referring to Commission's Exhibit 14, I wish you would say whether or not the specimens of the so-called Arkansas soft pine, also belonging, I believe you said, to Pinus echinata, would show, if properly selected, would show factors similar to Commission's Exhibit 16 and even possibly 17 as regards texture, the extreme soft texture of echinata if secured?

A. I do not believe that any considerable piece of Pinus echinata would approximate exhibit 16 and 17 in texture. Small pieces might.

Examiner SHEPPARD. Do I understand you to say the
1337 species you have just testified to more nearly approximates exhibits 13 and 14?

A. No.

Examiner SHEPPARD. They are both yellow pines?

A. The question was, as I understood it, whether the softer texture Pinus echinata approximates exhibits 16 and 17 in texture, and I said no.

Examiner SHEPPARD. Then I asked you if it did approximate exhibits 13 and 14 which is longleaf yellow pine, one of them.

A. I believe that exhibit 14 is a representative sample of the softer textured southern yellow pine.

Examiner SHEPPARD. Then it is more like this than it is like the ponderosa?

A. Yes.

Q. Those are rather small trees for the average. Are they all virgin timber?

A. Some of these specimens were taken some distance up in the tree and therefore do not represent the size of the tree at the stump, but I think in geneal they are smaller than the average for the species.

Q. I believe you testified there are certain five-leaf yellow pines. Are they of commercial importance?

A. Yes; there is one in Arizona which frequently has five
1338 needles in a bunch, although there are exceptions, which is cut into lumber.

Q. Is that the Pinus arizonica?

A. Yes.

Q. What other five-leaf yellow pines are there?

A. The Torrey's pine, which is very limited in distribution in California.

Q. It is confined to a little bit of seacoast there?

A. Yes.

Q. Is that cut commercially?

A. No.

Q. Any other?

A. No.

Re-cross-examination by Mr. MATTHEW:

Q. Mr. Koehler, have you in your collection any specimens of Pinus ponderosa lumber obtained from the forest in the Klamath Falls area?

A. Yes; I believe we have.

Q. Might we be allowed to examine those?

A. I will have to bring them in some other time.

Mr. BURR. Perhaps you would like to see them out there.

Q. Perhaps visitors may be allowed in your laboratory?

A. Oh, yes.

Q. You stated in response to questions put by counsel for
1339 the Commission that some of these specimens which you have before you may have been obtained from the top portion of the trees. Is that true of the Pinus ponderosa specimens?

A. Yes. I have three different heights there. I cannot tell offhand what height in the tree they were taken.

Q. So it is quite apparent these were obtained from trees which are smaller than the average commercial tree?

A. I believe so.

Q. Were any of these specimens obtained from second-growth trees?

A. I don't know offhand. The term second growth in itself is indefinite in meaning. It would be pretty hard to say in some cases whether they have or have not. Sample no. 14 may possibly have been obtained from a tree which would be classified as second growth.

Q. How about samples 15 and 16?

A. No. I collected them myself and they were collected in the virgin forest.

Q. How about samples 18, 19, and 20?

A. The same way. They were collected from the virgin forest.

Q. Did they come from a single tree?

A. No. They are three different trees.

Q. Have you seen any specimens of Pinus monticola which are much harder and flintier in type than any of your specimens 18, 19, and 20?

A. Not as a specimen as a whole, but any species we occa-
1340 sionally obtain wood in part of the tree which is harder than these samples.

Q. I assume you have in your laboratories specimens of lumber obtained from Pinus strobus?

A. We have, but they were not of these dimensions, covering the wood from the pith to the bark so as to show the range in the texture of the species and therefor I did not try to produce any.

Q. Is there quite a variation in strobus lumber throughout the range of that tree?

A. You mean variation in texture?

Q. Yes.

A. Well, all species vary more or less, but strobus does not vary as much as some of the pines do.

Q. Now, if you were to furnish samples of ponderosa pine obtained from trees of the average commercial size, would those specimens reveal as great a percentage of sap as is indicated by your specimens 15, 16, and 17?

A. Yes; I think they would.

Q. The percentage of sap in your specimen no. 16, for example, is apparently at least fifty percent of the entire specimen, is it not?

A. Yes; in this case. I did not have reference to a percentage amount of sapwood. I have reference to the width of the sapwood in itself.

1341 Q. Well, I have in mind the percentage of the sapwood to the diameter of the trees if you will. Now, in the ordinary commercial tree you do not find as great a percentage of sapwood in relation to the total diameter of the tree as is indicated by the specimens which you here submit as 15, 16, and 17, would you?

A. They would not.

Q. I am not certain whether you stated that your specimens of monticola wood are likewise obtained from relatively small trees?

A. Yes. I believe they are a little smaller than the average commercial run of logs.

Q. It is true, is it not, that the average commercial run of logs from the Pinus monticola represent much smaller diameter as far as timber is concerned than the average run of logs used in the production of Pinus ponderosa?

A. If you take Pinus ponderosa as a whole I doubt it, because in the Rocky Mountain region Pinus ponderosa is a relatively small tree. On the other hand, in the Sierras that may be, and to confine the Pinus ponderosa only to the Sierras I think that would be true.

Q. The Pinus ponderosa from its range in the Sierra Nevada Mountains ordinarily represents a much larger tree than the Pinus monticola?

A. I wouldn't say much larger, but from what I have seen
1342 of the timber I think it would run a little larger.

Q. Have you personally been in the Klamath Fall Basin?

A. No.

Q. What part of the Sierras have you observed the Pinus ponderosa personally?

A. I have been around McCloud and around Standard.

Q. Standard is in Tuolumne County?

A. Yes.

Q. In the lower part of the Sierra Nevada Range?

A. Yes.

Q. Southerly, southwesterly portion?

A. Yes. And around Susanville.

Q. Susanville is in Lassen County, California?

A. Yes.

Examiner SHEPPARD. Is there any ponderosa in the Cascades, western slope?

A. I cannot say definitely.

Examiner SHEPPARD. How about that around Bend, Oregon?

A. Yes; that is ponderosa.

Examiner SHEPPARD. That is in the Cascades. That is largely on the eastern slope of the Cascades, is it not, that is on the eastern drainage?

A. I really don't know how the drainage runs there.

1343 Mr. BURR. I will stipulate Bend is on the eastern slope.

Q. Just one question about this Colorado timber to which you refer. You said the trees were relatively small and the stands are relatively unimportant in area, are they not, commercially speaking?

A. Not locally. Lumber is cut there for local uses, but so far as shipment to the East is concerned they are unimportant.

Q. Is lumber on the whole obtained from this Colorado section quite different from the lumber which is obtained from the Sierra Nevada and Klamath Fall Basin?

A. Yes. It would contain more knots for one thing. Their timber is shorter bodied, be less clear lumber in the Colorado pine.

Q. Does it tend to run to harder and pitchier type than the lumber from the Klamath Fall Basin and Sierra Nevada Range generally?

A. I believe it does.

Redirect examination by Mr. BURR:

Q. In the subdivision of the work of the Forest Products Laboratory does it fall within your scope and duties to take note of the

percentage of heartwood and sapwood of these various species, or is that assigned to some one else?

A. I have done some of that in connection with the describing the wood of different species, but others have also done work on that.

1344 Q. The reports on the subject have not been prepared by you?

A. No laboratory reports have been prepared by me.

Q. Would you say that the specialist of the laboratory for that particular branch was some one other than yourself?

A. Yes; there are others who have more data than I.

Q. I think that is all.

Examiner SHEPPARD. All right, Mr. Koehler, you are excused, except you may be recalled for further examination a little later.

Mr. BURR. I think I will ask for an adjournment until two o'clock. I have these witnesses coming this afternoon on a similar character to the reports and some architects and some retailers. Then I shall be ready to adjourn, so far as I am concerned, subject to recall in the West. In the meantime you may take as much time as you desire to make up your minds with regard to this other material.

Examiner SHEPPARD. We will take an adjournment until two o'clock.

Adjournment thereupon taken until two o'clock p.m.

1345 2:00 o'clock p.m., hearing resumed.

Examiner SHEPPARD. Well, we are ready to proceed, gentlemen.

Mr. MATTHEW. If the examiner please, with your consent and the consent of counsel for the Commission, I would like to ask leave to put on a witness out of turn at this time.

Examiner SHEPPARD. Yes. It will be all right.

C. W. HORNIBROOK was thereupon called as a witness on behalf of the respondents and, having been duly sworn, testified as follows:

Direct examination by Mr. MATTHEW:

Q. Will you please state your name and your place of residence?

A. C. W. Hornibrook, Klamath Falls, Oregon.

Q. What is your business, Mr. Hornibrook?

A. Sales manager of the Ewauna Box Company.

Q. Where is the manufacturing plant of the Ewauna Box Company located?

A. In Klamath Falls.

Q. That company is one of the respondents in these proceedings?

A. Yes, sir.

Q. How long have you been the sales manager of the Ewauna Box Company?

A. Not quite two years.

1346 Q. What kind of lumber primarily is manufactured and marketed by the Ewauna Box Company?

A. California white pine largely.

Q. How many years have you been in the lumber business, Mr. Hornibrook?

A. About 19 or 20 years.

Q. Will you relate your lumber experience and in some little detail, if you please?

A. I started working in some of the northern Wisconsin mills during school vacations, manual labor. Later, after leaving school, I was employed by Mr. Coman of Menomonie, Michigan, first as a tallyman and later as an inspector of northern softwoods and hardwoods.

Q. When you speak of northern softwoods what particular varieties of lumber have you in mind?

A. The northern white pines, hemlock, Norway pine, tamarack, balsam.

Q. How many years in the aggregate were you in the lumber business in these Northern States?

A. About nine or ten years.

Q. Will you continue, please?

A. Part of that time I was employed as timber cruiser for a Milwaukee firm, cruising Georgian Bay white pine or Canadian white pine; and after the war bought and sold southern hardwoods
1347 and ran one mill in South Carolina until they closed up.

Q. Where was that mill?

A. At Lumber, South Carolina.

Q. What kind of lumber was manufactured at that point?

A. North Carolina pine; various hardwoods, such as gum, ash, elm, oak, soft maple.

Q. Will you continue your lumber experience following that?

A. I left there for California and was employed by the Fruit Growers Supply Company at their plant at Susanville, California, in a clerical capacity and later as operator of their dry kilns.

Q. In what year did you enter the employ of that company?

A. It was January of 1922, if I am not mistaken. I later ran a mill in Los Angeles, cutting spruce and western hemlock.

Q. Just how long did you remain in the employ of the Fruit Growers Supply Company?

A. About two and a half years.

Q. Following that, did you enter the employ of this Los Angeles company?

A. Yes, sir.

Q. What was the name of that company?

A. Los Angeles Lumber Produce Company, manufacturing spruce and hemlock.

Q. How long did you remain there?

A. A little over a year; and then handling the sales of the
1348 Hutchison Lumber Company, of Oroville, California, until their plant was destroyed by fire.

Q. What was the period during which you were employed by the Hutchison Lumber Company?

A. From early 1925 until late in 1927.

Q. What kinds of lumber were manufactured and marketed by that company?

A. California white pine, sugar pine, white fir, red fir, and western cedar.

Q. I think you stated you had charge of the sales of that company?

A. Yes, sir.

Q. In what year did you leave the employ of that company?

A. In the fall of 1927 when their plant was destroyed by fire and went to work for the Ewauna Box Company.

Q. You have been in the employ of the Ewauna Box Company since that date?

A. Yes, sir.

Q. Are you generally familiar, Mr. Hornibrook, with the kinds of pine lumber which are being the subject given consideration in this case, that is, the northern white pine, sugar pine, and Idaho white pine?

A. All except the Idaho white pine. I have had no real contact with it.

Q. But you are familiar with the others?

A. Yes, sir.

1349 Q. And have you some familiarity with the construction of doors?

A. Yes, sir.

Q. How is that familiarity gained?

A. From observation at the various Middle Western plants.

Q. You frequently visit those plants in the course of your activity as sales manager?

A. Yes, sir.

Q. Were you in attendance upon the Indianapolis hearing in these proceedings on October 16th of this year?

A. Yes, sir.

Q. Were you present at the morning session when certain testimony was given respecting the doors of the Cable Tabernacle?

A. Yes, sir.

Q. Did you accompany the examiner and representatives of the parties during the noon recess when an inspection was made of the Cable Tabernacle?

A. Yes, sir.

Q. Did you take any photographs of parts of the Cable Tabernacle on that day?

A. Yes, sir.

Q. When were they taken, if you please?

A. Right the afternoon of that day.

Q. Have you prints of those photographs here?

A. Yes, sir.

1350 Q. The prints that you have in your hand are the prints to which you refer?

A. Yes, sir.

Mr. MATTHEW. May we ask to have these identified, if the examiner please. They are marked on the back from A to J, inclusive. I think they might be identified as a single exhibit unless it is desired to be given a separate number. I suggest they be marked for identification as respondent's exhibits 20-A to 20-J, inclusive.

Examiner SHEPPARD. Yes.

(Photographs marked for identification "Respondent's Exhibits 20-A to 20-J, both inclusive".)

Q. Mr. Hornibrook, I direct your attention to the first of these photographs which have been identified as exhibit 20-A and ask you to state what it is and what it shows?

A. Just a general view of the doors which I understood were under the discussion at the particular time.

Q. Those were the doors which were first inspected in the course of that trip?

A. Yes, sir.

Mr. MATTHEW. I think the examiner and counsel will allow me to state, those were the doors on the Ohio Street entrance near the intersection with Ogden Street. I think it will show on the later photographs.

Q. Now, will you continue?

1351 A. This first picture just shows the defective bottom rails without much detail.

Q. Now, you pass to the next photograph identified as exhibit 20-B?

A. This was a close-up view of the bottom rail and also parts of the styles on the right-hand door. Shows the defective condition of the door; also shows one of the open joints. I inserted a lead pencil of ordinary size in the open joint there just as a matter of comparison to show the size of that opening.

Examiner SHEPPARD. On the right?

A. Yes, sir.

Q. That lead pencil in the crack between the right-hand style and the upper portion of the bottom rail?

A. Yes, sir.

Q. And the portion of the bottom rail which is most seriously decayed appears there very clearly at about the center of the picture?

A. Yes, sir.

Q. As I understand it, this is the right-hand door of the two which are shown at a little greater distance in exhibit 20-A?

A. Yes, sir.

Q. Now, will you pass to exhibit 20-C?

1352 A. Exhibit 20-C is a view of the bottom rails of two other doors in the same building to show the breakage in the joints caused by their use of green lumber or the doors not properly assembled, or both.

Q. May I ask the name of the pieces of the door which extend vertically above the lower rail?

A. Those are muntins.

Q. Are they properly installed?

A. No. None of the parts of the door are built in accordance with the accepted practice of manufacture of doors. It has been the custom for a number of years in the manufacture of doors to combine the mortise edge and the other part in once piece. These doors here, styles, muntins, and rails were square edge on all sides and had the molding nailed on the outside, made possibly through shrinkage or expansion the opening of more bent sills.

Q. Referring for a moment to your exhibit 20-B, does that likewise show whether or not the moldings were separate or whether they are a part of the style?

A. It shows where the molding that had been at the top of the bottom rail had been taken off and shows the moldings on the side of the left-hand style and on the muntins where they are nailed onto the door.

Q. Had your completed your characterization of exhibit 20-C?

A. Yes, sir.

Q. Pass to your next exhibit, 20-D.

1353 A. This is just another picture taken of another door to show that the doors were either not properly assembled or were made out of lumber not properly dried. The pencil there gives an idea of the size of the opening to permit the entrance of water or moisture, making conditions favorable for decay.

Q. The pencil in this instance appears at what point?

A. At the left of the right-hand style at the juncture with the lock rail.

Q. The right- or left-hand style?

A. It is at the right of the left-hand style.

Q. Toward the left center of the picture?

A. Yes, sir. The pencil shows the various other openings there between the several members.

Q. Do those conditions likewise indicate——

Examiner SHEPPARD. Mine is a good deal darker than your picture. I do not see it.

A. Right there.

(Question read.)

Q. Either improper construction or the use of green lumber?

A. Yes; or possibly a combination of both.

Q. Will you continue with exhibit 20-E?

A. That is just a close-up view of the same door as in picture exhibit 20-D. It shows the separation of the two members more plainly.

1354 Q. Does the same pencil appear approximately at the center of the photograph?

A. Yes, sir.

Q. Will you turn now to exhibit 20-F?

A. This is a picture of another door showing the same feature that some of these other pictures have shown.

Q. That is, it shows the gap between the transverse rail and the left-hand style?

A. Yes, sir; and also between the rail and the muntins.

Q. Will you take exhibit no. 20-G?

A. This was a picture of the door which had been replaced in the building which had not been painted.

Q. Now, this is a door which was likewise inspected at the time when the examiner and the parties visited the premises on the 16th?

A. Yes, sir.

Mr. MATTHEW. And the examiner will allow me to state this is the door on the Ogden Street side, as I recall it.

Examiner SHEPPARD. Yes.

Q. Will you continue?

A. This picture was taken to give a general view of the door which was made, if my judgment was correct, of sugar pine in the styles and rails and ponderosa pine in the panels.

Mr. BURR. Was that door in good shape now?

A. Yes, sir; considering that it had not been painted.

1355 Q. Give any evidence of checking any place?

A. There was some very slight evidence of checking in the panels which the photograph has not shown, but it was not material checking considering the time it had been in.

Q. And also the fact it had not been painted?

A. Yes, sir.

Mr. BURR. How long had it been in, do you know?

A. We were informed two years.

Mr. MATTHEW. I think one of your witnesses stated that it was two years. The record will show.

Mr. BURR. Yes. I think so.

Q. You have nothing aside from what the record shows on that?

A. No, sir.

Q. Will you pass to exhibit 20-H?

A. This was a close-up view of the door which I took, hoping to show the condition of the door. The door showed no signs of breakage at the joints and apparently had been properly manufactured out of dry lumber.

Mr. BURR. This is again the new door, is it not?

A. Yes, sir; and while there was a slight amount of check that does not show in these pictures in the panels, the fact they were perfect flat grain and did not check any more than they had would seem to indicate that the Pinus ponderosa under poor conditions would show up better than the doors which they had complained of.

1356 Q. Returning to the preceding photographs, 20-A to 20-F, inclusive, what conclusion did you reach as to the reasons for

the poor condition and the decay which was obvious there—which was evident there?

A. The doors were apparently very cheaply manufactured with a view of cutting expenses as much as possible and proper care had not been taken either to assure dry lumber or to properly assemble the various members of the doors. The doors properly manufactured with waterproof glue today from dry lumber would not open up the way these had, in my opinion.

Q. Were the doors properly hung?

A. No, sir. One of these pictures, exhibit 20-B, will show that the door was not hung evenly or else the sagging which is apparent there had developed from loose members afterwards. The right-hand style will be noticed is quite a little off the sill, whereas the left-hand portion of the door is resting right on the sill.

Q. Now, will you pass to the two concluding photographs identified as exhibits 20-I and 20-J?

A. Both of these pictures were taken to show the cheap class of construction throughout the building, and to show particularly the cracked stucco, showing that the stucco was not of the proper mixture or was not heavy enough and bears out the statement that the building was built as cheaply as possible.

1357 Mr. MATTHEW. We desire to offer in evidence the several photographs which the witness has just identified.

Examiner SHEPPARD. Any objection, Mr. Burr?

Mr. BURR. No objection whatever.

Examiner SHEPPARD. Let them go in, Mr. Reporter, and received as respondent's exhibits, appropriate numbers.

(Respondent's Exhibits 20-A to 20-J, both inclusive, received in evidence.)

Mr. MATTHEW. Cross-examine.

Mr. BURR. That is all.

G. H. LIPPERT was thereupon called as a witness and, having been duly sworn, testified as follows:

Direct examination by Mr. BURR:

Q. What is your business, Mr. Lippert?

A. Architect.

Q. You are with Balch and Lippert here in Madison?

A. Yes, sir.

Q. How long have you been in the profession of architect?

A. Since 1915.

Q. During that entire time in Madison?

A. Yes, sir.

Q. Now, Mr. Lippert, in your work are you engaged on residences largely or is it general practice with buildings, or what is the situation?

1358 A. We have a general practice.

Q. Do you have occasion for exterior work where the material is to be exposed to the weather to specify white pine?

A. Yes, sir.
Q. Beg pardon?
A. Yes, sir.
Q. What is your general classification for wood where there is exposure to weather conditions?
A. Well, we have—our general practice is more or less governed by the character or the quality of the job we wish. If we want what you call a very high-class job, we would specify eastern white pine; otherwise we just specify what we call a white pine, a western pine, or northern white pine.
Q. What do you not specify eastern white pine, what kind of white pine do you expect to get?
A. We would generally expect what we call a northern pine.
Q. By a northern pine you mean pine from what locality?
A. From around Wisconsin, Minnesota, perhaps Canada.
Q. Would you regard Idaho white pine as compliance with the specification for white pine?
A. I believe I would; yes.
Q. Would you regard California white pine as a compliance with it?
A. I don't know very much about California white pine.
1359 Q. Well, if you found that the material that had actually been furnished was said to be California white pine and in appearance and grade it measured up to your specifications, would you accept it or reject it?
A. I think I would reject it.
Q. You think you would reject it?
A. Yes.
Q. How about sugar pine, would you reject sugar pine if you found that was what had been delivered?
A. No. We get a lot of sugar pine. We think we do at least as much as we are able to judge we believe there is considerable sugar pine.
Q. Now, what means of checking up do you have as to whether or not your specifications for pine are actually lived up to? Are you familiar with the wood so that you can yourself be sure of what kind of white pine is delivered?
A. Well, of course, we must base our judgment mostly on our personal experience. We have made no scientific study of the woods, except that we have had the pines, the different pines, and we try to study the character as near as we can.
Q. Well, now, which of the pines do you regard as genuine white pines?
A. We have always regarded the eastern—what we call the eastern pine—as the genuine white pine.
Q. Do you regard the northern white pine of Wisconsin
1360 and Minnesota as genuine white pine?
A. Yes. Of course, I will retract that when I say the eastern white pine, because I mean there again of high quality.

Q. Not second growth you mean?

A. Yes.

Q. I see. Do you regard the Idaho white pine as genuine white pine?

A. Well, I don't know. I never have thought of it except as white pine.

Q. You said a moment ago, I believe, you would accept the Idaho white pine as compliance with your specification for white pine?

A. Yes; we would have to base it as a white pine.

Q. Do you regard California white pine as a genuine white pine?

A. I suppose it is genuine white pine; yes.

Q. Why, then, wouldn't you accept it if it appeared to measure up in grade and appearance and texture, if it appeared to measure up in your specifications in other respects, why wouldn't you accept it as a compliance with your specification for white pine? I believe you so testified?

A. Well, of course, this same would hold true with all pines. The quality of your pine, that is, what I mean, the durability of it and the defects of it is due to climatic conditions. Where we have severe winters naturally your wood in your pines must be tougher
1361 wood, and that means that it will stand up under use more severely in buildings. California white pine we just simply consider as a pine that we use and never would stand up, because it never has had a severe weather test. It grows in a soft balmy climate and it does not get the toughness that these northern pines would get. That is why when we want a good A number one job we go where the winters are the severest.

Examiner SHEPPARD. Do you make any distinction between what you call eastern pine and what Mr. Burr calls northern pine?

A. Why, I don't think there is very much distinction; no. I think it is more just——

Examiner SHEPPARD. It is all white pine, isn't it?

A. Yes. For instance, people—if you will specify an eastern white pine in the specification, people think they are getting a high class lumber, where I believe that the northern Wisconsin or all these northern points are about on equality.

Q. Do you get any of the northern pine from Minnesota?

A. I don't know for sure where it comes from.

Mr. BURR. That is all. You may cross-examine.

Cross-examination by Mr. MATTHEW:

Q. Mr. Lippert, what gave you the impression that the California white pine grows in a soft balmy climate?

A. Well, of course, by that I may have exaggerated some.
1362 I mean they do not get any twenty degrees below zero weather, while we do.

Q. Do you know what the weather conditions are in the area where that pine grows?

A. Just hearsay. That is all.

Q. You do not know that the winter conditions are perhaps just as severe as they are in your northern white pine area?

A. Well, the only thing I know, talking with California men, that I was in a place once where there was four California men; started to snow; they all went to the window, because it was the first snowstorm they had seen, so I took it for granted they do not know what severe weather conditions are.

Q. Do they come from the pine belt in California?

A. I do not know as to that.

Q. As a matter of fact, Mr. Lippert, you really are not familiar with the climatic conditions in the territory where the California white pine of commerce is produced, are you?

A. I never have experienced a winter there, but my judgment would tell me they do not have the severe winters that we do.

Q. Do you know anything about it?

A. No.

Q. You do not know anything about the weather conditions of the McCloud River section or Klamath Basin?

A. No.

1363 Q. Or around Westwood and other parts of the Sierra Nevada range?

A. No.

Q. You said you would be inclined to reject California white pine when furnished upon your specifications calling for white pine, but you thought that you would accept sugar pine, why are you disposed to accept sugar pine?

A. Well, I form my judgment that the sugar pine is more or less put under the same severe climatic tests that our northern pine is.

Q. You did not know that the sugar pine grows in the forest generally with the California white pine, in the same stand?

A. No; I did not.

Q. I assume, Mr. Lippert, that your experience and your study as an architect have not carried you into a consideration of the habitat of the various forest trees which yield lumber used in your work?

A. No.

Q. That is true, is it not?

A. That is, I would say this, it has not to the extent of just fathoming out in a general study of it, but no scientific study.

Q. You do not know anything about, for example, just where sugar pine is obtained and whether it grows with the white

1364 pine of California or not?

A. No.

Q. You are not interested in the botanical classification of the trees in any event?

A. In a general way, no.

Q. Your interest really is in the quality and the utility of the lumber which is to be used?

A. Yes, sir.

Q. You stated that you are of the opinion that you are getting a good deal of sugar pine now. Do you mean that you believe sugar pine is being furnished upon your work?

A. I think we have had some sugar pine; yes.

Q. Do you ever specify sugar pine by name?

A. No, sir.

Q. You think then it has been furnished upon specifications calling for eastern white pine?

A. No.

Q. Or northern white pine?

A. No.

Q. You are satisfied you have been getting the true northern white pine upon specifications calling for that particular variety of lumber?

A. Yes, sir.

Q. Then upon what specifications do you think that you are getting some sugar pine?

1365 A. Whenever we have what we call an open specification, just merely mention the white pine.

Q. Then when you have an open specification, which you have characterized as a specification of white pine, you do think you obtain some sugar pine?

A. I think so; yes.

Q. What leads you to think that?

A. Well, you can generally—what I base my opinion on is more or less the general inspection of the wood.

Q. That is, your inspector has reported to you that it is sugar pine, is that it?

A. Yes; merely that he didn't think it was northern pine or white pine, but it lived up to the specification; sugar pine, what we would call an Oregon pine or something like that.

Q. Has he reported that it is sugar pine, is that it?

A. He said sugar pine; yes.

Q. Sometimes reported it was Oregon pine?

A. Oregon pine.

Q. What do you understand he meant by Oregon pine?

A. Just based it as a pine that was used—sent in once in a while to fill in orders, liable to be most anything.

Q. May not be a white pine at all, as far as you know?

A. No.

Q. But it does not carry the name "white" in the term at all?

1366 A. No.

Q. Do you accept any southern yellow pines upon your work?

A. Yes, sir.

Q. Do you prescribe them for the same purposes which you specify white pine?

A. No, sir.

Q. To what uses do you specify southern pine?

A. Use them mostly for timber work, that is, heavy-duty work.

Q. That is where structural strength is required?

A. Structural millwork—millwork—mill construction, I should say.

Q. Do you distinguish between the short-lead pine and the long-leaf pine?

A. Not very much; no.

Q. That is, you use them interchangeably for the same purpose?

A. Yes.

Q. Do you ever receive any or accept any Arkansas soft pine?

A. We never had any experience with Arkansas white pine.

Q. No, pardon me, Arkansas soft pine. Do you know it by that name?

A. No. I do not.

Q. So far as you know it does not reach this territory under that name?

A. No.

Q. You would not know that lumber if it was brought to
1367 your attention?

A. No. At one time we were told to specify Ozark white pine. We tried to trace down Ozark white pine and we could not find any definite locality for it or where it was or anything. It may have been the same thing.

Q. Are you able to yourself distinguish between the southern lumber and the northern white pine?

A. I think I am; yes.

Q. Can you distinguish the Idaho white pine from the northern white pine?

A. I believe I could; yes.

Q. And sugar pine?

A. And sugar pine; yes.

Q. Could you readily distinguish sugar pine from other varieties of pine?

A. The eastern pine and that; yes.

Q. You could distinguish it likewise from the Idaho pine?

A. Well, I don't think so. I think it would be about the same thing. Pretty hard to tell the difference between the two.

Q. Can you distinguish the California white pine from the northern white pine and the Idaho white pine?

A. I don't know. I never have heard in this territory of the California white pine.

Q. So far as you know, the California white pine does not come into this territory?

1368 A. No. I never heard of it in here.

Mr. MATTHEW. I think I have no other questions.

Redirect examination by Mr. BURR:

Q. Now, if you knew that California white pine grew where there was about twenty or thirty feet of snowfall, and the weather condi-

tions brought about a low temperature, you would accept it if it was delivered on the job just the same as Idaho white pine, would you?

A. I think I would; yes.

Mr. MATTHEW. Mr. Lippert, would you accept it because of your opinion that it would satisfy your tests of quality and utility, or would you be accepting it merely because of its name, or are you interested in the name?

A. I would not be interested in the name at all; no.

Q. Would you accept it more readily as and for white pine on account of it having the words "white pine" in its trade name?

A. I believe I would; yes.

Recross-examination by Mr. MATTHEW:

Q. You said you would be willing to accept sugar pine upon a white-pine specification, did you not?

A. Yes, sir.

Q. The word "white" is not in the words "sugar pine" at all?

1369 A. No; but it is common knowledge to all of us sugar pine is more or less considered as an equality with white pine in that district.

Q. Then you accept sugar pine not because you think sugar pine is white pine, not because it has the word "white" in the trade name, but because you understand it to be the white pine satisfactory for your purposes, isn't that it?

A. Yes.

Q. Isn't it the same test you would apply to California white pine, irrespective of name?

A. If I didn't know sugar pine; yes. Not knowing California white pine and knowing sugar pine if the thing came up and the California white pine was presented to me, I would accept it.

Q. You would undertake to inform yourself in any instance, would you not? That would be your purpose?

A. Yes.

Examiner SHEPPARD. You do not know you got any white pine when you specified—I mean the California white pine?

A. No.

Examiner SHEPPARD. You do not know that has ever happened to you?

A. No.

1370 Mr. BURR. You do not know it has not happened to you, do you?

A. No; I don't.

Mr. BURR. That is all.

C. W. DAVIS was thereupon called as a witness and, having been duly sworn, thereupon testified as follows:

Direct examination by Mr. BURR:

Q. You are at the head of the Davis Lumber Company, are you, sir?

A. Yes, sir.

Q. How long have you been at the head of that company?

A. Comparatively new concern, about a trifle less than two years.

Q. How long have you been in the lumber business here in town?

A. About nineteen years.

Q. What concern were you with before the C. W. Davis Lumber Company was started?

A. Yawkey-Crowley Lumber Company.

Q. Do you do any millwork?

A. Well, not on our own account, but we do it through others, lots of it.

Q. Do you do any wholesaling or is it entirely retail?

A. It is practically retail; a little jobbing to the country towns.

Q. In connection with your retail lumber business, do you
1371 receive orders or specifications for white pine on occasions?

A. Yes, sir.

Q. What lines of lumber do you deal in?

A. Well, we have white pine, southern pine, Douglas fir, northern hemlock, cypress, redwood, oak, birch, some gum.

Q. Referring particularly to the pines what varieties of pine do you carry aside from the hard southern pines in this country?

A. Our stock of pine is entirely northern, comes from Fort Francis.

Q. What State is that?

A. Ontario, Canada.

Q. You carry no western pines, do I understand?

A. We have in the past, but this new concern has not.

Q. The concern that you were with up to a couple of years ago, what varieties of pine did they carry?

A. We carried California white, California sugar, Arizona pine, Idaho, northern white.

Q. Where did you get your northern?

A. From what district?

Q. Yes.

A. The other concern or now?

Q. With the other concern?

A. Well, that came from different sources, Idaho, and Shevlin, Carpenter & Clark, Minneapolis, who handle the Fort Francis
1372 stock.

Q. Did you handle any of this northern white pine from Wisconsin, Minnesota, and Canada?

A. Well, years ago when we were able to get it; yes.

Examiner SHEPPARD. More difficult now?

A. Oh, yes. The grade is poor and the source is limited.

Q. There are still good virgin white pine from Canada, are there not?

A. I believe so; yes, sir.

Q. There are still good virgin white pine from Minnesota, are there not?

A. A limited amount.

Q. It is higher in price than it used to be, isn't it?

A. Yes, sir.

Q. When you say you are able to get it, do you mean with quantities with which it can compete with Idaho?

A. A retail yard in a town of this size buys a mixed car and the stocks from a town like Virginia, Minnesota, are badly broken. It is hard to get a mixed car in the items that you might want.

Q. When I asked you about northern white pine you said you got it from Idaho; is that what is known as white pine Idaho or northern pine?

A. The northern pine comes from Fort Francis, Canada, and the Idaho pine of course comes from Idaho.

1373 Examiner SHEPPARD. You make a distinction?

A. Yes; the northern and the Idaho.

Q. Where do you get your sugar pine from?

A. We do not stock it, but in the past it has come from California.

Q. I am referring to the firm which you say carried sugar pine.

A. Oh, yes, California.

Q. Up to a couple of years ago?

A. Yes.

Q. Confine your testimony to the same firm; where did the Arizona pine come from?

A. I think Flagstaff.

Q. Where did you get the California white pine?

A. Largely from McCloud.

Q. Let me ask you, when you got orders for white pine did you regard yourself as justified in supplying northern white pine under such an order?

A. Surely.

Q. How about sugar pine?

A. Sugar pine has a purpose. We used to sell it for pattern lumber and some interior work.

Q. If you got an order for white pine for pattern work, you would supply sugar pine as a compliance, would you?

A. Yes.

Q. How about Idaho or California white pine, or Arizona,

1374 would you supply those on an order for white pine?

A. I would hesitate to supply Arizona, but both northern Idaho and California would go.

Q. Where did you get your Idaho?

A. Why, usually from Potlatch and Humbird, various places in Idaho.

Q. Which was, I will say, with this other firm your largest source of supply, the California, sugar, Arizona, Idaho, or northern?

A. Idaho.

Q. Next to that would be what?

A. California.

Examiner SHEPPARD. Cross-examine.

Cross-examination by Mr. MATTHEW:

Q. When you received orders for white pine during the period of your connection with the—what is the name of that company?

A. Yawkey-Crowley Lumber Company.

Q. How did you determine whether to furnish northern pine, Idaho white pine, or California white pine?

A. It depended largely on the stock on hand and sometimes the demands of the customer.

Q. The customer sometimes specifies northern white pine?

A. They like the softer type.

1375 Q. And when they specified northern white pine it indicated their desire that you furnish that particular kind. Did you supply it?

A. We either gave them that or Idaho; yes.

Q. Under what conditions would you furnish the California white pine?

A. Well, that was sold largely for interior trim and cupboard work, not so much for exterior purposes.

Q. Did it prove satisfactory for interior trim and cupboard work?

A. Absolutely.

Q. You recall no serious complaint about its use for that purpose?

A. No, sir.

Q. Is the term California white pine pretty well known to the lumber trade for a considerable period of years?

A. Yes, sir.

Q. How long has it been known in this territory?

A. Oh, I think, to my knowledge, for fifteen years, possibly.

Q. I take it, Mr. Davis, that it was your effort in each instance to supply the customer that which you understood he desired and what would satisfy his purposes?

A. Yes, sir.

Q. Your interest has been primarily in the quality and the utility of the lumber which you furnished rather than in

1376 the name which it might have?

A. Yes.

Mr. MATTHEW. I think that is all.

Redirect examination by Mr. BURR:

Q. Did you ever have any trouble with California white pine where it was sold for purposes exposed to the weather?

A. I don't think that I could say that we have. It has a little harder texture; it has a tendency to cup in the pile——

Q. To what?

A. It has a tendency to cup in the pile. The top boards dish in, and for cornice work we felt it was not quite as desirable as the softer texture.

Mr. BURR. That is all, sir.

Re-cross-examination by Mr. MATTHEW:

Q. Did your lumber company to which you refer likewise handle the southern yellow pines?

A. Yes, sir.

Q. Have they found extensive use in this territory?

A. Formerly there was an extensive use for interior work, but the last five or six or seven years the tendency is to California white pine for that purpose.

Q. Can you explain why the California white pine has been
1377 displacing yellow pine for that purpose?

A. It is a trifle softer, easier to work, and takes paint just as well.

Q. Is the California white pine more nearly comparable with the northern white pine for such use than the southern yellow pine?

A. Yes, sir.

Mr. MATTHEW. That is all.

ALBERT J. DYSLAND thereupon called as a witness, and after being duly sworn, testified as follows:

Direct examination by Mr. BURR:

Q. You are an architect, are you, Mr. Dysland?

A. I am not, sir. My brother is an architect. I am his associate. I am in the building business.

Q. You are in the building business?

A. Yes, sir. The Better Homes Company.

Q. Do you have occasion to specify white pine in your building operations?

A. Yes, sir.

Q. In what terms do you so specify?

A. We usually use D white pine or clear for exterior work.

Q. Do you specify northern white pine or Idaho white pine or California white pine or any specification with the words white pine?

1378 A. Usually not; no, sir.

Q. When you specify in that fashion for exterior trim do you regard Idaho white pine as a compliance with the specification?

A. I think so.

Q. And northern white pine?

A. Yes, sir.

Q. How about California white pine?

A. I do not think so.

Q. You do not think so?

A. I do not think it is used for exterior work in this district.

Q. If the pine that was for exterior purposes seemed to be up to grade in specification in other respects, would you regard it as compliance with your specification for white pine?

A. I always refer to the Forest Products Laboratory to find out about that when I am stuck.

Q. And you do not know what their report would be; is that right?

A. Yes, sir.

Q. How many times in the course of the last year have you referred matters to the Forest Products Laboratory?

A. Half a dozen times, at least. I did right today.

Q. Would you regard sugar pine as compliance with your order?

A. I do not think so.

Q. Have you ever refused California white pine or sugar
1379 pine as a compliance with a specification for white pine?

A. I do not think we have ever had any offered us, any sugar pine.

Q. Would you know whether California white pine had been offered you?

A. I wouldn't be able to tell. They might put it across on us.

Mr. BURR. That is all. Cross-examine.

Cross-examination by Mr. MATTHEW:

Q. I take it you are not particular familiar with California sugar pine?

A. I am not.

Q. Or the California white pine?

A. Not particularly; no, sir.

Q. You do not use either in your business?

A. Not to our knowledge.

Mr. MATTHEW. That is all.

OSCAR C. LOFTSGORDON, thereupon called as a witness and, having been duly sworn, testified as follows:

Direct examination by Mr. BURR:

Q. You are with Loftsgordon Brothers Lumber Company, Madison?

A. Yes, sir.

Q. How long have you been connected with the lumber company?

A. Oh, about twenty-one years, twenty years.

1380 Q. Do you do any wholesale business?

A. No, sir.

Q. Do you run a mill?

A. No; we do not.

Q. Now, excluding the hard southern pines of the South, what varieties of pine do you handle?

A. Northern, California, Idaho, "pondosa."

Q. Now, do you at times have orders for white pine, Mr. Loftsgordon?

A. Surely.

Q. Which of those varieties of the pines that you mentioned do you furnish on orders for white pine?

A. Again, please.

Q. I say, when you get orders for white pine which ones of those four varieties of pine which you say you handle would you feel at liberty to furnish under an order for white pine? Is that clear?

A. That would depend on what—in regard to grade, for instance in pondosa we get that in common lumber, while in the white pine it is more in the upper grades.

Q. You feel free, so far as the variety is concerned, to furnish such of those varieties on an order for white pine as you may have in stock of the right grade, do you?

A. Yes.

Q. In other words, you would supply northern white pine
1381 as white pine, pondosa as white pine, Idaho white pine as white pine or California white pine as white pine, is that true?

A. We would supply Idaho and northern. We feel that is on the same——

Q. Would you say that pondosa would not be supplied by you as a white pine?

A. No. I don't think so.

Q. You don't think it would be?

A. No.

Q. How about California white pine, would you supply that on an order for white pine if you had the right grade, suppose they asked for clear?

A. Yes.

Q. Would you supply a California white pine?

A. Yes.

Q. If the order was for clear white pine you would supply the California, would you?

A. I think so.

Q. That would be for either exterior or interior use, would it?

A. Yes; in the upper grades.

Q. Do you distinguish as to qualities of durability between these varieties of pine that you mentioned? In other words, do you think that any one of those four is better able to stand weather conditions?

1382 A. I think the Idaho and the northern were.

Q. Are the better?

A. Are better, yes; softer texture.

Q. Have you had any experience with California pine or pondosa pine where exposed to the weather where they have not given satisfaction or withstood rotting conditions?

A. No.

Q. You do not remember any specific instance or experience of that kind?

A. No, sir.

Mr. BURR. I think that is all, sir. You may cross-examine.

Cross-examination by Mr. MATTHEW:

Q. Do you carry northern white pine in the upper grades?

A. We do, to a small extent.

Q. Why not to a large extent?

A. Well, it is rather hard to get and the prices are somewhat higher. We carry the Idaho mostly.

Q. You carry Idaho mostly in the upper grades?

A. Yes, sir.

Q. Do you carry any California white pine in the upper grades?

A. Yes; we do.

Q. Do you carry more Idaho white pine in the upper grades than of California white pine?

1383 A. Yes, sir.

Q. Under what circumstances do you furnish California white pine upon orders which you receive for white pine? That is, how do you determine whether you are to furnish northern white pine, Idaho white, or California white?

A. Well, I don't know. Northern and Idaho we furnish, we figure, is about the same anyway.

Q. So if you had an order just for white pine you would feel free to supply either the northern white or the Idaho white, depending in some part at least, I suppose, upon the condition of your stock; is that right?

A. Yes, sir.

Q. When do you furnish California white pine?

A. We figure that California is about equivalent to the Idaho only it is not quite so soft a texture.

Q. What I am trying to determine is how you make a choice between these three or more varieties of lumber you carry. I understand your customer just orders white pine without any additional term—am I right in that—or does he say I want northern white pine or Idaho white pine or California white pine?

A. We don't have orders really that specify whether it is northern or Idaho in our experience.

Q. In what language is the order customarily framed?

A. White pine.

1384 Q. In some instances you furnish northern white?

A. Yes, sir.

Q. And some instances Idaho and other instances California. How do you decide how the choice shall be made?

A. That would depend on the stocks, I suppose.

Q. Any other circumstances?

A. Not that I know of.

Q. Do you carry the California white pine in the common grades?

A. Very little.

Q. For the most part you carry the pondosa in the common grades?

A. Yes. In the shiplap really. That is about all.

Q. When you get an order for white-pine shiplap, did you ever furnish pondosa for that?

A. Yes, sir.

Q. Why do you feel free to furnish pondosa pine upon an order for white-pine shiplap?

A. All the common grades like that—it isn't used for exterior use.

Q. For that reason you feel that your customer's order is satisfactorily met if you furnish the pondosa pine?

A. We would think so; yes.

Q. I would assume from that, Mr. Loftsgordon, that your interest is in the quality and utility of lumber, rather than the particular trade name which it may happen to bear.

A. To an extent, I suppose.

1385 Q. The word "pondosa" does not carry the word "white" in it or the word "yellow" or any other word, in fact, except pondosa pine?

A. No, sir.

Q. And yet you are at liberty, you feel, to furnish pondosa pine common when you have an order for white pine shiplap?

A. Yes, sir.

Q. So the name is not the material factor, but it is the quality of the lumber and the particular use to which it is put; am I correct in so stating it?

A. I think so; yes.

Q. Is the use of California white pine in this territory increasing in volume as far as your observation goes?

A. Yes; I would think it is.

Q. Is the use of northern white pine increasing or declining?

A. Declining, I think.

Q. To what circumstances do you ascribe these two changes?

A. Well, I don't know. I would think that the grades and also prices.

Q. Let us take the element of grades, what is the difficulty with the grades of the northern white pine?

A. I don't think they are quite up to the standard of Idaho, grade for grade.

Q. Then the Idaho white pine is increasing in volume in this territory, too?

1386 A. I would think so; yes.

Q. What accounts for the increase in the volume of the California white pine?

A. Well, I don't know as I can say that.

Q. Well, I won't ask you to speculate about it. For what purposes is the California white pine ordinarily used in this territory so far as your knowledge goes?

A. Well, in common lumber, to quite an extent, and also some finish.

Q. How long have you been familiar with California white pine?

A. Oh, I don't know, probably twelve or fifteen years.

Q. Has the term been well known to the trade during that period?

A. I can't just say; I suppose.

Q. I am referring to the lumber trade generally in this community?

A. Yes. The term has been used, white pine, that is why I can't say. Lumber bills come in, they specify white pine.

Q. But as far as your lumber business is concerned you have been familiar with the term California white pine for how many years did you say?

A. I would say about twelve or fifteen years.

Mr. MATTHEW. That is all, thank you.

Redirect examination by Mr. BURR:

Q. I believe you said you would feel free to furnish pondosa for inside work on an order for white pine, but not for
1387 outside work, is that true?

A. Well, for the common lumber that would not be interior finish or anything like that.

Q. I understand, for common lumber?

A. Yes, sir.

Q. It is true, is it, that you would not furnish pondosa as white pine for exterior work; is that true?

A. No. I do not think we would. In fact, we don't carry pondosa in the higher grades.

Q. But you would, I believe you testified, furnish California white pine for exterior purposes?

A. Yes, sir.

Q. Is that because you regard it as a white pine and therefor fit for exterior work?

A. It is of that soft texture almost nearly as soft as Idaho.

Q. And you think fitted for outside work?

A. I would think so; yes.

Q. Is that because you regard it as a white pine that you think it fitted for outside purposes?

A. Yes, sir.

Mr. BURR. That is all.

Recross-examination by Mr. MATTHEW:

Q. What do you mean by the statement, regard it as a white pine; what do you understand the question to mean?

1388 A. Well, assume.

Q. Do you know anything about the botanical classification of the trees from which pine lumber is obtained?

A. No. I am not experienced in that.

Q. Your interest as a practical lumberman is just in the quality and use of lumber?

A. Yes, sir.

Q. Do you handle the southern yellow pines?

A. Yes, sir.

Q. What varieties of lumber?

A. Shortleaf and longleaf.

Q. Could you readily distinguish the shortleaf and longleaf yellow pine from the California white pine?
A. I think I could; yes.
Q. Generally, are they used for different purposes?
A. Yes, sir.
Q. For what purposes are the southern yellow pines used?
A. More for interior finish.
Q. The southern yellow pines?
A. Yes, sir.
Q. And used for structural purposes to quite an extent?
A. In the common; yes.
Q. Do you handle any sugar pine?
A. No. We do not.
Q. You do not know whether sugar pine is a white pine or not?
1389 A. Well, I know it grows in the same locality that California does.
Q. But you do now know whether it was technically a white pine or not?
A. I haven't had enough experience with it to——
Mr. MATTHEW. That is all, thank you.
Mr. BURR. I will call Mr. Frank Riley. Is Mr. Riley here?
(No response.)
W. K. COLLINS, thereupon called as a witness and, having been duly sworn, testified as follows:

Direct examination by Mr. BURR:

Q. You are with Collins Brothers Lumber Company, are you, Mr. Collins?
A. Yes, sir.
Q. How long have you been with that concern?
A. About six years.
Q. What is your function in the partnership?
A. General manager.
Q. You are one of the partners, are you?
A. Yes, sir.
Q. How long have you been in this line of business?
A. About six years.
Q. Is it entirely a retail or do you do some wholesale or milling work?
1390 A. It is entirely retail now.
Q. Now, excluding the southern hard pines, what varieties of pine does your firm deal in?
A. Northern white, Idaho, pondosa, and California white.
Q. About how long has that been the case; for some time?
A. Yes.
Q. You have been handling all four of those for some time?
A. Yes. The California pine just in the past two or three years.
Q. Do you handle any California sugar?
A. No.

Q. Do you have orders for white pine on occasion from your customers?

A. Yes, sir.

Q. Do you feel free to furnish them California white pine?

A. We handle very little California white pine, but where we do handle it we have handled it to furnish as white pine.

Q. Was that for exterior trim or inside work?

A. Exterior, and some for inside work.

Q. You regard that as a satisfactory wood for exterior purposes, do you?

A. We do.

Q. How about Idaho and northern white pine; you would furnish those on orders for white pine would you?

A. Yes, sir.

1391 Q. How about pondosa?

A. In some territories we do furnish pondosa.

Q. On orders for white pine?

A. On orders for pine. That is accepted as white pine in those particular localities.

Q. You say on orders for pine, do you mean on orders for white pine or orders for pine, meaning white pine?

A. It is orders for pine, meaning white pine.

Q. Is there some parts of your territory when they say pine, they mean white pine?

A. Yes, sir.

Q. What parts of your territory would that be?

A. At certain of our yards, in Madison, for instance, we would handle either the Idaho or northern white and handle practically no pondosa.

Q. In Madison?

A. In Madison.

Q. Where else have you yards?

A. In Beloit, Brooklyn, Mount Horeb, Ridgeway, and Edmund.

Q. You have quite a chain?

A. Well, just a few.

Q. Which variety of pine do you buy and sell the greatest portion, the northern, Idaho, pondosa, or California white?

A. Northern white.

Q. What is the reputation of northern white pine as to
1392 durability where it has got to be exposed to the weather?

A. Well, I believe it has the best reputation for that purpose.

Q. What would you say came next?

A. Idaho.

Q. Has California white pine a good reputation for exterior use in this locality?

A. I cannot say as to that.

Q. What kind of reputation has pondosa got, if any?
A. Possibly it would be after the Idaho pine.
Q. After the Idaho, but before the California?
A. I cannot say as to that.
Q. Is California white pine a comparatively new entrant into this territory so far as you know?
A. So far as our company is concerned, it is.
Q. But some of your competitors have carried it for a longer time, do you know?
A. I believe so.
Mr. BURR. That is all.
Examiner SHEPPARD. Cross-examine.

Cross-examination by Mr. MATTHEW:

Q. I assume, Mr. Collins, that there was a time when the term white pine in this territory meant northern white pine only; is that so?
A. That was before my time.
1393 Q. You entered upon the lumber business just some six years ago?
A. Yes, sir.
Q. So these last six years represent your entire connection with the lumber trade?
A. Yes, sir.
Q. But during that time has the term white pine meant more than northern white pine?
A. Yes, sir.
Q. It included Idaho white pine for some time?
A. Yes, sir.
Q. You say, Idaho white pine will satisfy an order for white pine?
A. Yes, sir.
Q. And in some instances you said the California white pine will satisfy such an order?
A. Yes, sir.
Q. Why do you feel free to furnish California white pine upon an order for white pine?
A. Well, we feel that it is a white pine in the sense of usage.
Q. Do you carry any yellow pines?
A. Yes, sir.
Q. Southern yellow pine?
A. Yes, sir.
Q. Are they readily distinguished from the California white pine?
1394 A. Yes, sir.
Q. In general are they used for different purposes than California white pine?
A. With us they are.

Q. For what purposes are southern yellow pine used as far as you are concerned?

A. Interior trim for the most part and construction lumber.

Q. The California white pine is practically never used as construction lumber, is it?

A. Yes; we use that as construction lumber.

Q. Construction lumber?

A. Yes, sir.

Q. Is it used extensively for construction lumber?

A. It is a little more expensive. We carry that at some of our yards as a little better grade of lumber for special purposes.

Q. It has a softer texture than southern yellow pines?

A. Yes, sir.

Q. In general, is it used largely for the same purposes for which the northern white and Idaho white pine are used?

A. In the upper grades, I would say it is where it is being used.

Q. You find your trade is satisfied with California white pine?

A. In the few cases where we have used it they have been satisfied with it.

1395 Q. You are not particularly familiar with the botanical classification of the pine trees, I assume, Mr. Collins?

A. No, sir.

Q. Your interest as a lumberman is in the quality and usefulness of the lumber?

A. Yes, sir.

Mr. MATTHEW. That is all.

E. J. POTTER was thereupon called as a witness and, having been duly sworn, testified as follows:

Direct examination by Mr. BURR:

Q. Mr. Potter, you are an architect, are you, sir?

A. I am.

Q. How long have you been such?

A. Practicing thirteen and a half years.

Q. Your firm name is what?

A. Law, Law & Potter.

Q. You have been the entire period in the city of Madison?

A. Yes, sir.

Q. Now, Mr. Potter, do you have occasion to specify white pine for exterior work for the buildings that you are professionally connected with?

A. Yes, sir.

Q. In what terms do you generally specify for exterior purposes?

A. We specify northern white pine.

1396 Q. And what means do you have, if any, for ascertaining whether you get what you specify?

A. Well, visual inspection is all that we have ever used as a means of determining.

Q. Well, if you were placed on an inquiry on the matter and you found that the lumber actually delivered was Idaho white pine, would you regard that as compliance with your specification for northern white pine?

A. No, sir.

Q. How about sugar pine?

A. We would not.

Q. Pondosa? How about pondosa?

A. I am not familiar with the term. We just use the common trade names for it.

Q. Well, there is a great deal of the so-called ponderosa, botanically named, that is now given the trade name of pondosa. You have not come in contact with lumber under that trade name?

A. I have not.

Q. How about California white pine? If you learned it was that would you regard that as compliance with the specification?

A. I would not, absolutely. I have been advised against it.

Q. Have you had any experience with California white pine where it was exposed to the weather?

1397 Mr. MATTHEW. I think the latter part of the witness' prior answer should be stricken as not responsive.

Examiner SHEPPARD. About being advised against it?

Mr. MATTHEW. Yes.

Examiner SHEPPARD. Let that go out, Mr. Reporter.

Q. Why would you not regard California white pine as a compliance with your specification for white pine?

A. After consultation with experienced mill men I have been advised that it is not likely to stand up for the length of time we would expect the building to last or as long as northern white pine would.

Q. Do I understand on a specification for white pine you would accept nothing but northern white pine?

A. (No response.)

Q. Oh, you specify northern white pine?

A. Northern white pine; yes, sir.

Q. You insist on getting the genuine northern white pine?

A. We believe we get it or we want to get it.

Q. Do you accept second-growth white pine?

A. We have never specified as to the growth.

Q. What is the reputation in this community of northern white pine for durability where exposed to the weather?

A. We do not know of any wood that will last longer outdoors than northern white pine.

1398 Examiner SHEPPARD. Did you say you specify white pine or northern white pine?

A. Northern. I brought a specification along to show you.

Examiner SHEPPARD. So many people that testified in this case just specify white pine. You put the northern in front of it?

A. Yes. This is in regard to wood sash and any part regarding the wood. (Reading:) "Sash generally shall be double hung; shall

be one and three quarters inches thick; and shall be built in accordance with the details, using sound, clear, well-seasoned, and dry, clear northern white pine selected for sash work."

Mr. BURR. I think you may cross-examine.

Cross-examination by Mr. MATTHEW:

Q. Would you recommend sapwood for exterior use?

A. I—we have never differentiated as to sapwood for exterior use.

Q. Then, you do not distinguish between the durability of the sapwood and heartwood of northern white pine?

A. We have not specified as to that.

Q. Well, granting that, do you distinguish, yourself, between the durability of either of those two woods, respectively?

A. Well, I don't know as to the durability of the two.

Q. Then, when you speak of the reputation of northern white pine for durability you do not distinguish between the sap-

1399 wood and the heartwood?

A. No.

Q. And you do not know that the just repute of northern white pine for durability when used for outside purposes is based upon the use of heartwood?

A. No. I did not know that.

Q. Are you familiar with Bulletin No. 16 of the United States Department of Commerce, Bureau of Standards, relating to lumber nomenclature?

A. I am not familiar with it. I have seen the bulletin.

Q. You know that northern white pine is the accepted and recommended trade name for this lumber which we referred to as northern white pine?

A. I don't know whether it is used as a standard term or not. That is the way we refer to it always around this locality.

Q. That is the recognized name?

A. That is the recognized name; yes.

Q. Is the term Idaho pine likewise a recognized name?

A. It is used in that way around here.

Q. How long have you been familiar with Idaho white pine by name?

A. Well, I have read the advertisements in the magazines for years, but I am not familiar with the wood.

Q. Why is it that you would not accept Idaho white pine upon specifications calling for northern white pine?

1400 A. Because years ago I discussed that matter with one of the best mill men that I knew of. A man who has been in the business somewhere between thirty and forty years; and he advised me most strongly against it because in his experience he had put in window frames and sash particularly that he had to go back and take out afterwards. I do not know after how long a time, but I went to him and asked him about the use of the western pines as compared with the so-called northern white and he advised me always to use northern white.

Q. I was referring to Idaho white pine. You so understood?
A. Yes. Well, as I recall, he told me to stick to the northern white entirely.
Q. But you understood my question related to the Idaho white pine?
A. Yes, sir; I did.
Q. How long have you been familiar with California white pine?
A. Why, the only thing I know about it is the advertisements that I have seen in the magazines.
Q. You are not personally familiar with the California white pine?
A. I am not.
Q. You do not know how long it has been used in this community?
A. No. I couldn't say. I know it has been used for a number of years.

1401 Mr. MATTHEW. That is all. Thank you.

J. J. LUETSCHER was thereupon called as a witness and, having been duly sworn, testified as follows:

Direct examination by Mr. BURR:

Q. Mr. Luetscher, what is your line of business, sir?
A. I am a carpenter by trade and contractor.
Q. You put up houses?
A. Yes, sir.
Q. You contract to put them up, do you?
A. I do.
Q. With the owner?
A. Yes, sir.
Q. And in connection with that work have you had opportunity to observe how various classes of the soft pines stand up where exposed to the weather?
A. I have.
Q. Have you had any experience as regards northern white pine?
A. I certainly did.
Q. How does that stand up?
A. It stands up good.
Q. How about Idaho white pine; does that stand up good or not so well or what?
A. Not so well.
Q. Not so good?

1402 A. No.

Q. How about sugar pine; have you had that exposed to the weather?
A. I think that is worse.
Q. How about California white pine?
A. I didn't know there was any such wood, white pine, in California; is there?
Q. Have you come in contact with the so-called——
A. I have used all of those.

Q. The so-called California white pine? Have you had occasion to know, to buy, what is known as California white pine?

A. Well, not any further than what was told me by the lumberman what it was.

Q. Do you distinguish between California sugar pine and California white pine?

A. I think I could.

Q. You think you know the difference between the two, do you?

A. I kind of think I do; yes.

Q. Have you bought anything as California white pine, that you knew to be California white pine, and used it?

A. It is mostly called western pine.

Q. Western pine or western white pine?

A. No; western pine. Maybe some call it white pine, but it is known more as western pine than white pine, western white pine.

1403 Q. Beg pardon?

A. They leave the white pine out mostly. I haven't given it such particular notice as between white pine or western pine.

Q. Well, now, is that a different wood from Idaho white pine, that comes from the West, too?

A. Well, it is a little different; yes.

Q. Is that different from California sugar pine?

A. Yes.

Q. That is different, is it?

A. Yes. That is different.

Q. Did you ever come in contact with the wood known as pondosa pine?

A. No. I don't think so. Maybe I have used it, but I didn't know that it was such.

Q. How about this western pine; is that durable where exposed to the weather?

A. I have had experience with sash and outside blinds and porch work.

Q. How does it stand up?

A. It don't stand up very good. I could show you some outside blinds that is made out of western pine from Idaho; maybe it was western white pine, I couldn't say as to that, and they ain't five years old, and they are rotten, and it wasn't lack of paint, either.

Q. They were well painted, were they?

1404 A. Sure. It isn't five years old, the house, my son's house. That is why I know. And another case I come acress, when they first started to use western pine, in Judge Zimmerman's house, the sash were about seven years old, and the bottom rails, the tenons, rotted right off. I put in new sash. I didn't build the house originally, but he is a neighbor of mine and I have done some of his repair work. That was one of the things I noticed about western pine. Whether that was Idaho or California I couldn't say. It wasn't Wisconsin pine. I know that.

Q. Has it all been replaced, or is some of it there yet?

A. Not all of it. It all depends on which side of the house the sash really are. If they dry out fast, it isn't so bad.

Mr. BURR. I think that is all.

Mr. MATTHEW. No cross-examination.

PHILIP M. HOMER was thereupon called as a witness and, having been duly sworn, testified as follows:

Direct examination by Mr. BURR:

Q. What is your line of business, Mr. Homer?

A. Architect.

Q. How long have you been an architect?

A. About ten years.

Q. Located entirely in the city of Madison?

A. Yes, sir.

1405 Q. What is your firm name if you have one?

A. I haven't any. I am the firm.

Q. All by yourself, huh? And what is your line, residences chiefly?

A. General practice.

Q. In connection with that practice, do you have occasion to specify pine for exterior purposes?

A. Yes, sir.

Q. How do you specify?

A. We usually specify northern white pine for exterior purposes, such as sash and things of that sort.

Q. Do you vary from that at all?

A. Yes. I use a lot of cypress.

Q. But when you want pine it is always northern white pine, is it, for exterior work?

A. Yes, sir.

Q. Do you accept any substitutions for that if you know it?

A. Not if I can help it.

Q. You would not take Idaho or sugar or California white?

A. I don't know anything about Idaho. I know sugar pine when I see it and I don't want it.

Q. How about the California white, do you know that when you see it?

A. I don't know as I could distinguish California white pine. I ordinarily specify the northern white pine. I do, as I
1406 say, know sugar pine when I see it. I have had several occasions when that has been brought to my attention. I recall one job where the contractor wanted to use sugar pine——

Q. And you rejected it, did you?

A. Yes, sir.

Q. Would you know if California white pine of the required grade and appearance, freedom from knots, and so forth, if that were de-

livered on the job, would you be able to tell that from northern white pine, do you think?

A. I am not so sure whether I could or not. We usually know the contractors with whom we are dealing [redacted] and we find that they are pretty familiar with what we specify and, as a rule, they give us—at least, we think they give us—what we specify.

Q. You trust to their fair dealing as regards the variety of wood, do you?

A. In most cases we do, but a small contractor we know nothing about we are apt to be pretty careful.

Q. Check him up better than those that are familiar with your requirements?

A. Yes.

Mr. BURR. I think that is all. You may cross-examine.

Cross-examination by Mr. MATTHEW:

1407 Q. Why are you unwilling to accept sugar pine upon a northern white pine specification?

A. Where am I willing to?

Q. No. Why are you unwilling?

A. Well, from the information that I have been able to get from various millmen—not only millmen but from some of the local contractors, carpenter contractors—they inform me that sugar pine is very, very soft—it is—and the tendency toward shrinkage is pretty great, and I think toward rotting.

Q. I assume you are not particularly familiar with the botanical classification of the pine trees?

A. I would not say that I am.

Q. You do not know whether sugar pine is classified as a white pine or not?

A. No; I would not. I know that it is a white wood. I know sugar pine, I think, when I see it.

Q. But you reject it because you are apprehensive that it would not satisfy the purposes for which you have specified the northern white pine?

A. Yes; from the information that I have got from contractors who have used it.

Q. And you insist, then, that northern white pine itself be furnished upon your specifications for that wood?

A. Yes, sir.

1408 Examiner SHEPPARD. Where does your northern white pine come from that you use here? Where do you get it from; what part of the country?

A. I imagine the northern part of the State is where it comes from.

Examiner SHEPPARD. In your own State here?

A. I think so; yes.

Examiner SHEPPARD. All right. Thank you, sir.

J. S. TIMLIN was thereupon called as a witness, and, having been duly sworn, testified as follows:

Direct examination by Mr. BURR:

Q. Your business is the retail lumber business, is it?
A. Yes, sir.
Q. You are the head of the concern, are you, sir?
A. Yes, sir.
Q. How long have you been in the lumber business here?
A. Three years.
Q. Where were you before that? In the lumber business elsewhere?
A. In the milling business, in the retail business, Price County, Phillips.
Q. In this State?
A. Yes. Thirteen years there.
Q. Were you there in your own name just as you are here?
A. Just as we are here.
Q. In your concern in the State of Wisconsin have you dealt
1409 in the soft pines, excluding now the southern harder pines?
A. Yes.
Q. What varieties of soft pine have you used?
A. Northern white pine, Idaho white pine, Idaho pondosa, and western pine.
Q. Western pine; when did you use western pine last?
A. I think we have some in stock now.
Q. Do you regard that as different from pondosa pine?
A. Not very much.
Q. Some of the firms call in pondosa and some western pine; is that true?
A. No. I think Idaho is strictly the pondosa. I am not so positive of that. It may run pretty well into the western terriory, Oregon, Washington.
Q. What do you mean by western pine; is that a white pine or what is it?
A. No. I do not think it is a white pine.
Q. Do you handle any California white pine?
A. Well, I never was in the West to see it grow, but I do not know that there is a California white pine. There is a sugar pine and a western pine in California.
Q. From whom do you buy your own western pine?
A. Buy it from the Sugar Pine Lumber Company and from the Red River Lumber Company and we got some from Idaho, western Idaho.
1410 Q. In buying from the Red River Lumber Company, are you sure that you do not get it under the name of California white pine?
A. We probably do. I suppose we do.

Examiner SHEPPARD. Haven't you ever seen your invoices?

A. Yes.

Examiner SHEPPARD. How is it invoiced to you; do you remember?

A. White pine.

Examiner SHEPPARD. California in front of it?

A. California, what we get from California. We get some from southern Oregon.

Examiner SHEPPARD. Is that just as white pine?

A. It appears to me—I am not positive—but it appears to me they specify that as pine.

Mr. MATTHEW. May I suggest if the witness is in doubt on the point—I think it is better in any event to consult his invoices.

Examiner SHEPPARD. If he is in doubt about it; yes, sir. He put it in three different ways. I think he himself is doubtful.

Mr. BURR. Perhaps we better excuse the witness to come tomorrow.

Mr. MATTHEW. I do not want to annoy him, but as I
1411 understand you are really doubtful.

Examiner SHEPPARD. We would like to be sure about that, both for you and for this record.

A. Well, I could do that very easily.

Examiner SHEPPARD. I think I will excuse you and let you go and come tomorrow morning.

Q. Suppose you come down tomorrow morning at ten o'clock and bring along some of the invoices of where you get your western pine product that you handle. Will you do that, if you please?

A. Sure; glad to.

Mr. MATTHEW. May I suggest he bring invoices of the California white pine and of the sugar pine? As I understand it, you buy sugar pine.

A. No. We don't handle sugar pine.

Q. You buy some lumber from the Sugar Pine Lumber Company?

A. Yes; but we do not buy sugar pine from them.

Q. The lumber you do buy from the Red River Lumber Company, you say?

A. Yes.

Q. You might bring a representative invoice from the Red River Lumber Company.

A. Yes. I can bring along some invoices from the Sugar Pine Lumber Company. Of course, we specify we buy pine, not sugar pine.

1412 Q. Also from southern Oregon?

A. I think the Red River Lumber Company branches that they——

Q. I should like to have the invoices of the various concerns you buy what you have called here western pine.

A. I will do that.

Mr. BURR. Counsel call it California white pine, but you were not clear whether you bought any under that trade name. What we want is everything you buy under the term western pine.

Examiner SHEPPARD. Be here tomorrow morning at ten o'clock and we will put you on first and let you go.

FRED W. RAYNE was thereupon called as a witness and, having been duly sworn, testified as follows:

Direct examination by Mr. BURR:

Q. What is your line of business, Mr. Rayne?
A. Retail lumber.
Q. How long have you been in that line?
A. All my life.
Q. Always here in Madison?
A. I spent two years at Whitewater, Wisconsin, in the same line.
Q. How long have you been in the business right here?
A. Since 1906.
Q. Now referring to softer pines, exclusive that is of the southern hard pines, will you state which varieties of lumber you purchase and sell?

1413 A. From the south?
Q. No. Excluding those?
A. We buy and sell northern hemlock——
Q. No. Just the pine, if you please.
Examiner SHEPPARD. Northern and western pine.
A. We buy northern white pine and Norway pine, Idaho white pine, pondosa pine and California white pine and California sugar pine.
Q. Which is your largest supply of those six varieties?
A. We are getting most of it from Idaho, Idaho white pine.
Q. Next to that what would you say is your largest?
A. Northern white pine.
Q. How long have you been handling California white pine?
A. About five years.
Q. Do you get specifications for white pine calling for orders in the language asking merely for white pine without further specification of Idaho or northern or elsewhere?
A. We get specifications for white pine, but we seldom designate where it shall come from.
Q. They seldom do designate?
A. Seldom.
Q. Most of the orders then are just asking for white pine?
A. Yes, sir.
Q. And those six varieties that you describe as goods that you carry, which of them do you feel justified in supplying

1414 to fulfill an order for a white pine?
A. Why, we would just supply three of those grades mentioned for white pine.
Q. Which three?
A. Northern, Idaho, and sugar.
Q. Would you supply California white on those specifications?
A. Yes, sir.

Q. Beg pardon?
A. Yes.
Q. That makes four then.
A. I mentioned three: Northern white, Idaho white, and California sugar.
Q. How about California white? I asked that question and you said, yes, as I understood you.
A. Personally I do not think it is white.
Q. Would you supp[l] it on occasions if you had the right grade?
A. If they just asked for pine; yes.
Q. If you were asked for white pine?
A. I might explain that it was termed white pine; it is called white pine, yes.
Q. Well, would you regard that as compliance with the specifications such that you would deliver that if they asked for white pine?
A. I would, in that we buy it as such.
Q. You have done it, have you?
1415 A. Yes, sir.
Q. Which do you regard as the best wood for exterior trim?
A. Northern white pine.
Q. And next to that which would you place?
A. Idaho white pine.
Q. Do you regard both of those as preferable to either the California white or the California sugar?
A. Yes, sir.
Q. How about the pondosa; where do you rank that?
Examiner SHEPPARD. Are you familiar with the pondosa?
A. Yes, sir; we buy the pondosa.
Examiner SHEPPARD. Then you can answer Mr. Burr's question; go ahead.
A. I might classify it one wood better than California white pine.
Q. You think it is better than California white pine?
A. It is a better looking board.
Q. Which would you recommend for exterior purposes, the California white or the pondosa?
A. Neither.
Q. Do most of your specifications for white pine constitute orders for exterior material?
A. Yes.
Q. And under those circumstances you have furnished the northern, the Idaho, and the California white; is that true?
1416 A. Yes, sir.
Mr. BURR. I think that is all.

Cross-examination by Mr. MATTHEW:

Q. For what purposes do you supply Norway pine?
A. We buy it for dimension purposes.
Q. In what terms is it customarily ordered by your customers?

A. It is sold at our suggestion and as a substitute for other dimension items.

Q. Just what do you mean by dimension lumber?

A. Joists and studding and rafters.

Q. That is for general structural purposes?

A. Yes, sir.

Q. Is it ordered by your customers as Norway pine?

A. I repeat myself. The customer may have ordered dimension and we may have suggested the delivery of Norway because we had it probably not having the fir or hemlock which we usually sell for dimension.

Q. Then the orders do not specify any particular pine nor do they call for any particular variety of lumber except that the request is for dimension lumber?

A. Occasionally we have an order for Norway pine.

Q. But usually it is just an order for dimension lumber?

A. Yes, sir.

Q. Do you ever furnish Norway pine upon orders for white pine?

1417 A. No, sir.

Q. Do you know whether Norway pine is ever received mixed up with lots of northern white pine?

A. Sometimes bought that way, mixed Norway and white pine.

Q. And when you buy it in mixed lots, northern white and Norway pine, how is it sold?

A. As bought. We do not separate it.

Q. Is it sold as northern white pine or white pine or how?

A. It is bought by us in a number three grade and just sold for common purposes, principally shiplap.

Q. That is, it is common lumber?

A. It is common lumber.

Q. If you received an order for number three white pine common you would feel free to furnish some of this mixed lumber?

A. No, sir.

Q. Then upon what type of orders do you furnish mixed white and Norway number three common?

A. In shiplap which is sheathing lumber principally, perhaps in one-by-six flooring.

Q. Then in such instances the order comes in the form of shiplap or in flooring?

A. There may be affixed the name pine shiplap or flooring.

Q. But it is not customary for them to order northern white?

A. No, sir.

Q. Or even white pine lumber?

1418 A. No, sir.

Q. Do you purchase your Idaho white pine largely from the Weyerhauser lumber interests?

A. Largely.

Q. Purchase your northern white pine largely from the same interests?

A. I would say we have bought more from the Shevlin Carpenter & Clark Company.

Q. You purchase some from the Weyerhauser interests?

A. Yes.

Q. You purchase some of the pondosa pine from the Weyerhauser interests?

A. We do not.

Q. You purchase none from them?

A. None.

Q. From whom do you obtain your pondosa pine mainly?

A. We bought considerable from the Shevlin Carpenter & Clark Company at Minneapolis, through our sales agents for the Shevlin-Hickson Company of Bend, Oregon, from where it is shipped, and we buy the rest of it principally from wholesalers not always knowing where it is coming from.

Examiner SHEPPARD. That is the pondosa?

A. That is the pondosa.

Q. When you first entered upon the lumber business did the term, white pine, mean usually just northern white pine?

1419 A. When I entered the business the bulk of it was coming from the North, but I believe even then we were getting it from Idaho.

Q. Then, did the term "white pine" at that time usually mean the northern white pine?

A. We would construe an order at that time of white pine from either place.

Examiner SHEPPARD. That is in 1906, wasn't it?

A. In 1906.

Q. So as early as 1906 the term "white pine", as you recall it, would include either northern white or Idaho white?

A. Yes, sir.

Q. Would it include California sugar white, or did it include California sugar white?

A. We did not stock California sugar pine at that time.

Q. Had you any familiarity with California sugar pine as of that time?

A. No, sir.

Examiner SHEPPARD. Does that include sugar pine now, the word "white pine"?

A. I included sugar white pine in my personal idea of what was really white pine.

Examiner SHEPPARD. So that word has had a broadened meaning as time has gone by, hasn't it?

A. Yes, sir.

1420 Examiner SHEPPARD. I mean it has included more woods than the original wood which designated it way back yonder?

A. I would say so.

Examiner SHEPPARD. You would?

A. Yes.

Q. Now, as I recall one of your answers upon your direct examination, you said that when you received orders for white pine you felt free to furnish northern white pine or Idaho white pine or sugar pine, and in either case you felt that you had satisfactorily complied with the specifications; is that right?

A. Yes; and you would include California white pine in that it is sold as such.

Q. I am not asking you about California white pine for the moment; I will ask you that shortly. You did state definitely that you would feel free to supply either one of those three woods in the first instance?

A. Yes, sir.

Q. Why do you feel free to furnish California pine upon an order for white pine?

A. My personal opinion of the wood.

Q. Then it is not based upon a trade custom or a trade nomenclature?

A. No, sir.

1421 A. It is because you personally understand that sugar pine is botanically a true white pine, is that it?

A. It is my opinion that it is. I am not familiar with the botanical terms.

Q. Then you are not interested in the botany of these woods?

A. No, sir.

Q. You are interested rather in their quality and their usefulness?

A. Yes, sir.

Q. Then the term sugar pine, although it does not contain the word white, to your mind, satisfactorily identifies a white pine?

A. In my mind it does.

Q. How do you determine whether you will furnish sugar pine in any case upon an order for white pine?

A. We supplied our stock with the upper grades of sugar pine, and we rather want to talk and sell sugar pine for purposes where they want the upper grades.

Q. You have in mind certain specific purposes; is that it?

A. Yes.

Q. That is, you are trying to satisfy the requirements of your customer as you understand them, is that it?

A. As best we can handle their orders from our stock.

Q. Do you carry the northern white in the upper grades?

A. We carry a D select grade in a small way, not a very

1422 large stock.

Q. How does it happen that you did not carry a larger stock?

A. It has been to our advantage to go to Idaho or California for the grade.

Q. Why to your advantage?
A. Price advantage.
Q. Is that the only factor?
A. Yes.
Q. Now, do you carry the northern white, the Idaho white, and the California sugar pine in corresponding grades? Do you understand the import of my question?
A. No.
Examiner SHEPPARD. Read it.
Mr. MATTHEW. Let me reframe it if I may, Mr. Examiner, please.
Q. You stated a while ago that you carried the California sugar pine in the upper grades. Do you recall your answer to that effect?
A. Yes.
Q. Just what grades did you mean by the upper grades?
A. D select grade, C select grade, and B and better grades.
Q. You carry the sugar pine in D select, C select, and B and better. Do you carry northern white in those same grades?
A. We carry northern white only in the D grade.
Q. Why not in the C and in the B and better?
1423 A. For the reason that our purchases from California have tied us over so that we didn't need to buy from the north.
Q. So you are carrying the sugar instead of the northern white in those highest grades?
A. The stock move slowly so what we had continued on our stock later in the C and better grades.
Q. What grades do you carry in the Idaho white?
A. D select and C select.
Q. Why not B select and better?
A. For the same reason that our California stock moved slowly and we did not need to replace it after having once put in a stock of it.
Q. Well, my difficulty is still this, why did you not initially stock up with the northern white and the Idaho white in these highest grades rather than to resort to California sugar pine for the highest grades?
A. At the time we put in our stock of California upper grades it was of advantage to us on account of price then being considered low.
Q. That is the only reason for your stocking up with the California sugar pine in these higher grades than with the northern white or Idaho white?
A. Yes, sir.
Q. Do you carry the California white in these same grades?
A. No, sir.
1424 Q. What grades of California white pine do you carry?
A. I don't think we have any in stock.
Q. So then naturally it cannot be your practice to furnish California white pine upon orders for white pine?

A. No, sir.
Q. How long since you carried California white pine?
A. We had a car of it in 1920 or 1921.
Q. And you have carried none since?
A. One and only car.
Q. That is the only car of California white pine that you have ever carried?
A. Yes, sir.
Q. Do you supply the Idaho northern white and California sugar pine for exactly the same purposes?
A. Yes.
Q. You make no distinction as to the particular lumber which you will furnish to your customers from those three varieties?
A. Not in the select grades.
Q. How about other grades?
A. We do not carry the common in sugar pine.
Q. Do you carry the common in Idaho white?
A. Yes, sir.
Q. And northern white?
A. Yes, sir.

1425 Q. How do you determine whether you will furnish northern white or Idaho white when common lumber is asked?
A. We have both stocks and furnish what we have.
Q. The customer asks for northern white pine common, do you feel free to furnish Idaho white common?
A. Not without telling them that it is Idaho.
Q. Do you sometimes do that?
A. Yes.
Examiner SHEPPARD. Is it the same thing with the sugar pine?
A. We do not carry sugar pine in common grades.
Q. For what purposes is the California sugar pine ordinarily used in this territory?
A. Would be used for outside porch work, for building of columns or facer, or for outside window and door frames and for cornice work or for the building of cabinets, cupboards, or interior trim.
Q. I understand from your direct examination that you do not rate California sugar pine as high as Idaho white for exterior use?
Mr. BURR. Did he so testify?
Mr. MATTHEW. If I am wrong he can state so. I am asking him.
A. Can I have the question again?
(Question read.)

1426 A. I did class the Idaho ahead of California sugar.
Q. And you class northern white ahead of Idaho white?
A. Yes, sir.
Q. And yet you feel free to furnish any one of these three variety of lumber upon orders of white pine?
A. Yes, sir.
Q. Even though you know that it is desired for exterior use?
A. Yes, sir.

Q. You stated that you would not recommend pondosa pine for exterior use. May I ask whether you would recommend it for interior use?

A. It would be all right for that purpose.

Q. Do you sometimes supply it for interior?

A. We only have it in the common grades, selling it for sheathing or shelving or something of that kind.

Q. Did you ever furnish pondosa pine in those grades upon orders for white pine?

A. No, sir.

Q. In what form do these orders which you supply with pondosa pine normally come?

A. Where the customer merely wants sheathing or shelving.

Q. And he does not ask for white pine nor does he even ask for pine. He just requests lumber for sheathing or shelving.

A. He may ask for pine lumber. The chances are he does not know what pondosa means, but may say pine.

1427 Q. I will go with you he does not know what pondosa means, but ordinarily he merely asks for pine lumber for sheathing or shelving?

A. Yes, sir.

Q. He is not interested in knowing whether it is white pine or any other kind of pine?

A. No, sir.

Mr. MATTHEW. I think that is all. Thank you.

Redirect examination by Mr. BURR:

Q. Now, when you testified that you got mixed lots of northern white pine and Norway, do you mean mixed cars where you order certain specifications of Norway and certain specifications of white or do you just ask for a car of mixed common with the two. What is the situation there? I do not quite understand it.

A. Sometimes we made a price on one by eight shiplap where the percent of white pine and Norway pine is different. There may be eighty-five of Norway pine and fifteen percent of white pine.

Q. How do you order that material where it comes mixed?

A. Just as pine, shiplap.

Q. Pine shiplap, and then the manufacturer, the lumber mill, is justified in giving you anything between all Norway and all

1428 northern white or anything in between in the way of mixture, is that true?

A. The percent is usually stated, whether fifty percent or eighty-five percent.

Q. Stated by you in your order?

A. Stated by the party selling.

Q. How do you order?

A. We order the way he has represented it to be. We may order fifty percent white pine and fifty percent Norway, being satisfied with that percentage.

Q. Then what do you do when you get it, do you put it all in the same stack or do you store—sort it?

A. Put it all in the same stack.

Q. And you sell it then as a mixed pine, do you?

A. Sell it as pine.

Q. So there is no misunderstanding anywhere along the line, is that true?

A. There should be none. We understand the party we buy from and we are just selling pine shiplap.

Q. When you sell pine shiplap there is no implication that is white pine or anything of the kind, is there?

A. No, sir.

Mr. BURR. That is all, sir.

FRANK RILEY was thereupon called as a witness, and, having been duly sworn, testified as follows:

1429 By Mr. BURR:

Q. What is your line of business, Mr. Riley?

A. Architect.

Q. How long have you been an architect?

A. Twelve or fifteen years.

Q. During that entire time in the city of Madison?

A. No, sir.

Q. Where were you previously?

A. Boston.

Q. How long have you been an architect here, sir?

A. About eleven years.

Q. Did you come direct from Boston here?

A. No; from Europe.

Q. I mean have you had experience in your profession elsewhere than Boston and Madison?

A. Yes; in Europe.

Q. You practiced there, did you?

A. I worked over there.

Q. In connection with this profession, do you have occasion to specify any variety of pine for exterior purposes?

A. No. We never mention grades, just simply order white pine, or occasionally, longleaf or shortleaf.

Q. For exterior purposes?

A. Not for exterior purposes.

Q. Do you specify any variety of pine for exterior work?

1430 A. No; simply say white pine.

Q. Simply say white pine?

A. Yes, sir.

Q. You do specify white pine then for exterior purposes on occasions, do you?

A. Yes, sir. Unless it happens to be an oak house.

Q. When you specify white pine for exterior use do you regard northern white pine as a due compliance with your specification?

A. Yes, sir.

Q. How about California white pine?

A. We are dependent a little bit on the mills in Madison—the lumber yards. We specify—we follow the course of least resistance I am afraid. I would specify and expect what they give us. It helps us a little bit. In Boston it was different.

Q. Just a minute, I will come to Boston in a moment. When you specify here in Madison white pine and you found California white pine was delivered on the ground, would you regard that as compliance—if it met with the grade and other requirements?

A. We accept it, but we are not as pleased with it as northern white pine.

Q. You regard northern as more durable, do you?

A. Yes, sir.

1431 Q. Do you regard the delivery of Idaho white pine as compliance?

A. We like that less than the California.

Q. Upon what ground?

A. I cannot say definitely, just perhaps opinions of a couple of contractors here in town whose opinions I respect.

Q. California is a little cheaper than the Idaho?

A. California is a little cheaper, I think; yes.

Q. Do you prefer the California on the ground of it being cheaper?

A. We do not go into it that deeply.

Q. Well, you do not know whether the contractor prefers it because it is a little more reasonable, or do you?

A. I don't know; no. I have found that they will accept a car of Idaho one shipment and a car of California in another shipment. It depends a little bit on how readily it comes.

Q. In your experience in Boston did you find that they would accept California white for white pine?

A. No; they would not. They were very much more particular with their white pine than they are here, I think.

Q. Do you handle pondosa pine?

A. Don't know it by the name. I might be able to tell it.

Q. If you found pondosa when they delivered on the ground when you specified white pine, would you accept it as if it were satisfactory?

A. I don't know the——

1432 Mr. MATTHEW. He might be informed of the pondosa and not—he might be told it was Cuban pine.

Mr. BURR. If he was told, if it was pondosa pine, I asked him whether he would accept it as the white pine ordered.

A. I imagine, if the appearance was nearly identical, quite similar.

Mr. BURR. I think that is all.

Cross-examination by Mr. MATTHEW:

Q. You stated, Mr. Riley, that in Boston California white pine would not be accepted upon an order for white pine?

A. Well, I think they were a lot more particular about their white pine than they are here. I know specifications from the Boston office specify more definitely the type of lumber they wanted used.

Q. You would understand when they specify white pine in Boston ordinarily they mean the northern white pine?

A. Yes.

Q. And Idaho white pine would not be accepted on such specifications?

A. Not in those days. That was twelve or fourteen years ago.

Q. Your testimony as to Boston was given as to your experience in that period?

A. Yes. I know nothing of it since then.

1433 Q. Would California white pine be accepted as satisfactory compliance with an order for white pine in Boston as of that same period?

A. That is a hard question to answer because, as a rule, the architect did not go into the woods quite as deeply as that. He did have more reliance, I think, on his contractor or his lumberyard.

Q. You understood as of that period the term white pine in Boston meant the northern white pine?

A. Yes, sir. I don't know where the pine came from for the older houses. I imagine it came from the East and later on it came from here.

Q. You stated in answer to a question for counsel for the commission that you were familiar with pondosa pine under that name?

A. I merely seen it advertised. I know the name as a pine, but I wouldn't know it if I saw it.

Q. I think you also said if pondosa were delivered upon the job and appeared to be satisfactory in appearance and quality you might accept it, or was that your answer?

A. Yes, sir.

Q. Are you familiar with the term Arkansas soft pine?

A. Yes.

Q. Do you know the lumber?

A. I don't believe I do; no. If a piece was of the same
1434 size, I believe I couldn't tell it. It is apt to be delivered.

Q. If Arkansas soft pine was delivered on the job and appeared to be the same in appearance and quality, would you accept that?

A. Yes.

Q. The same as the pondosa?

A. Yes.

Q. Are you familiar with the southern pines generally?

A. No.

Q. I suppose you would have the same difficulty in determining whether to accept pine which happened to be a southern yellow pine?

A. I am afraid so. We do not have much occasion to go into it.

Q. As an architect you are not familiar particularly with either the botanical classification of the pine trees or with the several kinds of lumber which they yield, are you?

A. No.

J. J. LUETSCHER was thereupon recalled as a witness, having been previously sworn, and testified as follows:

Redirect examination by Mr. BURR:

Q. Mr. Luetscher, you testified a few moments ago that you had had trouble with some exterior appurtenances of one of the houses that you built, did you?

A. Yes, sir.

1435 Q. You built that for your son, or did you say your son-in-law?

A. My son. He built that himself.

Q. He built that himself?

A. Yes; he did.

Q. Do you know when that was built, of your own knowledge?

A. About four and a half years. That is one of the blinds [witness indicating].

Q. You brought a blind down, did you?

A. Yes, sir.

Q. Do you know how that blind was ordered?

A. How it was ordered?

Q. Yes; what kind of a blind was ordered?

Mr. MATTHEW. If he knows of his own knowledge.

Q. Yes. Do you know what was ordered?

A. That I couldn't say.

Q. How long ago was that blind put up?

A. Less than five years.

Q. Less than five years?

A. Yes. I think it will be five years in the spring.

Q. Do you object to our cutting a piece off of that?

A. No, sir. You can't spoil it.

Examiner SHEPPARD. I rather agree with you.

Q. Take your knife and cut a piece of it off.

A. There is one [indicating] ordered in that same lot, that new one.

1436 Mr. BURR. That will be all for the moment. I will call Mr. Koehler, please.

Mr. MATTHEW. Before anything further is done, I think, in order to have a proper foundation there has got to be some evidence that lumber under the name of California white pine was furnished upon an order calling for white pine.

Examiner SHEPPARD. Those things will have to come out, otherwise there will be no consideration given to this.

Mr. BURR. If the examiner please, if I now prove that is the pondosa pine or a variety of yellow pine, not only giving the appearance of pondosa pine but yellow pine, I think it will be more persuasive evidence if it is proved to be ordered as California pine, but on the durability of the wood it is not necessary to ascertain whether this was ordered as white pine or whether it was not, whether it was furnished as pondosa pine or California white pine. You remember of my telling you that I was going to accept evidence along the line of the pondosa. I now want to ascertain whether this is a yellow pine strongly resembling, as the witness testified this morning with regard to the sample brought from Indianapolis, strongly resembling the pondosa. I do not know whether it is or not. If it is not, we will strike the testimony. If it is, I desire to have it remain in for such value as the Commission and examiner may attach to it.

1437 Mr. MATTHEW. I think the examiner will appreciate the fact we can easily go around the country and find decayed specimens of every kind of wood in the world, including the renowned strobus.

Examiner SHEPPARD. Do not take this, Mr. Reporter.

(Discussion off the record.)

A. KOEHLER, thereupon recalled, having been previously sworn, and testified as follows:

Redirect examination by Mr. BURR:

Q. Mr. Koehler, you have made an examination of part of these blinds which Mr. Luetscher has testified to, have you?

A. I have.

Q. And what parts of the blind did you make examinations of?

A. I examined the lower rail and the lower panel.

Q. Were you able to ascertain whether it is pine or not?

A. It is pine.

Q. Is it yellow pine or white pine?

A. It belongs to the yellow pine group.

Q. Would you say whether the lumber is heart or sap, could you distinguish?

A. I believe that is a sapwood.

Q. How about the other piece?

A. Which other piece?

Q. You said you examined part of the panel as well, did you not?

1438 A. I cannot tell that under the microscope and the panel is either rotten or covered with paint so I cannot see its natural color.

Q. But you are able to tell that both pieces are of yellow pine, are you?

A. Yes.

Q. How about the texture, does that lead you to the belief that the yellow pine is ponderosa or is it some heavier or harder variety of yellow pine?

A. The texture indicates that it is not southern yellow pine, therefor it is very likely that it is Pinus ponderosa.

Q. What was the condition of the parts of the blind that you examined there?

A. Partly decayed.

Q. Was the panel in an advanced state of decay?

A. Yes.

Q. Such as there were places where the decay had entirely perforated the panel and left a hole?

A. Yes.

Q. How about the other part that you have examined? What was the state of decay there?

A. It was well permeated with decay.

Q. What signs of promptness of protection by paint are there upon this blind?

A. It has been covered with paint.

1439 Q. Are there any signs of more than one coat?

A. I couldn't tell.

Mr. BURR. I think you may cross-examine, sir.

Recross-examination by Mr. MATTHEW:

Q. Is it possible that this wood may be Arkansas soft pine?

A. No. Not in my opinion.

Q. As I recall your testimony this morning, you said that you could not state infallibly whether a given specimen of yellow pine was from a ponderosa tree or from perhaps one of the southern yellow-pine group?

A. That is in smaller sizes, but in a size like this I feel certain it is not southern yellow pine.

Q. It is not possible that it could be the Pinus echinata from the Arkansas territory?

A. No.

Q. It is absolutely impossible?

A. Yes. That is my belief.

Q. In other words, you feel that that is a certainty for all practical purposes, Mr. Koehler?

A. Yes.

Q. What are the apparent reasons for the decay which took place in these wood specimens concerning which you have just testified?

1440 A. Since the bottom rail and the lower end of the panel are decayed, it looks as though moisture accumulated where the panel joined the rail and perhaps where the lower rail joined the muntins and promoted decay.

Q. Conditions of that particular character, that is where moisture can get in in the fashion that you have described, are especially conducive to decay, are they not?

A. Yes.

Q. And sapwood is furthermore more likely to decay rapidly under those conditions than heartwood?

A. Yes.

Q. You would agree, would you not, Professor Koehler, that the sapwood of any species of pine is less resistant to decay than the heartwood?

A. Yes.

Q. I assume that you have not given particular study to the construction of doors and sash?

A. I have not.

Q. Nor given particular consideration to the features of construction which promote or prevent decay?

A. I have not.

Q. Of course you are not familiar with the terms or conditions under which this particular blind was ordered?

A. No.

Q. May I ask you if you would subscribe to this statement respecting the decay of sapwood and heartwood respectively:

1441 "The natural decay resistance of all common native species of wood is in the heartwood; when untreated the sapwood of practically all species has low decay resistance and generally has short life under decay-producing conditions. The decay resistance or durability of heartwood in service is greatly influenced by differences in the character of the wood, the attacking fungus, and the conditions of exposure. Therefore great differences in length of life may be obtained from pieces of wood that are cut from the same species or even the same tree and used under apparently similar conditions."

A. I believe that is correct.

Mr. MATTHEW. That is all. Thank you.

By Mr. BURR:

Q. Do you understand that the ponderosa has a far greater percentage of sapwood than the genuine white pine?

A. Yes.

By Mr. MATTHEW:

Q. You would not recommend the sapwood of any of the pines for exterior use without adequate provision for protection against decay, would you?

A. I would not.

J. J. LUETSCHER, thereupon recalled as a witness, having been previously sworn, and testified as follows:

By Mr. BURR:

1442 Q. Referring to that blind, Mr. Leutscher, that you testified about, will you state whether or not it was painted at the time it was installed or when it was painted?

A. It was painted before it was installed.

Q. Did you do that job, or superintend that job?

A. Yes; to a certain extent I did.

Q. Do you know whether it was a good job of painting?

A. Yes; he bought his own material and had a man working by the day—the best paint he could get.

Q. Has it been painted since and protected subsequently?

A. No. He just painted it this year. He painted his house this summer. That is how he discovered that those blinds were rotten, you see.

Q. How many times during the time that the blind has been up has that been painted, if you know?

A. It had four coats of paint. He put on four coats of paint on the blinds.

Q. Two coats of paint when he first put them up and then two this year?

A. No. He put on one more coat on the blinds than he did on the rest of the house. He put on four coats on the blinds.

Q. In the beginning, you mean?

A. Yes.

Q. Four coats in the beginning?

A. He painted them over in the winter, you see. I just
1443 talked with him before I come up here so I know what I was talking about.

Mr. MATTHEW. In other words, this is hearsay.

Q. Do you know?

A. I know the house was painted with the best material, and it has four coats of paint.

Mr. MATTHEW. Who told you so?

Q. Do you know that of your own knowledge or is it just what somebody told you?

A. He told me that.

Q. Do you remember seeing it was painted in the beginning or don't you?

A. Yes. I was there. I done some of the work. I built the stairs and mantels and that stuff. I was around there most of the time.

Q. Do you know of your own knowledge, sir, that it was painted in the beginning?

A. That I know. He painted them all before he put them up. I can swear to that.

Q. Do you know about its being painted recently of your own knowledge?

A. No. They have not been painted since.

Q. They have not been painted but the once?

A. No. Four coats of paint.

Q. Four coats of paint in the beginning?

1444 A. Yes.

Q. Is this green paint on here the original coat of paint, the last of the four original coats?

A. Yes. The difference in the color is because this was up against the house [indicating].

Q. The job of painting is in good shape or is it in bad shape?

A. Well, it did not peel off. It didn't check.

Q. In other words, do you regard the paint, aside from the rot, is the paint in good shape on that blind?

A. I do; yes, for the time it being on there. That is four years, four and a half years.

Q. Is it still in shape to turn rain water?

A. Well, it should be. I think it is; yes. It has a good body on there.

Mr. BURR. You may examine.

Recross-examination by Mr. MATTHEW:

Q. How do you know it had four coats of paint?

A. I just told you before, I was told it had four coats of paint.

Q. You do not know except for that advice?

A. I didn't ask him neither.

Q. But that is all you know. That is your entire source of information as to the number of coats of paint put on?

A. Yes.

1445 Mr. MATTHEW. I think that ought to go out as hearsay.

Examiner SHEPPARD. Yes. I will order the testimony of the witness in reference to what his son told him about the pain struck out.

Q. Who made this door, or blind, as you call it?

A. Blind.

Q. Who made it?

A. Outside blind. Why, I think Curtis & Yale.

Q. You don't know?

A. He bought his millwork from Curtis & Yale, and these blinds came with it.

Q. Who are Curtis & Yale?

A. Sash and door people up in Wausau.

Q. In Wausau?

A. Yes. That is one place, anyway. They were bought from Collins & Son; Collins and Son furnished them. They were bought through Collins & Son.

Q. Collins & Son, lumber people here?

A. Local lumber dealer.

Q. Is it a well-constructed blind?

A. Yes. I call them well constructed.

Q. Let me call your attention to one side here where it appears there is quite a bit of shrinkage.

A. Yes. The panel shrunk.

Q. Leaving quite an unpainted area here.

1446 A. When that rotted off up here [indicating] this blind, this is the bottom of the blind right here, when that rotted away this dropped down.

Q. Let us take the upper part of this panel here and on the left-hand side, as I show it to you, there again apparently is more shrinkage.

A. Wood don't shrink endwise very much, you know. It ain't supposed to shrink at all.

Q. It has shrunk laterally?

A. Yes; sidewise.

Q. And there is an area, an unpainted area, that is exposed there?

A. Yes. It is split out. It is tighter on one side than the other, and it comes off from one side, shrunk.

Q. Is it possible the lumber in this panel may have been rather green when it was put in, with the result it shrunk afterwards?

A. I don't think so.

Q. What occasioned the shrinkage?

A. Maybe it isn't shrinkage. I just thought about that now. That panel might have been an eighth of an inch shorter than the groove inside, and it moved.

Q. Might have been a little defect in construction there?

A. Well it might not be—it wasn't full. It ain't supposed
1447 to be full. That panel swelled out, and if it was a tight fit in there it would open the joints here, and it is not practical to make it that way. The panel should be just a little bit narrower than the space in between.

Q. What is your best judgment as to the reason for the apparent shrinkage here?

A. Some shrinkage and some is, it went to one side.

Q. In that respect it wasn't very well constructed, is that it?

A. I consider the construction all right as far as that is concerned.

Q. Would a properly constructed blind here have this particular shrinkage as indicated there?

A. It is pretty hard to construct a blind, outside blind, without having some of those things like that show up.

Q. Those defects may show up then?

A. Yes.

Q. For the same reason we have this little gap between the transverse middle rail and the stile which I direct your attention to?

A. Yes.

Q. There is some shrinkage there?

A. This dowell pin here, in here you can't see them, they are blind. Maybe they let go a little.

Q. That may happen in any blind or door?

A. It may come along through weather.

1448 Q. This was exposed to the weather, of course?

A. Sure. The rotten part has nothing to do with that.

Q. Do you know of your own knowledge how this was ordered, that is, under what name? Was it ordered as northern white pine?

A. No, sir. There wasn't anything mentioned about that as I know. Of course, I couldn't answer that.

Q. You do not know how the order went in?

A. No, I do not.

Q. Was it ordered by your son or ordered by the contractor or by whom?

A. My son.

Q. You do not know whether the lumber came from which was used in the manufacture of this blind?

A. No. I do not know where it came from. I know it is western pine. Whether it is Idaho or California I couldn't say. I don't think there is any sugar pine in it to my knowledge.

Mr. MATTHEW. I didn't ask you about the sugar pine.

Mr. BURR. That is all.

Mr. MATTHEW. Mr. Examiner, you requested that I reserve the right to press an objection to testimony of this character and I think I should and present it at this time. My objection is to this effect that the mere offering of samples of wood which may be identified satisfactorily or otherwise as coming from the ponderosa
1449 pine tree, does not go to the issues of this case and that furthermore it is perfectly obvious that we can find samples of any kind of lumber imaginable throughout the broad expanse of the United States which have failed under various conditions, and it puts these respondents in an unfairly prejudicial position to allow evidence of this character to go into this record.

Now, if this lumber were identified with an order for California white pine or with an order for white pine but with our California white pine furnished I suppose it might be received, altho there again I think that it should have the most inconsiderable influence upon the conclusions of the Commission as to the essential issues in this case, as I understand those issues.

For these reasons I move to strike the testimony of the witness Luetscher and Professor Koehler respecting the wood of this particular blind.

Mr. BURR. Mr. Examiner, this testimony is not offered for the purpose of showing that the naming of ponderosa as California white pine is confusing. We will prove that by other evidence. This evidence is offered for the purpose of showing that ponderosa being predominately sapwood fails to stand up under weather conditions, and it makes no difference for the purpose of proving that whether the particular specimen of ponderosa offered was
1450 sold under the trade name pondosa or under the trade name western white pine or under the trade name California white pine.

On the question of durability and the question of the use of sap for this purpose by the manufacturers of ponderosa this testimony is offered, and I think it is helpful and beneficial to the Commission to have the evidence of this character.

Mr. MATTHEW. If it was helpful on any theory certainly to offer corroborative evidence of Idaho white pine and California sugar pine and of the strobus pine, it would be under similar conditions.

Examiner SHEPARD. That could well be brought out on your side of the case. I will tell you, gentlemen, as I said in New York, I think I am going to make findings in this case on the various incidents that are in the record on the side of the ponderosa and on the side of the California white pine and let the Commission do what they please with it.

In reference to the testimony of Mr. Luetscher, there is an element in my judgment lacking there in reference to this matter that we do not know from the testimony what was specified, but I take it since the testimony of Mr. Koehler, that made the identification, that that element would not add to it at all. He testified that the wood was ponderosa, and comes under, therefore, my conception of this case that the two woods being so similar a finding should be made on both and let the Commission draw their own conclusions, and I am going to so hold.

1451

So I will deny the motion to strike and allow the testimony to remain in, giving an exception.

Mr. MATTHEW. Will the examiner allow me an exception?

Examiner SHEPARD. I said, allowing the exception on the record. Is that all?

Mr. BURR. I think that is all this evening.

Examiner SHEPARD. We will take an adjournment until ten o'clock tomorrow morning.

(Hearing adjourned until Tuesday morning, October 22, 1929, at 10:00 o'clock a.m.)

1452

Docket Nos. 1620–1669, inc.

MADISON, WISCONSIN, *October 22, 1929.*

Met pursuant to adjournment, 10:00 o'clock a.m.

Before William W. Shepard, examiner.

Appearances:

Mr. Eugene W. Burr for the Commission.

Messrs. Matthew & Wheat for the respondent.

J. S. TIMLIN resumed the stand and further testified as follows:

Direct examination (continued) by Mr. BURR:

Q. Did you bring your invoices, as requested by the examiner and counsel last night?

A. I did; yes, sir.

Q. Will you be kind enough to produce them?

A. Yes.

(Witness producing invoices.)

Mr. BURR. May it be stipulated that Mr. Timlin's invoices which he brought down this morning, insofar as the Red River Lumber Company is concerned, which constitutes the bulk of the invoice material, the designation of the material purchased is in the main "C.W.P." and "California white pine" with two instances where the material is designated as "California pine D.I.M."

1453

Mr. MATTHEW. May it be added that it is our assumption that the letters D.I.M. stand for dimension, so that the entire term means California pine dimension lumber.

Examiner SHEPARD. All right.

Mr. BURR. It is so stipulated, is it?

Mr. MATTHEW. Yes.

Mr. BURR. Other invoices are immaterial to the present matter; is that correct?

Mr. MATTHEW. Yes. May it likewise be stated that the invoices of the Red River Lumber Company which the witness has submitted are under the caption "The Red River Lumber Company, manufacturers of California white and sugar pine."

Mr. BURR. That is agreeable. You may cross-examine, if you please.

Mr. MATTHEW. I think I shall have no questions upon cross-examination, Mr. Examiner.

(Witness excused.)

1454 A. KOEHLER recalled for further redirect examination, and thereupon testified as follows:

Redirect examination (continued) by Mr. BURR:

Q. Mr. Koehler, have you this morning at my request cut from some of the samples at your office from Pinus strobus lumber and brought them for the hearing this morning?

(Pieces of wood marked "Commission's Exhibits 21, 22, 23, 24, 25, and 26" for identification.)

A. Yes.

Q. Now, of these samples, four represent cuttings from virgin growth, do they?

A. They do.

Q. And the other two are from what?

A. Second growth, so called.

Q. Now, Mr. Koehler, these samples having been marked, will you state which are original and which are second-growth samples.

A. Samples numbered 21, 22, 23, and 24 are virgin-growth samples. and samples 25 and 26 are what is commonly known as the second-growth samples.

Examiner SHEPARD. I understand that is all Pinus strobus.

A. Yes.

1455 Q. Will you state briefly how one unfamiliar with lumber can from these samples detect the point at which the sapwood and the heartwood are divided?

A. The sapwood in each case is lighter in color in general than the heartwood; and also, in these samples, the sapwood is permeated in places by a bluish stain which is absent in the heartwood.

Q. Now, would you say that the samples or any of them show a fair average as regards the proportion of heartwood and sapwood?

A. I believe these samples are representative of Pinus strobus with respect to the portion of sapwood and heartwood.

Q. Including those both of virgin growth and of second growth?
A. Yes.

Mr. BURR. I ask that they be received with the numbers already given to them as Commission's exhibits for the record.

Examiner SHEPPARD. Any objections?

Mr. MATTHEW. None.

Examiner SHEPPARD. Let them be received, Mr. Reporter.

Mr. BURR. I think that is all on this topic.

Mr. MATTHEW. No questions.

Mr. BURR. Mr. Koehler, I may want to recall you; would you mind staying? I believe, if the Commission please, at this time I will make an offer of certain correspondence that has been
1456 received from the Forest Products Laboratory files and which has been loaned to opposing counsel.

Q. Mr. Koehler, I believe you referred the other day in your testimony to correspondence involving the comparison of Pinus ponderosa with white pines and correspondence involving the identification of Pinus ponderosa, together with expressions of dissatisfaction from correspondence with regard to certain pine, samples of which were handed you for consideration, handed your office for consideration, did you?

A. Yes, sir.

Q. And those files you turned over to me previously, did you?

A. Yes.

Mr. BURR. Now, if the examiner please, I realize that under the strict rules of evidence this material is hearsay. It comes, however, from all parts of the country and it is a practical impossibility for it to be identified and run down and that I think goes to the probative value as well as to the question of its strict character as evidence under the hearsay rule. However, on some occasions the examiners in Federal Trade Commission cases have let down the bars in some respects where they felt satisfied that the material was offered in good faith and where it did contribute something to the knowledge of the Commission in a practical fashion, such as practical men would consider in reaching their views; and, accord-
1457 ingly, I offer these two packages of correspondence both on the part of people who wrote in to the Forest Products Laboratory and carbon copies of replies thereto, and ask that they be received as Commission's exhibits for the record, nos. 27 and 28.

A. We do not want to part with that correspondence permanently.

Mr. BURR. Under the understanding that if they be received counsel for the Commission will have the privilege of substituting for the originals photostat copies and will return to Mr. Koehler the original correspondence, together with these carbon copies to which I refer for replacing the files.

Examiner SHEPPARD. Any objection?

Mr. MATTHEW. Yes; Mr. Examiner, I object to the tender upon the ground that it is clearly obnoxious to the hearsay rule. I urge the objection not merely because of the technical phase of the mat-

ter, but I think the objection is substantial. There is absolutely no means, of course, of our confronting the authors of these letters. I have examined the files in a cursory way and I am satisfied they will be of no assistance to the Commission in any event. I think they will merely result in confusion. I can find expressions there which will be very helpful to our side of the case and doubtless counsel for the Commission feels that there are certain fea-
1458 tures of the correspondence that will be helpful to his contention, but the hearsay objection is fundamental and substantial here and, of course, I am allowed to object to the receipt of letters upon that ground.

Examiner SHEPPARD. I do not think, Mr. Burr, it will help this case any from what you both have heard. Some features of the letters may be favorable to one side and other features favorable to the other. It is more or less of an offset. I think I will bar them. I do not think they will be of any service to us.

Mr. BURR. If the examiner is barring them upon the ground that it is about an offset between the failure of ponderosa and matters that may be favorable to the defense, I would say that it would be my idea that perhaps the examiner might profitably glance over the papers and see if he thinks it would add anything to the knowledge of the Commission in this matter.

Examiner SHEPPARD. There is another reason there, too, in my own mind which I was going to state, and that is that any promiscuous bunch of letters written by Tom, Dick, and Harry on a question of this kind which is gathered together as Mr. Koehler has said he received them, I do not think it is exactly fair to the respondent in the case to be confronted with letters of such a nature, because there is no opportunity to call the witness before them for cross-examination, and I think that in a case of this kind, as in cases of
1459 similar kind, we should take our facts from the witnesses as they appear on the stand, being fully examined and cross-examined by the counsel and all the facts brought out in regular order, and I think that is sufficient in this case without going outside of the rule and allowing a bunch of promiscuous letters to be brought in, and where there is no opportunity for cross-examination and for me to observe the witness himself, which is one of the big things in hearing one of these cases, to see the witness himself, see how he conducts himself or what he knows, and the examiner is under the apprehension that a promiscuous bunch of letters of the kind that you offer here would not be of any material use from that angle to me or either to the Commission.

Mr. BURR. If the examiner please, if the examiner would look at the papers he would find that the word "promiscuous" is hardly a fair designation of the letters. They come in from people who desire to know what they are buying or proposing to buy is white pine or not and also complaints as to the early rotting out of certain wood; and then Mr. Koehler's office—and he is on the stand here today and could testify as to the accuracy of the reports made—Mr.

Koehler's office then comes back with a report to the effect that the sample submitted is western yellow pine; that is to say, ponderosa, and it seems to me it is hardly a promiscuous body of letters
1460 and I would suggest that, if the examiner deems it appropriate, he might take a look at the correspondence and ascertain whether or not he thinks it would add something to the knowledge of the Commission.

Mr. MATTHEW. I object to the characterization of correspondence which is not itself admissible because that characterization by counsel while not in the record technically is, nevertheless, in the record physically, and I think, further, it is highly out of place to suggest that the examiner should review correspondence which afterwards will presumptively not be made a part of the record, but, nevertheless, may be a part of the record in his mind. That is the very essence of the objection to hearsay.

If I should venture to tender at this hearing a sheaf of correspondence which therein the virtues of California white pine were extolled to the high heavens and Pinus strobus were reputed to be something which, while of some value in its glorious past is today something to be frowned upon, I think counsel would very legitimately object; and if I offered in turn to allow the examiner to read the correspondence, even though it should be made a part of the record, I think he should again object. I take it, when the examiner referred to this correspondence as being promiscuous, he merely meant that these letters came in from various parts of the country, in no particular orderly fashion.

Examiner SHEPPARD. That is what I meant by promiscu-
1461 ous, coming from various parts of the country and from various people whom you gentlemen would not have a chance to cross-examine or whose knowledge you would not have a chance to test. I do not think they have any place in this record, and under the rules I am going to bar them from the record and consideration in this case. Mr. Burr, I will be glad to give you an exception to that ruling.

Mr. BURR. I do not care for an exception. I think the examiner's ruling is in accordance with the strict rule, if we apply the strict rule.

Examiner SHEPPARD. Yes; I think so, too. If they had been offered on the other side I would bar them because I prefer to take the testimony of the witness on the stand.

Off the record.

(Discussion not for the record.)

Mr. BURR. Now, if the examiner please, and with the consent of opposing counsel, I desire to offer as Commission's exhibit for the record, no. 27, census figures of the production of various kinds of soft lumber, including therein columns designated "sugar pine", "western yellow pine", and "white pine", for the purpose of showing the Commission the relative quantities, State by State, produced

in these three types of lumber during the period of 1927, and ask that they be received.

Examiner SHEPPARD. Any objection?

1462 Mr. MATTHEW. There is no objection, Mr. Examiner. May I add in that connection that we may ask leave before these hearings are concluded to supplement these census figures with other data taken likewise from official sources of perhaps the 1928 figures, which I understand are shortly available?

Examiner SHEPPARD. I would like to have that. I would like to have it up to date.

Mr. MATTHEW. And there may be some other data of similar character.

Examiner SHEPPARD. Six months of 1929 or something like that. I would be glad to have that. Mr. Reporter, you may mark this exhibit and receive it in evidence.

(Commission exhibit 27 received in evidence.)

Mr. MATTHEW. There may be some other data of similar character taken from Government publications we may ask also to admit

Mr. BURR. May it be stipulated that the word "white pine", includes monticola as well as strobus; that is to say, the northern white pine and the Idaho white pine, respectively?

Mr. MATTHEW. I understand so.

Mr. BURR. "Sugar" is a separate column. If the examiner please, with the consent of opposing counsel, I am offering that

1463 portion of a leaflet publication purporting to be gotten out by H. S. Betts and W. D. Brush, of the U. S. Forest Service, showing the distribution of "sugar pine", "western white pine", and "white pine", respectively, being Pinus lambertiana, Pinus monticola, and Pinus strobus, it being understood that counsel for the Commission is instructed to cut off and mount that portion of the publication which contains the map, eliminating the reading matter.

Examiner SHEPPARD. Any objection?

Mr. MATTHEW. There is no objection.

Mr. BURR. May this be received as Commission's exhibit 28?

Examiner SHEPPARD. Let it go in, Mr. Reporter.

(Commission's exhibit 28 received in evidence.)

Examiner SHEPPARD. Showing the map as stated by Mr. Burr and the elimination of any reading matter or explanation under them. Anything else?

Mr. BURR. I believe the understanding is that the defense will proceed with the matter next.

Examiner SHEPPARD. Mr. Koehler, you are excused unless these gentlemen want you.

Mr. BURR. I should rather you would continue to attend for the time being, Mr. Koehler.

Mr. MATTHEW. I desire to call one witness if I may at this time, Mr. Examiner.

Examiner SHEPPARD. All right.

1464 JOHN A. NEWLIN was thereupon called as a witness and, having been duly sworn, testified as follows:

Direct examination by Mr. MATTHEW:

Q. Mr. Newlin, where do you reside?

A. In Madison.

Q. What is your profession or occupation?

A. I am in charge of the section of timber mechanics at the Forest Products Laboratory.

Q. And the Forest Products Laboratory is under the general supervision of the United States Department of Agriculture?

A. Yes, sir.

Q. How long have you held your present position?

A. Since the establishment of the laboratory.

Q. In what year was that?

A. In 1910. I was the Forest Service before that.

Q. Will you let us have your entire experience in the Forest Service, if you please?

A. I was in the timber testing at Purdue University for five years before the laboratory was established at Madison, starting in December 1904. I have been with the Forest Service continually since then.

Q. Have you had any engagement in the lumber industry apart from your connection with Purdue University and with the Forest Products Laboratory?

1465 A. Not except as I was working with my father in repair work as a young man.

Q. In general your time is given up almost entirely to your professional work with the Forest Products Laboratory?

A. I had four years with the railways.

Q. What is the exact nature of your duties, Mr. Newlin, in the Forest Products Laboratory?

A. Testing of timber for strength properties and the designing of structures made of timbers or designing for strength.

Q. Are you familiar with Bulletin No. 556 of the United States Department of Agriculture, dated September 15th, 1917?

A. I am.

Q. I note you are one of the joint authors of that bulletin, Mr. Newlin, the other being Mr. Thomas R. C. Wilson?

A. Yes, sir.

Q. And Mr. Wilson appears to be the engineer in forest products for the Forest Products Laboratory?

A. Yes, sir.

Q. Will you state what your relation was to a preparation of the data which was found in that bulletin?

A. I worked with Mr. Wilson in compiling that bulletin. He did more of the detail work. I had more of the general supervising character. Passed upon everything that went into the bulletin as to whether these should be included or should not.

1466 Q. In general the work which was done in this connection was under your supervision?

A. Yes, sir.

Q. This is a copy of the bulletin to which I have referred? (Handing document to witness.)

A. Yes, sir.

Q. You are familiar with the matter which is found in tables 1 and table no. 2?

A. Yes, sir.

Q. Of that bulletin, and the data which is there found, was the result of the various tests which were made under your supervision?

A. Some of them were not made under my supervision; most of them were. We had several laboratories; had one at Seattle; one at Boulder, Colorado; and one at San Francisco or rather at Berkeley right across from San Francisco. Some of those tests made by the Forest Service are in the bulletin; the tests were not made under my direction.

Q. In other respects the tests were made under your direction?

A. Yes, sir.

Q. And the results have been collated, assembled, and set forth in tabular form in this Bulletin No. 556?

A. Yes, sir.

Mr. BURR. You refer only to tables one and two.

Mr. MATTHEW. I refer now to tables one and two.

1467 Q. Now table no. 1 in this Bulletin No. 556, Mr. Newlin, is entitled—I am reading from page 27—"Results of tests on 126 species of wood tested in a green condition in the form of small clear pieces", and table no. 2, which commences on page 37 of the bulletin, is entitled, "Results of tests on 126 species of wood tested in an air-dry condition in the form of small clear pieces." I think it is stated elsewhere in the bulletin, Mr. Newlin, that the data in table no. 1 is derived from a considerable larger number of tests and therefore somewhat more reliable than those at table no. 2.

A. They are.

Q. That is your statement as one of the authors of this bulletin?

A. Yes, sir.

Q. And is a correct statement?

A. Yes, sir.

Q. May I hand you a copy of that bulletin, Mr. Newlin, and direct your attention first to certain features of table no. 1 and more particularly to data on page no. 35 which initially I would like to direct your attention to the data found under column no. 5, which bears the caption "Summerwood (percent)." First, may I ask you to state what the summerwood is?

A. Summerwood is that dark portion of the annual ring
1468 that is put on in the summer. It is against that light, usually lighter in color and lighter in weight materials put on in the spring of the year.

Q. The texture of the spring wood is ordinarily softer than the texture of the summer wood?

A. Yes, sir.

Q. Directing your attention to this column no. 5, I find that the percentage of summer wood in the case of Pinus strobus is 31, and from that I will understand that that is the percentage of the summer wood to the aggregate of summer wood and spring wood.

A. Yes.

Q. Now, immediately above the data as to the Pinus strobus we find the data as to the Pinus ponderosa and it there appears that the percentage of summer wood is but 22% or materially below the percentage of summer wood as to Pinus strobus. May I ask you if you have the results of any other tests which tend to change the conclusion indicated by those two percentage figures?

A. When it comes to measuring summer wood and those particular species it is a very difficult proposition, and those figures I do not consider to be very reliable on species of this kind.

Q. You don't believe them to be especially significant one way or the other?

A. No; I do not.

1469 Q. Now, will you turn to the column numbered 9, entitled "Weight per cubic feet," and may I direct your attention again to the weight of the several species which are there shown. The weight for Pinus strobus appears to be 39 pounds per cubic foot; Pinus ponderosa, 46 pounds; the Pinus monticola, 39 pounds; and for Pinus lambertiana, 39 pounds. As I understand it, these are the weights of the wood in a green condition.

A. Yes, sir.

Q. Now, in that same connection, will you turn to table no. 2, which shows the results of wood tested in an air-dry condition, and I have particularly in mind the data found upon pages 42 and in 43 and 44, there appears, I have particularly in mind data on page 44, that the weight of strobus in a dry condition is 27 pounds per cubic foot, the weight of Pinus ponderosa is 28 pounds per cubic foot, and the weight of Pinus monticola is 29 pounds per cubic foot.

A. Yes.

Q. Now, it would appear from these particular figures that the weight of monticola in a dry condition is somewhat greater than the weight of ponderosa in a dry condition. May I ask first whether there are any other tests which reveal a different relationship than here indicated?

A. The latest that we have show the specific gravity tests.

1470 Mr. BURR. Green or dry now?

A. This specific gravity is always dry. That is, they may be on various volumes, but it is always in a dry condition. These other, the weight green there and the other weights include moisture, but these do not. They give the strobus specific gravity of 34 and the monticola 36 and ponderosa is 38.

Q. Those figures are to be classed with the figures that you find in column 6 on page 34.

A. Yes.

Q. The figures which you have just read are the result of recent tests.

A. They include recent tests as well as the tests that are in this bulletin.

Q. Are they confined to the lumber you say in an air-dry condition?

A. The specific gravity that we give is for lumber without moisture.

Q. Have you got the figures in the weight per cubic foot in air-dry condition?

A. No; I have not here. I could get them.

Q. Now, may I pass in turn to the columns upon pages 34 and 35 of table no. 1, numbered 26 and 27, bearing the caption "Hardness, load required to imbed a 0.444-inch ball to one half its diame-
1471 ter." Now, it would appear from the data found in these columns that the Pinus strobus is the softer of the several pines which have been under discussion in this proceeding, the test being 300 pounds.

Mr. BURR. I do not think we ought to have this duplicated and spread upon the record all these figures, if the examiner please.

Examiner SHEPARD. I presume Mr. Matthew has some reason for it. I do not know; I am not particularly interested in these various data relative to the weight of ponderosa and weight of Pinus strobus. It has got nothing to do with this case.

Mr. MATTHEW. If the examiner please, there has been a great deal of testimony about the relative softness of strobus, monticola, lambertiana, and ponderosa in this case. Now, I assume that when we are dealing with softness that the results of Government tests as to hardness are directly in point. In other words, hardness is simply the obverse of softness. One of the purposes of my detailed inquiry here was to find out whether the figures which are shown in these tables are as significant as I believe them to be, and also to give the expert witness for the Government a chance to tell us if there are any subsequent figures which modify those which are here in tabular form.

Examiner SHEPARD. All right, go ahead.

1472 Mr. BURR. I object to the repeating of the figures into the question each time.

Examiner SHEPARD. Go on; make it as short as you can.

Mr. MATTHEW. Sometimes it makes the record more intelligible when it is being read some months afterwards.

(Question read as follows: "Now it would appear from the data found in these columns that the Pinus strobus is the softer of the several pines which have been under discussion in these proceedings, the test being 300 pounds.")

Q. With respect to both the end test and the side test. It further appears that the Pinus ponderosa lumber is less hard than the monticola lumber as shown by these tests. Am I correct in so reading the figures?

A. Yes, sir.

Q. And in turn when we pass to the comparison of Pinus ponderosa and Pinus lambertiana; we find with respect to the end test the ponderosa lumber is the softer of the two and that as to the side test they are exactly the same.

Mr. BURR. If the examiner please, if he is going to offer the exhibit, why should he duplicate it by going all through this long cross-examination of the man? The figures ought to speak for themselves rather than to be read into the record.

Mr. MATTHEW. This won't take long. I am not misstating
1473 the figures so I am not misleading anybody, I may take up a little time, but that is all.

Examiner SHEPARD. Go ahead.

Q. Are the results of any other tests which would tend to change the conclusion which is apparently to be drawn from the figures to which I have just directed your attention——

A. We have some other tests that do not show quite the same relations that are given here.

Q. Are they materially different?

A. They show the ponderosa slightly harder than the other pines there of the white-pine group, but these are not very widely different.

Q. Now, for practical purposes, would you ordinarily rely more upon the tests of the lumber in an air-dry condition or the test of lumber in a green condition?

A. That is a very difficult question to answer because of the fact that air-dry lumber may have been dried under so many different conditions and its strength values are likely to be changed or influenced by the condition under which they are dried, so that we have a great deal of trouble when we go to making comparison on the dry material.

Q. Then am I to conclude from that that you rely upon the results of tests upon lumber in a green condition to a greater extent than upon the results of tests made upon lumber in a dry condition?

1474 A. We have to have both, but for comparison we take the green as our main test, the foundation from which we calculate the strength.

Q. Now, these tables to which I directed your attention set forth not only the results of tests upon the several varieties of pine to which I directed your attention, but likewise the results of tests upon the southern yellow pines such as the Pinus palustris, Pinus echinata, and the Pinus taeda, I believe.

A. Yes, sir.

Q. Those three represent the most important of the southern commercial pines?

A. Yes, sir.

Q. Is it a fair summary or characterization of these tests that the mechanical properties of Pinus ponderosa as disclosed by the data in these tables more closely resemble the mechanical properties of the white pines, botanically speaking, than the southern yellow pine?

A. Yes, sir.

Q. Let us assume for a moment, Professor Newlin, that we are making one group of the three true white pines as they have been termed, botanically speaking, namely, the Pinus strobus, the Pinus monticola, and the Pinus lambertiana. Then we make a second group of the three leading southern yellow pines, namely, the
1475 Pinus palustris, Pinus echinata, and the Pinus taeda. We now address ourselves to the consideration of the mechanical properties of the Pinus ponderosa in comparison to the relation of the mechanical properties of the white pines and yellow pines to which I refer. Now, considering the mechanical properties alone, would you again say that Pinus ponderosa is more directly to be assimilated to the white-pine group than to the southern yellow-pine group?

Mr. BURR. If the examiner please, I think the figures speak for themselves. It is for the Commission to draw the conclusion rather than having a conclusion to be drawn from the figures. There is no special or practical experience shown by this witness which is paramount to the figures, and why not let the figures stand for themselves and let the Commission draw such conclusion therefrom as the Commission may find to be appropriate?

Mr. MATTHEW. There is a very practical reason for that particular question, Mr. Examiner.

Examiner SHEPPARD. The Commission will draw its conclusion, anyhow, but I will let Mr. Newlin state what he thinks about it. Go on.

A. The Pinus ponderosa in its mechanical properties more properly belong in with the white pines than with the southern yellow-pine group; that is, it is much closer in its mechanical properties to that group.

1476 Mr. MATTHEW. May I offer in evidence at this time, if the examiner please, the bulletin which the witness has identified and concerning which he has testified, namely, Bulletin No. 556 of the United States Department of Agriculture, dated September 15, 1917, and entitled "Mechanical Properties of Wood Grown in the United States, by J. A. Newlin, in charge of timber tests, and Thomas R. C. Wilson, engineer in forest products"?

I offer it for the data which is found in tables 1 and 2 relating to the several pines which have been under discussion throughout these proceedings, including both Pinus ponderosa, of course, the

white pines, and the southern yellow pines. I offer it likewise for any matter which may be in the text which may serve to explain and give character to the statistical data itself. Perhaps I may add that I am perfectly willing that the paper be in for any purpose which may serve the wishes of counsel for the commission. In other words, I am not intentionally making a limited tender. I am merely pointing out the particular matters which I have in mind in making the tender.

Mr. BURR. If the examiner please, I do not think I shall object to that. I had hoped that the complication which is involved in this exhibit, together with other exhibits, might be avoided; but
1477 I think the exhibit is competent, and I shall make no objection.

Examiner SHEPPARD. Let it go in, Mr. Reporter.

(Respondent's exhibit 21 received in evidence.)

Q. Mr. Newlin, are you familiar with the publication of the United States Department of Agriculture entitled "Miscellaneous Publication No. 46, dated June 1929, entitled 'The Strength of North American Woods, by H. S. Betts, senior engineer, branch of research, Forest Service'"?

A. I am.

Q. Can you tell us whether the statistical data found in table no. I of that bulletin which bears the caption "Properties of various woods, actual and comparative" was obtained from any records in your possession?

A. It is the same records as those of Bulletin 556.

Q. And the data which is found in this miscellaneous publication no. 46 represents simply a somewhat different assembly from the data which is found in Bulletin No. 556?

A. Yes, sir.

Q. Are there any important points of diversion or difference in treatment?

A. He has given it on a percentage basis there in comparative figures and a thing that was not given in Bulletin 556. He has also given the properties from the different localities of growth. and we give an average figure.

Q. Now, the case of the ponderosa pine, for example, he
1478 gives the results of tests on specimens obtained from five separate points, is that true? That appears upon page 12 of the tabulation.

A. Yes.

Mr. MATTHEW. I should like to offer this publication in evidence, if the examiner please, because it does represent a little more detail in some respects and also a slightly different treatment. The basic data is the same.

Mr. BURR. Before that is offered, may I ask a few questions?

Mr. MATTHEW. Certainly.

Cross-examination by Mr. BURR:

Q. Mr. Newlin. do I understand correctly that Miscellaneous Publication No. 46 had no new basic data to go upon?

A. I think there is no new basic data.

Q. Do you know how many specimens of Pinus monticola were used in compiling these data?

A. I could not say except with reference to the records.

Mr. MATTHEW. The record shows, does it not?

Q. Does the publication anywhere show how many specimens were used for the purposes of securing the conclusion that they reached?

A. It does in 556. It shows the number of tree, rather, not the number of tests, but the number of trees.

1479 Q. As I understand it, in respondent's exhibit no. 21, on page 34, the number of trees used for Pinus monticola is shown to be 5; is that true?

A. Yes.

Q. And is it true that there were only five trees from the entire range of monticola used for that purpose?

A. That is all that is in there.

Q. How many different localities was that from in monticola?

A. One locality.

Q. Now, then, referring to Pinus ponderosa, you examined 25 trees, I believe, did you?

A. Yes.

Q. For the purposes of respondent's exhibit 21, table I; is that true?

A. Yes.

Q. Now, referring to Miscellaneous Publication 46, the Pinus ponderosa seems to have been examined at one point in Arizona, one in California, one in Colorado, and one in Montana, one in Washington, or were there several in some of those States?

A. There may have been more than one.

Q. There may have been more than one?

A. Yes.

Q. Now, then, in the Miscellaneous Publication 46, it purports to segregate the results in various localities for Pinus ponderosa, does it?

1480 A. Yes.

Q. And in respondent's exhibit no. 21, table I, there is no way whereby the results can be segregated for Pinus ponderosa from different States; is that true?

A. There is none.

Q. Now, will you state for the purposes of Miscellaneous Publication No. 46 at this time how many different localities in Arizona were used for securing Pinus ponderosa samples, do you recall?

A. I do not.

Q. Did you collect those samples?

A. I did not. I think that there is only one from each of those, though; I am under that impression.

Q. Only one locality?

A. I think there is only one represented there.

Q. Do you know how the locality was selected; do you know how you come to go to one locality in California rather than another?

A. Well, they were selected by representatives of the Forest Service as being representative stands of the material, and, of course, availability of the material had something to do with it; but primarily we tried to find stands which are representative of the species in that section of the country.

Q. Now, did you have the help of the association in select-
1481 ing the locality?

A. Quite frequently we did. I don't know in this case whether we did or did not.

Q. Who would know?

A. I doubt whether anybody knows at this time.

Q. And by the association you mean the California White and Sugar Pine Association for the California selections?

A. In that case it would have been; yes.

Mr. MATTHEW. You mean as to the California?

Q. As to the California specimen?

A. Yes. It was our practice to consult with the association as to where we would get the material, but it was not always followed out, and in this particular case I cannot say whether we did or did not.

Q. Do you know who actually did that work?

A. I think it could be found; I don't know.

Mr. MATTHEW. Is this cross-examination?

Mr. BURR. The examination has gone to a greater extent than I anticipated, but it seems to me there ought to be some way in which the distribution of the samples that are shown to have been used in preparation of respondent's exhibit 21 for the purposes of the segregation which has been made for localities in Miscellaneous Publication 46.

A. We have records of those and we can take it from the
1482 records as to just where they came.

Mr. BURR. I won't press the matter further. I have already intruded more than I should on counsel's examination.

Direct examination (continued) by Mr. MATTHEW:

Q. Now, Mr. Newlin, it appears upon reference to page 12 that this Publication No. 46, that the specimen of Pinus ponderosa obtained from California came from Madera County. Do you know whether or not the Pinus ponderosa which came from Madera County is characteristically a harder type than the Pinus ponderosa that comes characteristically from the Klamath Falls Basin and the upper range of the Sierras?

A. We have some from the Sierra County as well as from Madera County there, not in that publication. I was looking at them yesterday, and I did not note any material difference.

Mr. BURR. Between Sierra County, which is not in there?

A. Is not in there.

Mr. BURR. All right, sir.

Mr. MATTHEW. Counsel and examiner recall the testimony about the Madera County pine previously in this case, without carrying that further. I think I may offer at this time as our next exhibit Miscellaneous Publication No. 46.

Examiner SHEPARD. Any objection?

1483 Mr. BURR. I shall interpose no objection.

Examiner SHEPARD. Let it go in, Mr. Reporter.

(Respondent's exhibit 22 received in evidence.)

Q. You stated heretofore, Professor Newlin, that some subsequent tests of these several pine properties have been made with the result that you have some new figures which vary somewhat from those which appear in exhibits nos. 21 and 22.

A. Yes, sir.

Q. Has that data been prepared in tabular form?

A. It has.

Q. Is this a copy of the table that you have had prepared in that connection [handing document to witness]?

A. Yes, sir.

Q. Does this reflect the results of the early tests as well as the more recent tests?

A. It does.

Q. May I ask you to explain this table which you are just identifying so that we may have an appropriate basis for comparing with the tests in the figures here shown with those which appear in exhibits nos. 21 and 22?

A. In comparing the various species we find that it is quite confusing to have the large mass of data that we have in Bulletin 556 where we give all the properties separately, and that we give

1484 dry and green material separately, and with the comparison of the species and for general use by nontechnical people that they would get a great deal more information from something that gave comparative figures in which several properties were combined, that were quite similar and varied in the same way, so we have combined various properties here and have some figures that are comparative. Thus we take stiffness; we have combined our modulus of elasticity in static bending and impact bending and in compression parallel to grain and for the green material with similar figures reduced to 12% moisture, and the figure 119 that you see is the result of that combination.

Mr. BURR. Where is 119 on here?

A. At the top, stiffness, Pinus strobus. Now, we have combined for the other species these same properties in exactly the same way and arrive at the figures given below. These figures we feel are more representative of the stiffness of the species than any of the single figures found in Bulletin 556. They also include data not given in 556.

Now in the hardness test we have included compression perpendicular to grain as well as this ball hardness test, figures to which you referred in 556. The compression perpendicular to grain test was made by placing a plate across the block and finding the load at the

elastic limit of the material. It represents what may be
1485 thought of as hardness and by a good many. It is not that hardness against puncture, but it is a hardness that will hold up a piece of furniture that is standing on the floor and something rolling across the floor that has a little larger area than we have in the ball hardness test. In the shock resistance we combine from 556 the height of drop in impact bending as well as the work values found under static bending.

Q. As I understand it, you used precisely the same formula in deriving these figures with respect to each species of lumber?

A. Yes, sir; absolutely.

Q. The purpose being to get what you believed to be a fair basis of comparison?

A. Yes, sir.

Mr. MATTHEW. In order to complete the testimony of the witness on this feature of the case I now desire to offer in evidence the table which the witness has just identified.

Examiner SHEPARD. Any objection?

Mr. BURR. No.

Examiner SHEPARD. Let it go in, Mr. Reporter, and mark it "Respondent's Exhibit No. 23."

(Respondent's exhibit no. 23 received in evidence.)

Mr. MATTHEW. I think that is all.

1486 Cross-examination by Mr. BURR:

Q. Now, Mr. Newlin, the tests that were taken of Pinus strobus samples were secured from one site in Wisconsin?

A. Yes, sir.

Q. By whom?

A. I secured those.

Q. You secured those; is that partly second growth and partly virgin growth, or what?

A. Those are virgin growth.

Q. All virgin growth?

A. Yes, sir; that is, those that I selected were virgin growth, and I am not absolutely certain about the New Hampshire material.

Q. I am referring to the one site in Wisconsin; where was that one site?

A. That site was in Shawano County.

Q. In Shawano County?

A. Yes; on the Indian reservation.

Q. Whereabout in Wisconsin is that?

A. That is north of here; I believe it is about a hundred miles.

Q. Now, is there anything to show on any of these various respondents' exhibits how many trees were used in Wisconsin for those samples?

A. The total number of trees used from all localities is given
1487 on the last exhibit.

Q. But you do not know how many were used in each one of those localities?

A. Not without referring to the record.
Q. How was the thing weighted——
A. I know——
Q. Excuse me.
A. I know the Pinus strobus from Wisconsin was five trees.
Q. Five trees, and were they all in the same locality?
A. Yes, sir.
Q. The operations of the same mill as they were working, is that true?
A. Yes.
Q. Now then, one locality was chosen in Minnesota?
A. Yes, sir.
Q. By the by, when was this work done in Wisconsin; how many years ago?
A. It was before the war, about fourteen years ago, I think.
Q. Did you have any help in picking out the samples in Wisconsin, do you recall?
A. None but that of a practical lumberman who went along with me to help fall the tree.
Q. How about in Minnesota; did you do that work yourself?
A. I did not.
Q. Do you know who did it?
A. No; I cannot; I don't recall.
1488 Q. Do you know whether he had help there in selecting the samples?
A. I do not.
Q. Was that also fourteen years ago?
A. I don't recall the date of those.
Q. It was some years back, was it?
A. Yes, sir.
Q. Now, how about the locality in New Hampshire; you did that work yourself, I believe?
A. No, sir.
Q. Do you know when that was done?
A. Not without referring to the record. I believe that is one you will find is not in that first exhibit. It had reference to the 556. I can tell you whether it is more recent or not.
Q. That means it is more recent, does it?
A. If it is not in Bulletin 556, if New Hampshire is not mentioned there.
Q. Can you tell me whether it is in Bulletin 556?
A. I cannot tell you without looking it up.
Q. Will you kindly look at it?
A. The only thing that we have in 556 there is the Wisconsin material.
Q. I see, thank you. Now, then, how about these samples taken from New Hampshire; do you know whether that was
1489 virgin growth or not?
A. I do not.

Q. Do you know whether the Minnesota was in virgin growth?

A. Supposedly it was.

Q. What do you mean by "supposedly"?

A. In the New England States we know that they are getting a great deal of the second-growth material, and I know that we have been getting second-growth material from that section of the country, and we have not been studying second-growth material from Minnesota.

Q. Now, do you know whether the strobus samples were more largely heartwood or sapwood?

A. Well, we have nothing there to say without going back into the records of the individual——

Q. Have you ever observed the difference between heartwood and sapwood with regard to mechanical qualities?

A. We have.

Q. Is there much difference?

A. In most species we have been unable to find any difference, and these five trees of strobus were among those that were examined when we were trying to find a difference between the sap and the heart wood in the mechanical properties.

Q. Now, I believe you said for the purposes of respondent's exhibits 21, 22, and 23, your reliance was upon the showing
1490 as to greenwood; is that true?

A. More reliance on the showing of green wood than on the others, but not altogether, because not all species change in drying by the same amount, and, consequently, it would not be fair to base a judgment altogether on green material when it is primarily used dry.

Q. Lumber users do not use green material if they can avoid it for any purpose?

A. Not if they can avoid it.

Q. Then the practical significance of the mechanical properties is solely a question of dry lumber, isn't it?

A. Primarily so.

Q. Isn't it almost solely, Mr. Newlin, if they do not use green lumber when they know it, isn't the mechanical difference between various types of lumber a matter of dry lumber rather than green lumber?

A. In a great many places it is set in the ground and not infrequently wood does come back that is wet, and come back in a green condition, so that from the standpoint of working stresses we have to give a great deal of attention to green lumber or wet lumber.

Q. Let me see if I get you. Isn't it true that for practically all purposes it is the dry lumber that is used for all purposes?

A. Dry lumber may be used, but it don't—in all purposes
1491 does not remain dry. Take a telephone pole, a bridge timber, and dock timber, things of that kind, while they are used when they are dry, prefer them dry, they get wet, and we have to compare them on the wet basis.

Q. Well, is the green basis and the wet basis precisely the same for mechanical purposes?

A. Not precisely, but very closely to the same. If they dry out, and then become wet again, they may have had some checks when they dried out and developed some weakness through the drying process, but ordinarily when you soak a piece of dry lumber it comes back to practically the green strength.

Q. Now, then, just why is it you rely upon results that you secure—the data for green condition to the results that you secure for dry condition?

A. As I stated before, we have a great many more tests in the green condition than we have in the dry condition, and the conditions under which the materials dry quite frequently change its strength perhaps, and it has been very, very difficult to set up a standard of drying such as we could have the material comparable, and when we are trying to make the material comparable in a dry condition, we may want it at 17% moisture for boxes or we may want it at 5% or 6% for interior finish or we may want it at 12% for unheated houses or something of that kind in this
1492 region around here, so that there is no moisture content to which we could dry it and be certain that we were hitting the condition of use; that, combined with very great difficulties of having representative methods of drying, is the primary reason why we do not base all of our data on dry.

Q. Are you improving constantly your methods of computation or are they pretty well stabilized?

A. The methods of computation have not been changed materially in a good many years.

Q. In other words, you have not improved, you mean, the method of drying the sample?

A. Oh, we improved in the kiln-drying processes very greatly.

Q. I mean treating the samples for the purposes of getting this data.

A. Yes; we have improved our conditioning on the samples.

Q. How recently?

A. Well, in the last three or four years we have been holding them in a kiln at a constant humidity for some months before we would test them, so as to have a very uniform moisture content of about 12%.

Q. How much of an improvement do you regard that as upon the older method?

A. Have no way of knowing, because the older method of putting them out in an open shed might not cause any damage what-
1493 soever, and then again they might have damaged the stock. If you put it out under those same conditions in the summertime you might damage it, and put it out in the winter time, most material, and you might not damage it at all; and, again, if you had material like the redwood, plum chuck full of water, and put it out in cold weather you may knock it all to pieces by freezing.

Examiner SHEPPARD. Off the record.

(Discussion off the record.)

Q. Now, referring to the lambertiana samples, do you remember who secured those samples?

A. I do not.

Q. Do you know whether the association's representative assisted there?

A. I could not tell you definitely on any of these whether the association representative participated or not.

Q. Do you know where those facts are?

A. Only by reference to them in our files.

Q. Do you know whether that was virgin timber or second growth?

A. That was virgin timber.

Q. Do you know whether the sapwood and the heartwood were examined in accordance with the ratio of sapwood and heartwood in that variety of lumber?

A. We record those all the time in every test.

Q. In every test you put it down whether it is sapwood or
1494 heartwood?

A. The percentage of heart and sap present in the specimen.

Q. Now, in the monticola samples I think you have already stated where those were secured from, have you?

A. Those were secured, I believe, from Idaho. I think that shows.

Q. One site in Montana and one site in Idaho appears in respondent's exhibit 23?

A. Yes; that is right. It is in here, one in Montana and one in Idaho.

Q. Who got those specimens?

A. I cannot tell you.

Q. Do you know how much help he had there in the selection of specimens?

A. I don't; I only know that our record is that they shall be selected by one qualified to identify the species, and we always try to see to it that he is qualified to identify the species and to select it as representative.

Q. Who was it that selected those samples; I mean what representative of the Forest Products Laboratory?

Mr. MATTHEW. I suggest, Mr. Examiner——

A. I cannot give you the name of any of those.

Mr. MATTHEW. I think those inquiries are irrelevant.

A. I can find it in the files and some of it I would have to go back into the correspondence to get it.

1495 Mr. MATTHEW. Do you know whether it was somebody in town here?

A. Probably not; most of this is not collected from anyone in the laboratories. It is usually someone in the district; not all the time.

Q. Who got these samples of Pinus ponderosa?

A. I cannot tell you except that Mr. Wilson got some of them.

Q. Wilson is here in town, is he?

A. Yes, sir.

Q. And the same is true of the samples from Colorado, Washington, Arizona, Montana, and California; is that true; but you do not know who got them?

A. Yes, sir; not without referring to the record.

Q. Now, referring to the two places where they were secured in California—I think we have those counties here somewhere, haven't we, referring to ponderosa?

A. Yes, sir—no; not the two; we have two in California, but I do not think you have got a record there of where they come from, what county.

Q. Can you tell what counties they come from from California?

A. I looked that up yesterday, and I believe that those two are from Madera County and Sierra County.

Q. Sierra County?

A. Yes.

Q. Yes; I think you stated. Now, the Pinus ponderosa
1496 varies widely, does it, in its characteristics and various parts of its range?

A. Varies widely in its characteristics and in its strength properties. It don't seem that the range has much to do with it.

Q. You think the Idaho and eastern Washington ponderosa is in the same category as regards its strength and hardness and texture, and so forth, that the ponderosa is of southern Oregon, for example?

A. Yes, sir.

Q. Are you familiar with the ponderosa from field work that you have done?

A. Not from field work; no, sir.

Q. Do your figures show any material difference between ponderosa in different parts of its range?

A. They do not.

Q. As to mechanical properties and hardness, and so forth.

A. They do not.

Q. You think in other respects your figures are about equally dependable as they are with regard to the various characteristics of ponderosa in different parts of its range. Are you as sure of the mechanical properties of Pinus ponderosa being practically uniform as you are with the rest of your figures?

A. I did say it was practically uniform?

1497 Q. Well, if I am misquoting you, please correct me. I do not want to thrust anything into your mouth at all.

A. The Pinus ponderosa is not very uniform in its mechanical properties.

Q. Do your figures so show?

A. I do not think we have given any figures there that show anything about it.

Mr. MATTHEW. I think the witness said, if I may set you right there, that there was not a great variation over the range. He said that the Pinus ponderosa does vary to some extent within the range.

Q. Is that your——

A. Yes, sir.

Q. You say it varies within the range; do you mean it varies in the same locality?

A. Yes, sir.

Q. In other words, the spread in the mechanical properties, in your judgment, could be found in each locality; is that true?

A. Yes, sir.

Q. Does that vary in accordance with the age of the tree?

A. Conditions under which it is grown have something to do with it. It may not be the age of the tree exactly, but an old over-matured tree in a dense stand will usually put on a slow
1498 growth, lightweight, soft material on the outside; and if you get into a stand of that character you will have more lumber of the soft texture.

Q. Then that means that it is practically absolutely crucial as to what trees are selected; is that true as to what results you would secure?

A. Well, you could change the results by not picking representative material.

Q. By not picking representative trees?

A. Yes, sir.

Q. And you could get almost any results from any given locality within the range of variability; is that true?

A. It would take a very great expert to do it, and he probably would have to select them after the trees were cut down; but it could be done.

Examiner SHEPARD. Do you mean to tell me that if you take ten ponderosa trees from California and perform your experiments on them and get a certain tabulated system of results as to hardness, stiffness, softness, and so forth, and then should be in California in another locality and take another ten ponderosa trees and subject them to the same experiments as you had the previous case, that you would arrive at a totally different bunch of results?

A. No, sir; you would usually arrive at the same results. He has asked whether it would be possible to select them so
1499 that you would arrive at very different results.

Examiner SHEPARD. Your answer to my question was that an experiment performed on the same tree in various localities would give you the same results?

A. Yes.

Examiner SHEPARD. But you could pick out a series of trees that would give you different results?

A. Yes, sir.

Examiner SHEPARD. That would be the exception and not the rule?

A. Yes, sir.

Examiner SHEPARD. All right; that is clear.

Q. Now, as I understand it, you personally had nothing to do with the selection of the samples except fourteen years ago in New Hampshire and Wisconsin; is that true?

A. Wisconsin. Cut out the New Hampshire.

Mr. BURR. Just in Wisconsin. I think that is all.

Mr. MATTHEW. That is all.

Examiner SHEPARD. I have one question to ask to straighten up the whole thing, in my judgment. I am only interested here in this matter of hardness and softness, and in column 8 on exhibit 23 you show the following figures under hardness: Strobus, 33; lambertiana, 38; monticola, 35; ponderosa, 41. I am not specially interested in the other two. What does that indicate? Does that indicate
1500 to me that ponderosa is softer than the others or harder?

A. Softer in proportion to those figures there.

Q. Then strobus from that would be 35; that would indicate that strobus was a softer wood than ponderosa?

A. Yes, sir.

Q. Lambertiana there appears to be 38; would that show it is softer than ponderosa?

A. Yes, sir.

Q. In other words, ponderosa there is 41; that means that it is the hardest of them?

A. Hardest of them.

Q. Hardest of the ones that are shown there. The next one is lambertiana, and it appears that strobus and monticola, being 35 each, are the softest of them all?

A. Yes, sir.

By Mr. BURR:

Q. What do you take as a unit there?

A. There is no unit about it. They are in the same order. You can have any of them as a unit, divide any if you want it on a basis of percentage. You could take your strobus as unity and divide each of the others by that, and you would have it on a percentage basis.

Q. You really believe that monticola is as soft as strobus, do you?

A. That is the best information that we have on it.

1501 Q. You believe that is correct, that strobus is no softer than monticola as an average, do you, throughout its range? Is that your view as an expert?

Mr. MATTHEW. He is testifying as to result of tests.

Mr. BURR. I think I am entitled to an answer on that.

Examiner SHEPPARD. Go on and answer it.

Q. You think monticola fully as soft as strobus, do you, throughout its range?

A. My general impression is there is very little difference, but that if you will take the old matured strobus of twenty years ago that it would average softer than the monticola of today that they are getting from Idaho.

Q. You think the average virgin forest of strobus and monticola, that strobus is no softer than monticola today for virgin forest?

A. I would not expect it from general experience with it. If there was a trifle difference it is so small that I would not make any difference at all if they wanted to furnish me one or the other.

Q. You think on the virgin forest monticola is as soft as strobus, do you?

A. I did not say I thought it was as soft. It is so near the same they could furnish me one or the other.

1502 Q. You think it would not show up in the figures, do you?

A. It has not shown up in the figures.

Q. Do you think the figures in that respect are representative of the virgin forest of those two types of lumber?

A. We have always got a possibility or probability of error. We can give you just how accurate we think those are. They indicate the same; that is, the best that we have is the same. We know if we got five trees we have got a certain probability of error in any of those and in our selection——

Q. Do you think you really selected enough trees to get results that you can rely upon when you say strobus and monticola are the same as to softness?

A. Nobody——

Q. Can't you answer that yes or no, and then explain?

A. Nobody has ever answered that question as to how many is enough, and never will.

Q. You have your own opinion as to whether or not the data are comprehensive, have you not?

A. They are as comprehensive as——

Q. Read him the last question and have him answer yes or not and explain his answer.

(Question read.)

Q. Just answer yes or no and explain your answer in any manner or fashion you think necessary.

1503 A. I will say yes, but I will also say that in all these tests we have to count the cost as against the desirability for accuracy and that you can never be absolutely certain of your values until you have tested every piece.

Q. Well, do you think obtaining samples in one site in Wisconsin, one in Minnesota, and one in New Hampshire is sufficient to base a real comprehensive test?

A. All that we had the money to pay for.

Q. Do you think it is a comprehensive test, just one site?

A. It is the most comprehensive test in the world we have met.

Q. I am not asking you that. Please answer yes or no and then explain your answer, if you will.

A. I do not think there is a yes or no answer to that.

Q. Read the question once more.

(Question read.)

A. It is the most comprehensive. I cannot answer that yes or no.

Q. Beg pardon; you don't know whether it is comprehensive or not, is that true? You know whether you think it is comprehensive?

A. I know it is the most comprehensive of any experience or test.

Q. That would be true if I went out and cut one tree if no one else had made a test?

A. Yes, sir; it would be.

Q. Do you think it is comprehensive enough so we can rely upon that that monticola and strobus are of equal softness when you have gone to only one place in Wisconsin, one place in Minnesota, and one in New Hampshire; do you really think that is a comprehensive test?

1504

A. Yes, sir; I do.

Mr. BURR. I think that is all.

Redirect examination by Mr. MATTHEW:

Q. Mr. Newlin, was this table, which was in evidence as exhibit 23, prepared upon the request of the respondents in these proceedings?

A. The table was prepared at their request, but the data was ready for publication on those species.

Q. Upon request of the——

A. Mr. Burr requested the table to be prepared.

Q. That is, Mr. Burr, the counsel for the Federal Trade Commission, requested this table, now exhibit 23, to be prepared?

A. That is my understanding.

Q. It was not prepared upon the request of any of the respondent lumber companies in these proceedings?

A. No.

Q. Now, the table which is in evidence is precisely the form in which you prepared it upon Mr. Burr's request, with the exception that, upon my personal suggestion to you, there was added the data as to Pinus palustris?

1505

A. I am not certain. Mr. Johnson and Mr. Marquardt prepared that. I don't think that he gave instructions as to just the form, but only the species, I believe.

Mr. MATTHEW. I think counsel will allow me to state that the table which I have in my hand, is one which I received from him, from you, Mr. Burr, and that it is identical with the table which is in evidence, with the single exception that the data as to Pinus palustris has been added and that data was added, I think, this morning responsive to my suggestion, following the visit which you and I and others made to the Forest Products Laboratory.

Mr. BURR. Does that implicate me in any fashion; if it does, I want to make some defense?

Mr. MATTHEW. It is not a question of defense, but I desire to be clear of record, Mr. Examiner, that this is not data that we requested, but I found that it had been prepared and, in order to complete the showing which would be partially made by the introduction of Bulletin No. 556 and Miscellaneous Publication No. 46,

I thought it only fair that the later data, which had been tabulated, should likewise be made of record.

Examiner SHEPARD. I think that is very correct, too.

Mr. MATTHEW. I want to make one further very brief comment, Mr. Examiner, that we do particularly desire that the com-
1506 parative data as to Pinus echinata and Pinus palustris be considered, because one of our points in the case, Mr. Examiner, is, our lumber does not resemble the southern yellow pine.

Mr. BURR. I have no objection to the addition of those two.

Examiner SHEPARD. I want to know if the figure that we have been discussing here and that you have been testifying about appearing on respondent's exhibit 23 is the last word of the Forestry Department on this question.

A. Yes, sir.

Q. Can you tell me when the data from which this exhibit was made was obtained?

A. It covers all of the Forest Service work back for the last thirty years.

Examiner SHEPARD. Now, is there any other question of this gentleman from either side?

Mr. BURR. Now, gentlemen, I have no further questions with regard to this matter, and I move we adjourn until two o'clock this afternoon, if the examiner please.

Examiner SHEPARD. Take an adjournment until two o'clock, Mr. Reporter.

Adjournment taken until 2:00 o'clock p.m.

1507 Dockets Nos. 1620–1669, inc.

MADISON, WISCONSIN, *October 22, 1929.*

Met pursuant to adjournment, 2:00 o'clock p.m.

Before: William W. Sheppard, examiner.

Appearances:

Mr. Eugene W. Burr, for the Commission.

Messrs. Matthew and Wheat for the respondents.

E. M. DAVIS was thereupon called as a witness and, having been duly sworn, testified as follows:

Direct examination by Mr. BURR:

Q. Mr. Davis, you are connected with the Forest Products Laboratory, are you?

A. Yes, sir.

Q. How long have you been so connected, if you please, sir?

A. Seven years this month.

Q. During that period you have been engaged in what line or lines of research?

A. My work has dealt with properties, uses of woods, the specifications, grades, manufacturing methods in general. Softwoods, that is.

Q. And in that connection you have made a study of the heartwood content as contrasted with the sapwood content of
1508 various softwood lumber?

A. Yes.

Q. And that included the lambertiana, monticola, ponderosa, and strobus, among others, did it?

A. Yes.

Q. Now, will you kindly state whether the sheets I am handing you now represent the ultimate figures that you derive from the study that you last mentioned?

A. Yes; those are the figures.

Q. Did you prepare those yourself?

A. A large part of the computing work was done in what we call our section of computing; a number of people who put their whole time on that sort of work.

Q. It was done under your supervision, was it?

A. Yes.

Q. Did you check it up?

A. The checking is also done by other members of the computing force.

Mr. BURR. I would request that this tabulation be marked by the reporter as "Commission's Exhibit 29, pages A and B."

Mr. MATTHEW. That is marked for identification.

Mr. BURR. Yes; for the present moment.

Examiner SHEPARD. You will have a photostatic copy, Mr. Matthew, and all of any others.

Referring to the first column, that is, the number of
1509 pieces tested, were those from the same tree to a large extent, or were they varied as to the number of trees?

A. They must have been from quite a number of trees, but it is impossible to say how many trees.

Q. You have not preserved the data on that subject?

A. Well, there was no data on that subject. We took the lumber from stock, did not trace it through from the original tree, but from the methods of manufacture they must necessarily have come from quite a large number of trees.

Q. How about the sites at which those specimens were selected; do you know as to that?

A. As to that we depended very largely on the law of averages. Under each species we collected material from several mills, and, as a rule, each mill is operating more than one camp, and, as a result of that, you would almost necessarily have a number of sites and a pretty good representation of sites included.

Q. From these different mills?

A. Yes.

Q. I see. Now, in the column "Average percent of heartwood and percent of heart face pieces", will you explain the distinction between those two columns?

A. Well, we have in the first species there under "Average
1510 percent of heartwood", we have the figures 84.9. That means that the 200 pieces had an average heart content of 84.9%; that is, 84.9% of the wood in those 200 pieces was heartwood.

Q. And the next column "Percent of heart face pieces", means what?

A. We have the figure 40 there. That means that 40% of those 200 pieces were of heartwood on the face side.

Q. What do you mean by the "face side"?

A. We mean the best side of the board, the side from which it is graded.

Q. And then "Percent of sap face pieces" means what?

A. Well, along the same line we have zero in that column. In that particular instance none of the 200 pieces were of sap on the face side.

Q. Now, in the specific instances and specific figure that you have given, you have referred to the first type of wood on that table as being typical of all the rest.

A. Typical of the method of presentation.

Q. Yes; it is just by chance that happens to be southern cypress, and we are not interested in this case, but your method was followed all the way through, and with regard to the various types of lumber, was it the same as you have described?

A. The same method was followed in all grades and all species; yes.

1511 Q. Who actually got these specimens out there in the West, did you handle that?

A. The actual work on this, I probably did about one third of it, and I would say about one third was done by Mr. Johnson, of the laboratory, and the remaining one third by Mr. Morbeck, of the laboratory.

Q. You actually did some of the field work then yourself, did you?

A. Yes, sir; I would say about a third.

Q. Did you handle the ponderosa or the white pine?

A. I handled some of each.

Q. Some of each variety?

A. Yes, some of all.

Q. Now, what part of California was visited for this purpose?

A. Well, we got the sugar pine, we got some of it at Westwood, some at Tuolumne, and some at Standard, and the ponderosa, we got some at Standard, some at Westwood, some at Weed, and some at Pine Ridge, Oregon, where the mill is a member of the California Association.

Q. How about the monticola, where did that come from?

A. Those mills were all in the northern part of Idaho, one at Spokane, one at Potlatch, and two at Coeur d'Alene.

Q. Now, the strobus, where did that come from?

A. One of those mills was at Virginia, Minnesota, and the other at Fort Frances, Ontario.

1512 Q. Two mills only?

A. Two mills is all we have the heartwood information on for strobus.

Q. What do you mean by that; did you get information on sapwood elsewhere?

A. No; we have a third mill on which we got additional information, but nothing on sapwood and heartwood.

Q. Nothing that went into this table?

A. Nothing that belongs in there.

Q. So there were two places only for the purposes of this table?

A. For the purposes of this table.

Q. Where did the sugar pine figures come from; did I ask you that?

A. You asked that.

Q. Strike out that question, will you please; do you think of any further information that should be offered to clarify this table?

A. Well, it probably should be explained that that was based entirely on one width, 8 inches, 1 by 8 inch board.

Q. I think you started to offer additional explanation, or did you finish?

A. Well, that 8-inch, of course, is merely one width of several which are manufactured. That might or might not change

1513 these figures in case we had studied all widths. We do not know that it would or would not.

Mr. BURR. I ask that be received as Commission's exhibit 29, pages A and B.

Examiner SHEPPARD. Any objection?

Mr. MATTHEW. I desire to offer this objection that I think this statistical data is absolutely irrevelant and immaterial to the issues in the case. I do not believe the relative proportion of sap and heart wood in these several species of pine lumber go at all to the major issue.

Mr. BURR. Let me ask a question or two further of the witness.

Q. (By Mr. Burr). Do you regard sapwood and heartwood of various species of pine as having varying degrees of durability where exposed to the weather?

Mr. MATTHEW. You have not qualified him yet to answer any question. I object on the ground there is no foundation for the question.

Mr. BURR. I will lay the foundation then.

By Mr. BURR:

Q. In connection with your studies of forest products have you had occasion to ascertain the difference between heartwood and sapwood as to durability?

A. I have not made any particular studies of that. Anything I happen to know is in a very general way, observation.

1514 Q. Well, isn't it a matter of general knowledge throughout the lumber world that there is a difference between heartwood and sapwood as regards durability?

Mr. MATTHEW. I do not think he is qualified to answer a question as to the lumber world.

Mr. BURR. I will withdraw the question. I think the record will show sufficiently and does already show. If the examiner please, I am sure it will be recalled that the record shows that sapwood is far less durable than heartwood, therefore the percentage of sapwood as contrasted with the total volume of the wood has a very direct bearing on durability where exposed to the weather. It will also be recalled that several witnesses testified in dealing with white pine that they were able to so adjust the manufacture of mill products that they were able to preserve a heart face to the elements, to the exposure, as contrasted with having sapwood so exposed. Therefore, it seems to me that this intends to bear out the evidence of this character, and shows the percentage that there is among white pines as contrasted with the western yellow pines.

Mr. MATTHEW. Let me suggest this, if I may, Mr. Examiner. Let it be assumed, let it be supposed, if you will, that the California white pine consists entirely of heartwood, that it had no sap

1515 whatever, would that circumstance go to the merits of this case? It seems to me obviously it would not, because if we are properly marketing this lumber under the name, California white pine, the fact that it has no sapwood in it or the same percentage of sapwood which there may be in strobus or monticola lumber or a greater proportion of sapwood, certainly does not go to the validity of the trade practice.

Mr. BURR. If the examiner please, we are not standing here solely upon botanical distinction; we are standing upon the fact that the sale of ponderosa pine, under the trade name white pine, has a definite detriment to the public inasmuch as in some respects Pinus ponderosa is not as satisfactory a wood, particularly for external use, as are the true white pines and particularly strobus, and therefore, it seems to me the percentage of heartwood and sapwood in the various types goes directly to prove that the public when they buy white pine and use it on the outside of the building do not get what they think they are buying.

Examiner SHEPARD. Well, gentlemen, it is my theory of this case that the question principally involved is one of the trade name, but all through these hearings it has cropped out on both sides, and I understand it is one of the major defenses of the respondent, that in various ways its wood, ponderosa, is more near the white

1516 pine family than others is.

Mr. MATTHEW. That is true, Mr. Examiner.

Examiner SHEPARD. Also, in this testimony, especially with reference to incidents or cases that have been put into the record as

to certain types of wood that have disintegrated or rotted in service, I have noticed that counsel has asked witnesses testifying on these various incidents as to whether the wood was sap or heart. I think I will let this go into the record for what it is worth. Mr. Reporter, mark it and admit it into evidence as Exhibit 29.

(Commission's exhibit 29, pages A and B, received in evidence.)

Examiner SHEPARD. Anything else?

Mr. BURR. Yes; you may cross-examine, sir.

Examiner SHEPARD. Make a note on the record here the examiner here requests counsel for the Commission to have photostatic copies of exhibit no. 29 made for the benefit of and transferred, delivered to Mr. Matthew and Mr. Wheat of respondent's counsel.

Mr. BURR. All right.

Cross-examination by Mr. MATTHEW:

Q. When were the two tables which have been received in evidence as exhibit 29 prepared, Mr. Davis?

1517 A. The tables themselves were prepared within the last two or three weeks. The information I think very largely was worked up several months ago.

Q. I note from a memorandum on the face of the exhibit that the tables were apparently prepared at the request of Mr. Burr, the attorney for the Federal Trade Commission.

A. Yes.

Q. Can you tell us how your selection of specimens of strobus pine lumber was made?

A. In the first place, all that strobus there I collected myself so I can answer that fully. I went to the mills with a tallyman; got the approval of the management and got the management in each case to provide a grader. With the tallyman and the grader we went out to the shed where they keep their stock on hand; went to a pile of 1 x 8 no. 1 common, for instance, and the grader looked over that material, one piece at a time, loading it onto a truck or onto horses until we had a thousand feet or whatever amount we were to study, and as he looked it over, any pieces he found which were off grade were put aside and not included in the study.

Q. Now, in order to save time, couldn't I ask you this general question, whether the specimens of other species of lumber were collected in essntially the same fashion?

A. There was one difference, in the case of the western pine, instead of depending upon a grader at the mill we were

1518 provided with an association grader in both the western pine and California association, who went from mill to mill with us and selected the material. With that difference it was the same system.

Q. Then the materials were in each instance obtained at the mills, and not in local retail or wholesale lumber yards?

A. At the mills in each instance.

Mr. MATTHEW. I think that is all.

Examiner SHEPARD. Let me have the exhibit a minute. Mr. Davis, I want to get some general idea of what you are trying to do here. The testimony in this case shows that as a rule the greater percentages of sap in the western and so-called western pines and in the northern pines, sapwood, the outside sappy portion of the wood of the western pines is greater than that of the old-time eastern, northern, strobus pines. Do you understand?

A. Yes.

Examiner SHEPARD. Now it seems to me that the percentage of sap on each tree in the forest would be different, isn't that the case?

A. It would differ depending on the age and size.

Examiner SHEPARD. Exactly. Depending on the circumference of the tree and its age. Now, do I understand that you are trying to, by a series of figures here, to show that the sap in any one species
1519 is greater or less as the case may be than in some other species, a great number of trees of all the species being examined.

A. We were not trying to show that one is greater or less. We had the figures and it was more of a proposition of finding out where they stood.

Examiner SHEPARD. Exactly. I do not mean to say you were trying to find one way or the other, but I mean you were trying to establish some grade or rule by which those questions could be determined?

A. That was it, largely.

Examiner SHEPARD. I am afraid that my idea that I have in my head is difficult for me to get over to you, but here is what I am trying to find out: I am trying to find out if, for instance, you took a large number of sugar pines, for instance, of given dimension and age and found out the variety or the percentage of sap in those logs as compared with the monticola here, for instance, or some other tree; is that what you are trying to get at?

A. I think I ought to explain that what we did in heartwood was really an afterthought. The main job we were doing when we got this information was a defect study. And while we were getting this defect information, we saw a chance to get information on heartwood at the same time while we got the other and without any great additional work; and, consequently, that is, I would say
1520 indicative rather than conclusive. If we had made a study exclusively on heartwood, we would have gone about it in rather a different method than we did there.

Examiner SHEPARD. Here, just to see if I get what you are trying to get at here, let us take strobus here on exhibit 29, page A, you examined there 106 pieces?

A. Yes.

Examiner SHEPARD. And I take it that your examination showed in the B or better grade that 64.6% of that was heartwood?

A. Yes, sir.

Examiner SHEPARD. And the remaining was sap?

A. Yes, sir.

Examiner SHEPARD. All right, now. Let us find out what the finding was in reference to ponderosa. There is none here for that.

A. Yes; we have ponderosa on there under the three regions.

Examiner SHEPARD. All right.

Mr. BURR. You ought not to use sheet 1 against sheet 2, because ponderosa are on both of them, Judge.

Examiner SHEPARD. Here we are. In that you find, you examine for ponderosa on the same exhibit 106 pieces, the same as was examined on the strobus and you found four percent of heartwood against no sap.

A. No; four percent compared with 64.6, and no heartface
1521 pieces compared with 6.5; 73.5 sap face compared with 1.9.

Mr. BURR. The percent of sapwood is not on there. It is the correlative of the percent of heartwood.

A. Yes; subtract the percent of heartwood from a hundred and you would get the percent.

Examiner SHEPARD. The 4% represents the heartwood under the ponderosa, and the record shows, or rather this exhibit shows, that 6.5% was the sapwood under the strobus, wasn't it?

A. No; this means that 6.5% of the pieces of strobus were heartface pieces. To get the sapwood you would subtract 64.6 from a hundred.

Mr. BURR. In other words, 35.4 is the sapwood for the strobus; is that right?

A. Yes; that is right. This figure represents the percent of pieces which were of sap on the face side. No heart whatever on the face side.

Examiner SHEPARD. All right.

Cross-examination (continued):

By Mr. MATTHEW:

Q. Mr. Davis, would you feel that you were warranted in stating to the Commission that the ponderosa lumber in the B and better grades characteristically has but 4% of heartwood?

A. That is what we found at this one mill in the Arizona
1522 territory. I would not feel justified in saying that applies to the whole region.

Q. And you have no data as to the B and better from California?

A. No; we got no heart and sap data on B and better in California.

Q. Then I would gather from your testimony that you regard these results indicative by these figures as somewhat unconclusive.

Mr. BURR. I do not think that is a fair question.

Mr. MATTHEW. It is a fair question for me to put upon cross-examination.

Mr. BURR. I do not think, it seems to me, that is a fair question to gather from his testimony when you only asked him on but one grade.

Mr. MATTHEW. I will go through these other grades then and string this out as long as you want to.

Q. In the C selects you show for California a percentage of heartwood of 12.9%. For the D selects you show 32.9%; for the commons, no. 1, 2, 3, and 4, respectively, you show 44.9%, 61.3%, and 59.2%, and 40.2%, respectively. Are you prepared to say that those figures are typical?

A. According to the best information we could get the mills were typical mills, and the amount of material we got is enough to give a representative average.

Q. Then you are prepared to say these figures are typical
1523 of the percentage of heartwood to the entire wood of ponderosa lumber?

A. To the best of my belief they are fairly typical.

Q. Would you expect to find a greater portion of heartwood in the higher grades than in the lower grades?

A. No; you would expect to find less heartwood in the higher grades.

Q. Have you noted in the case of lambertiana you show a greater percentage of heartwood for B and better than in the case of the C selects?

A. You might find a slight difference between consecutive grades, but taking selects as a group, common as a group, you will find the selects considerably below the common in percent of heart.

Q. That would be the normal experience to anticipate, would it not?

A. Yes.

Q. Now, have you carried your studies into an examination of typical logs; I mean unsawed logs?

A. This particular thing concerns nothing but the 1 x 8 boards.

Q. I understand that, but what I want to know, is whether you have made any studies with respect to unsawed logs.

A. I have not personally; no.

Mr. MATTHEW. I think that is all.

Mr. BURR. I think that is all.

1524 Examiner SHEPARD. You are excused, Mr. Davis. Much obliged to you, sir, for coming down.

(Witness excused.)

F. L. BROWN was thereupon called as a witness and, having been duly sworn, testified as follows:

Direct examination by Mr. BURR:

Q. Mr. Brown, you are connected with the Forest Products Laboratory?

A. Yes.

Q. Have been for how many years?

A. For eleven years.

Q. Now, did you conduct some experiments in connection with a so-called paintability of various different types of wood?

A. Yes; I did.

Q. When was that?

A. The project was planned in 1922. These particular experiments actually started in 1924.

Q. What do you mean by "paintability"?

A. That is a term that we have coined for present purposes, endeavoring to express in a single word the qualities of lumber that influence the service given by paint coatings applied to it, applied to the wood.

Q. Now, in connection with that, did you make a graph
1525 showing the respective paintability of certain varieties of wood including among them a strobus, monticola, lambertiana, and ponderosa?

A. Yes.

Q. Will you be kind enough to state whether this graph is the one to which you refer in saying yes?

A. Yes; this is the graph in question.

Q. And this diagram goes with it, does it?

A. Yes.

Mr. BURR. Now, if the examiner please, I would request that these two sheets be marked for identification as "Commission's Exhibit 30, pages A and B."

(Commission's exhibit 30, pages A and B, marked for identification.)

Q. Now, will you state whether that diagram has been corrected or supplemented, I should say, by pen and ink?

A. It has been supplemented in india ink.

Q. That was done by you, was it?

A. I did that myself.

Q. That is, for the purpose of putting in the botanical term for each specie?

A. The botanical term; yes.

Q. And also for the purpose of explaining the number of tests; is that true?

A. Yes.

1526 Q. Now, will you state briefly what the eight different things shown by this diagram are, as briefly as you may and have it clear?

A. At the top of the diagram, that is to say, the diagram in the first place is divided into two portions, the right-hand portion giving the results obtained when we used a typical lead and zinc paint—type of prepared paint. The left-hand portion gives corresponding results when we use a straight white lead paint. Then along the top of each half we have a scale in months. That scale represents the time elapsed from the starting of the tests. That is the time when the panels were attached to the test fence out of doors and the paint coatings applied and allowed to dry. That is the time represented as zero. The length of time elapsing after that is the time plotted in these scales for each species of wood. I say species, in the case of numbers twelve and thirteen we had the same species, but we have

shipments obtained from different regions. For each species or shipment of wood we have two dividing bars, the upper half of each bar represents results obtained on flat grain boards exclusively. The lower half of each bar represents the results obtained with edge grain boards exclusively. If we take the upper half of this bar for example the full length of the bar out to this point, which would be about forty-four months, represents the time elapsed
1527 before, in my judgment, the coating applied to that; that is, it is the average time for all of the boards in question, all the panels in question, before the coating arrived at that stage in coating deterioration that was designated as poor. That is the point at which we believed, or at least that was the arbitrary point that we selected for the purpose of this investigation as representing the time at which the surface should be repainted in order to maintain an adequate coating of paint. That is merely from the point of view of keeping a coating—a continuous coating of paint over the surface. The portion of the bar from zero to this point.

Q. That is the solid black portion?

A. Just the solid black portion represents the time that elapses before the panel arrived; that is, of the average time that elapses before the panels of this group arrived at that point in their history where the appearance of typical wood checks indicated that the wood was beginning to weather in spite of the fact that it still had paint coating on top of it. That is to say, we had arrived at a point where if you were going to maintain a coating that will adequately prevent wood weathering, we felt that it was necessary to repaint.

Q. For each species you used forty-eight test panels each; is that true?

A. Yes; for each species.

Q. And each panel contained three boards; is that true?

1528 A. Yes.

Q. Making a hundred and forty-four boards?

A. That is correct.

Q. Of that number how many were flat grained?

A. Of the 144 boards 72 were flat grained. Of those 72, 36 were painted with a straight white lead paint and 36 with a lead and zinc paint.

Q. Did you have any check or consultation upon your work.

A. Yes; we have a long list of cooperators including the lumber interests and the paint interests and certain universities, other Government laboratories and two railroads.

Q. You do not mean to say you had help from all of those people?

A. Yes; I would say help in some material form from all of those people.

Q. Now, you used the word "arbitrary" in connection with one of those periods, some arbitrary time. Was that a criterion fixed upon for uniform use?

A. Yes; a paint coating after it is applied and exposed to the weather undergoes a gradual series of changes. There are, as far

as I know, no points at which anything happens very suddenly. What the condition today is much like the condition yesterday, except that there is just a slight increase in certain things. There are no jumps.

1529 Q. The gradations are imperceptible.

A. The gradations are small, therefore you must adopt some sort of an arbitrary as standard. Of course, the point is for a study of this kind to adopt an arbitrary standard that will be the same for all of the—in this case all of the different woods.

Q. You did adopt such an arbitrary standard, did you?

A. Yes.

Q. Would it be possible to define it? How did you keep it under your thumb so it would not vary from day to day?

A. I am afraid I cannot define it in a few words.

Q. You did have a definition that you adhered to, did you?

A. Yes; I had certain standards, all of the inspecting was done by myself. It is necessary that one man do this because the thing is a mental picture. We can not define it in terms of the percentage of the total area of wood left bare by paint flaking or something of that kind because we have no means of measuring that. The thing must be done by forming a mental judgment.

Perhaps I can explain it this way, that the particular criterion of judgment in the case of what we call coating integrity, that is, the thing that is measured by the full length of these bars, was whether or not we still retained coating over all portions of the wood to which it had been originally applied. That is, you

1530 start with a continuous coating covering all parts of the wood.

We find as time goes on we come to a point in the history of the coating where small pieces fall away and leave the underlying wood bare. We grade our panels with respect to that in something of the way we grade lumber for grade. The grader has to judge the size, distribution of knots, and things like that in order to classify his boards according to grade, while we had to grade our coatings with respect to these little knots, if you please; that is, a little places where the coating had fallen away.

We had four grades—good, fair, poor, and bad. The point is where they fell to the grade of poor in coating integrity, that is the arbitrary point that we chose as representing the time when repainting would be in order.

Mr. BURR. I ask this now be received, namely, Commission's exhibit for identification 30, pages A and B, received for the record as the Commission's exhibit, same number and pages.

Mr. MATTHEW. I will save an objection upon the ground of immaterial and irrelevant.

Examiner SHEPARD. I have no special objection to it, Mr. Burr, except I rather agree with Mr. Matthew.

1531 Mr. BURR. I do not care to argue the point if you are going to let it in.

Examiner SHEPARD. I will let it in, go in for whatever use you want to make of it.

Mr. MATTHEW. No questions.

(Commission's exhibit 30, pages A and B, received in evidence.)

Examiner SHEPARD. Anything else?

Mr. BURR. Yes; I have something more.

(Witness excused.)

R. P. A. JOHNSON was thereupon called as a witness and, having been duly sworn, testified as follows:

Direct examination by Mr. BURR:

Q. Mr. Johnson, you are with the Forest Products Laboratory, are you?

A. Yes, sir.

Q. How long have you been so?

A. 21 years.

Q. And in connection with that work have you had occasion to consider the variability of certain types of lumber as regards their specific gravity?

A. Yes, sir.

Q. Does specific gravity represent or is specific gravity and
1532 its variation an accompaniment or concomitant of other variations in the quality of wood, do you find?

A. Yes, sir.

Q. What other variations?

A. Practically all of the mechanical properties, specific gravity is the best criterion of strength and other properties we have aside from actual test.

Q. Have you prepared a graph showing the range of variation in specific gravity of the three varieties of white pine and also Pinus ponderosa?

A. Yes, sir.

Q. And also a table showing the comparison or purporting to show a comparison of species with respect to variation in specific gravity?

A. Yes, sir.

Q. I will ask you to state whether the two sheets that I hand you are the tabulation of the graph which you have just referred to?

A. Yes, sir.

Mr. BURR. May they be marked "Commission's exhibit for identification, exhibit 1, pages A and B"?

Examiner SHEPARD. So mark them, Mr. Reporter.

(Commission's exhibit 31, pages A and B, so marked for identification.)

Q. In connection with that study you conducted the collection of specimens yourself or through others?

1533 A. The specimens were collected by the organization, not by myself.

Q. What organization do you mean?

A. The Forest Products Laboratory personnel and the staff.

Q. They were then turned in to you, were they, or how was it handled?

A. The specimens were collected, packed into boxes, and shipped into the laboratory, where the determination of specific gravity was done by our nontechnical staff. The results were then sent in to the computing department and the analysis was made by myself.

Q. The weighing part?

A. The weighing and the measuring largely by the nontechnical staff.

Q. When you say here in the third column of Commission's exhibit 31 A, fourth column, I should say "Probable variation percent", what do you mean?

A. That is a statistical measure of the variability of material. It means that theoretically one half of the material will fall within that percent of the average, above or below.

Q. So the probable variation, taking the fourth column of the first tabulation, the probable variation is 6.55 of strobus, both above and below; is that true?

A. Yes.

Q. Making a total variation of 13.1%; is that true?

1534 A. Yes.

Q. And so on down through?

A. Yes. In other words, that means that a piece selected at random would have a 50-50 chance of falling within that range.

Q. Now, turning to the graph, page B, of the same proposed exhibit, will you state what is to be derived from the fact that the columns rise at the portion of the graph which relates to Pinus ponderosa, the rising of several columns to the height marked 16 or thereabouts, as contrasted with the smaller number of columns and rising to a higher distance in the other portions of the graph?

A. The height of the columns indicates that that percentage of the material we collected fell within the range of specific gravities indicated by the head of the lines in closing the bar at the bottom of the chart. In the case of Pinus ponderosa the bar coming around 16 indicates that about 16 percent of those specimens fell between .34 and .36. While in the case of monticola some 26 percent, or slightly under that, fell within that same range.

Q. Now, which shows the greater tendency toward variation of the four species that you have?

A. The Pinus ponderosa shows the greatest variation in specific gravity of the four species shown on the chart.

1535 Mr. BURR. I ask this exhibit be received for the record.

Examiner SHEPARD. Any objection?

Mr. MATTHEW. No objection.

Examiner SHEPARD. It may go in.

(Commission's exhibit 31, pages A and B, received in evidence.)

Examiner SHEPARD. In other words, Mr. Johnson, the strobus group consisting of the three we have been talking about, the monti-

cola and the sugar pine and the old northern pine, all have about the same specific gravity.

A. I wouldn't say; well, they all have very close to the same specific gravity.

Examiner SHEPARD. That is what I say, about.

A. Yes.

Examiner SHEPARD. And Pinus ponderosa has a varying?

A. Well, Pinus ponderosa differs slightly from them in specific gravity.

Examiner SHEPARD. Higher or lower?

Mr. BURR. Average, you mean?

A. In average specific gravity goes slightly higher than all the other species, three species.

Examiner SHEPARD. Just as a general proposition, if one substance has a certain specific gravity and another substance has

1536 a specific gravity less than that, what does it indicate?

A. In the case of wood it would indicate that the pieces with the higher specific gravity has higher strength properties. It would be slightly higher in bending strength and slightly higher in shock resistance. That is what we expect from it.

Examiner SHEPARD. That is what I want to know, what it leads to. To tell the Commission or me that one wood has a higher specific gravity means nothing.

A. An explanation in there: If you take two pieces of wood in your hand, one of balsam and one of hickory, for instance, with your eyes shut, you could tell which of those two were the strongest. You would not hesitate a minute to say the heavier piece was the strongest. This is simply drawing a finer distinction.

Q. The Pinus ponderosa samples were obtained for the purpose of this graph from five mills in California, were they? I wish you would refresh your recollection as to the number of mills, and state them briefly.

A. The Pinus ponderosa were obtained from five mills in California.

Q. Where was the other pine we are interested in here, the white pine?

A. Also some Pinus ponderosa from Montana and from one

1537 mill in Idaho. The strobus samples were collected from two mills in Minnesota; the Pinus monticola samples from four mills in Idaho; the Pinus lambertiana samples from three mills in California.

Q. When was all of this done?

A. This was done in the summer of 1927.

Examiner SHEPARD. I want respondent's counsel to have a photostatic copy of that also.

Mr. BURR. He has of the graph already. But I will see he has one of the other.

Examiner SHEPARD. Anything else from Mr. Johnson?

Mr. BURR. I think there was.

Cross-examination by Mr. MATTHEW:

Q. Mr. Johnson, can you give us the names of the five California mills from which the specimens of Pinus ponderosa were obtained?

A. I cannot do so without reference to the record.

Examiner SHEPARD. I will have Mr. Johnson write a letter and tell you that if you want it.

Mr. MATTHEW. If there is no objection, I should like such a record.

Examiner SHEPARD. Mr. Johnson, will you get Mr. Matthew's address before this hearing is ended and get that information
1538 and write him and send Mr. Burr a copy of your letter of the California mills?

Mr. BURR. I suggest we stipulate that that go in as exhibit 32 without further action by this examiner.

Examiner SHEPARD. I don't know that Mr. Matthew wants it in the record.

Mr. MATTHEW. Suppose we agree on that afterwards.

Examiner SHEPARD. I am perfectly willing to have it go in the record if you want to. I just thought he wanted it for his own information.

Mr. MATTHEW. I am not sure that either of us will deem it of enough importance to make it a matter of record.

Examiner SHEPARD. If it is, and you want to put it in the record, all right.

Q. Mr. Johnson, I note that the average specific gravity of the Pinus ponderosa specimens is very slightly in excess of the average specific gravity of the Pinus monticola specimens.

A. Yes, sir.

Q. You would agree that they are so close together that the difference is hardly material, would you not?

A. Yes, sir.

Q. Now, have you made any similar investigation respecting the specific gravity of the three better known southern yellow
1539 pines, namely, Pinus palustris, Pinus echinata, and Pinus taeda.

A. Not exactly similar because you will note that these are the random run of commercial lumber and the commercial lumber of the southern pine is not separated botanically by species; consequently, our figures on that are for southern yellow pine or for commercial longleaf and shortleaf.

Q. Let me get clear on that. You say the southern yellow pines are not segregated botanically by species.

A. The lumber is not.

Q. Do you mean by that that the longleaf lumber is not identical with botanical longleaf?

A. Yes, sir.

Q. You mean it is not identical?

A. Yes, sir.

Q. In other words, then, the commercial longleaf lumber may be made up of lumber obtained in part from Pinus palustris and in part from Pinus echinata?

A. Yes, sir.

Q. And in part from Pinus taeda?

A. Yes, sir.

Q. Similarly has the commercial shortleaf lumber content some lumber yield of each of these three trees?

A. It may.

Q. And the grading is in respect to the quality of the lum-
1540 ber rather than with respect to the botany of the particular tree?

A. Well, if you call that segregation by appearance, quality; yes, sir.

Q. Well, we will include appearance.

A. Yes, sir.

Q. Now, would it be practicable to obtain representative specimens of commercial longleaf lumber and commercial shortleaf lumber and make specific gravity tests of the same character that you have made as disclosed by your exhibit 31?

A. Oh, yes, sir; we have done that; not of the lumber, but of the trees, from the trees the selection in order to be botanically correct must be made from the trees and not from the lumber.

Q. Then in making your tests of the southern yellow-pine lumber with respect to specific gravity you have adhered to the trees and not merely to the lumber?

A. We have both, as you will see by your exhibit, you will see the one southern pine is shown in the second table.

Q. I did not have this table before me when I asked the question, Mr. Johnson, and that explains my ignorance; but you do show the specific gravity of the Pinus echinata in tables 2 and 3.

A. Yes, sir.

1541 Q. As I understand it now, selection has been made from trees which are botanically Pinus echinata?

A. Yes, sir.

Q. Have you any similar tests from the Pinus palustris tree?

A. Yes; those tests came from the same tests as a basis of bulletin 566.

Q. And from Pinus taeda?

A. Yes, sir.

Q. Could you conveniently prepare a supplemental table and a supplemental graph which would show the results of the specific gravity tests of Pinus echinata, Pinus palustris, and Pinus taeda in the same fashion in which you have shown the results of the tests of the four species covered by your graph of exhibit 31?

A. Yes, sir. I want to add here in order to avoid misunderstanding that the graph that you have in your hand is based upon the figures of table I and not tables 2 and 3.

Mr. BURR. Table I and tables 2 and 3 of what?

A. Of the exhibit.

Mr. MATTHEW. Of page A of exhibit 31?

A. Yes, sir.

Examiner SHEPARD. Mr. Matthew, I will have the witness prepare that information for you and write it to you at the same
1542 time that he writes you about the mills from which this comes from, and if you desire you can put it in the record later.

Mr. MATTHEW. I would request at this time when that tabular matter & accompanying graph are prepared they be formally incorporated in the record.

Mr. BURR. I think I have absolutely no objection to that.

Examiner SHEPPARD. Yes; I would rather like to have that, too.

A. Would you care to give me the three names you want?

Mr. MATTHEW. Pinus palustris pine and Pinus taeda and Pinus echinata. You do have the Pinus echinata in tables 2 and 3 of page A of your exhibit 31, but the echinata does not appear in table I or in the graph. My particular desire is to complete the showing by extending it to cover the three major southern yellow pines.

A. I can prepare it to go into tables 2 and 3, but not table I, for the reason explained.

Mr. BURR. How about the graph?

A. I can make a graph; yes, sir.

Mr. BURR. You can include the two, additional two types of lumber in the graph and table I, is that right?

A. I will have to prepare a new graph, if it is to be compar-
1543 able, based on the figures of table 2 for the four of them with the additional—for the five at present with the additional two he has requested, because table no. I is based on lumber—selection from lumber. Tables 2 and 3 are based on trees selected in the forest.

Mr. MATTHEW. Yes; I understand your distinction. If you can make such a supplemental showing as will, in your opinion, be fairly responsive to my request and not misleading in your own judgment, I shall appreciate it. In other words, I am sure that counsel for the Commission and I will be very glad to leave it to your own judgment as to the particular form which it should assume.

Examiner SHEPARD. Let the exhibit stay in and make the supplemental showing—I don't know whether you want another graph, too, do you—all I want for my own personal information is to have a comparison of the specific gravity of the trees. I do not care anything about the graph.

Mr. MATTHEW. I find that sometimes the graph is a great deal of assistance to some parties who like a visual presentation. That is the purpose of the graph in this instance.

Examiner SHEPARD. All right, fix him a graph, Mr. Johnson.

Mr. MATTHEW. I would suggest when that exhibit is received and made part of the record that it be identified as exhibit 32.

1544 Examiner SHEPARD. Make a note, Mr. Reporter. Exhibit no. 32 is reserved for supplemental information to be furnished by Mr. Johnson in answer to a request from respondent's counsel.

Mr. MATTHEW. The average specific gravity of Pinus ponderosa approaches more closely to the average specific gravity of the three white pines than to the average specific gravity of the southern yellow pine to which I have directed your attention.

A. Yes, sir.

Mr. MATTHEW. That is all.

(Witness excused.)

GEORGE M. HUNT was thereupon called as a witness and, having been duly sworn, testified as follows:

Direct examination by Mr. BURR:

Q. Mr. Hunt, you have been with the Forest Products Laboratory for how long a period?

A. Sixteen years.

Q. And where did you receive your training for forest work?

A. University of California.

Q. During your time with the Forest Products Laboratory, what forest service, if any, have you had?

1545 A. What service in the forest?

Q. Yes; have you had experience in the actual forest?

A. I have been out on field trips at various times; and before I came to the laboratory I served for two years on the Pacific coast—one year in California and approximately one year in Washington and Oregon.

Q. That was as a member of the staff of the Forest Service, was it?

A. Yes; Forest Service.

Q. What topics have you specialized on in your research studies for the Forest Products Laboratory?

A. Specialized in the collection of evidence on the durability of wood, on the methods and materials for protecting wood from decay, and I have had supervisory duties in connection with various other studies.

Q. Over how long a period have you studied the durability of various types of wood, various species, I should say?

A. Substantially during the whole period of sixteen years.

Q. Did you some years ago work out a proposed method of testing the durability of wood within a shorter period than the actual experience where exposed to the weather?

A. No, sir.

Q. You pursued such a method at one time, did you?

A. Such a method was attempted at the laboratory before I came. I continued to experiment with it for a short time, and then

1546 we abandoned it as unsatisfactory. It did not give the data we could use.

Q. It did not give the data you could use?
A. No.
Q. Did you use the data that you obtained?
A. No; we never published that data.
Q. It was never published?
A. No. We couldn't use it. It was too inconsistent.
Q. Did you actually get out some material that purported to give the relative decay resistance under conditions favoring decay of untreated woods with average proportion of sapwood?
A. You are referring now to that specific publication?
Q. Yes; Publication No. 173.
A. No; I did not.
Q. Well, it was gotten out, was it?
A. It was prepared at the Forest Products Laboratory.
Q. Who got it out?
A. A man not now with us—David G. White.
Q. What time did he get this out?
A. About 1920.
Q. Where is he now?
A. I am not certain. He is with a hardwood lumber association in the East somewhere.

1547 Q. Do you know when this was gotten out?
A. About 1920.
Q. And that was before your time, was it?
A. No; I came in 1913.
Q. You have been there sixteen years?
A. Yes.
Q. Do you know whether this caused a good deal of criticism and trouble?
A. Yes, sir; it certainly did.
Q. As a result of that it was withdrawn, was it?
A. Yes, sir.
Q. Did you have anything to do with the experiment which resulted in a technical note no. 173?
A. Yes; the note is based upon all the evidence that we could collect, all the usable evidence that we could collect, and I had a hand in collecting some of that evidence.
Q. Did you have a hand in collecting the evidence as regards any variety of pine?
A. Yes; insofar as that means collecting statistics on the durability of railway ties and test tracks.
Q. Now, there was one test made with flasks, was there not?
A. Yes.
Q. Did you have anything to do with that?

1548 A. No; that was done by the pathological staff at the Forest Products Laboratory.
Q. Who was in charge of that at the time?
A. C. J. Humphrey.
Q. Is he still there?

A. No; he is in Manila.

Q. Is there anyone there who assisted him?

A. Not now; no.

Q. Did you have any hand, not to incriminate yourself, sir, but did you have any hand at all in the preparation of the ultimate figures that appear upon the third page of this—no; the second page of the technical note no. 173, a copy of which I now hand you—did you have anything to do with those figures there in actually getting them up?

A. I considered the figures and discussed them with Mr. White after he had prepared the table, and at my suggestion he changed some of them.

Q. Can you testify that the figures are approximately correct on the assumption that the method of procedure was correct? I merely want to ascertain whether the figures are correct, irrespective of the merits of the method, and I will get the merits of the method in some other fashion.

Mr. MATTHEW. It seems to me, in view of the witness's prior testimony, not only his testimony that he had nothing to do with
1549 the figures themselves, but the preparation of the bulletin itself was severely criticized and was withdrawn by the Forest Products Laboratory, certainly we should not proceed further with this.

Mr. BURR. I am not offering it as yet. I think you may make that objection at that time, as you see fit.

Mr. MATTHEW. I think you have laid no foundation for any question to the witness.

Mr. BURR. May I proceed further?

Q. The durability of commercial white oak was considered as 100%, was it?

A. Yes.

Q. And the figures that are above will be supposed durability greater than white oak?

A. Yes.

Q. And those less than a hundred to the same extent as being inferior to white-oak durability, is that true?

A. Yes.

Q. That was supposedly under the same conditions of test, is it, that was applied to all of these alike?

A. Under the same conditions of service.

Q. What were those conditions of service?

A. In contact with the ground, or in other places where the wood could collect moisture and decay, would be favored.

Q. Did you also have tests applied which related to conditions that the wood was subjected to in certain flasks?

1550 A. I did not; no.

Q. Did the flask results enter into the figures which were shown on the technical note no. 173?

A. They were certainly considered by Mr. Humphrey, by Mr. White, but to what extent they entered into these figures I cannot say.

Q. You do not know whether those figures represented a composite of conditions including the flask treatment and the treatment in the ground, and the treatment at the surface of the ground; is that true?

A. I don't know that those figures enter into—the flask figures enter into these figures in technical note 173. I know they were considered.

Q. How long is it since you saw this note 173?

A. About two minutes.

Q. You saw it years ago, did you not?

A. Yes; I saw it during its preparation, and I O.K.'d it when it was issued.

Q. You O.K.'d it when it was issued. Will you be kind enough to look it over and see if anything refreshes your recollection on the question that you say you are unable to answer?

A. Nothing in this note would help me to recall to what extent the flask tests entered into the compilation of these figures.

1551 Q. Do you know of any comprehensive experiments with regard to decay that have been made?

A. The principal experiments that have been made on the decay of wood are made in railway tracks and in pole lines throughout the country.

Q. That is the actual experience, isn't it?

A. That is experience.

Q. What I mean is this——

A. I mean something more than experience, establishing experimental sections of ties or poles or fence posts under actual conditions of use.

Q. Driving in a nail, you mean, with an eye on it where it was placed?

A. Yes; and then inspecting it frequently thereafter and keeping accurate records.

Q. Has anything as to the durability as to any of the pines been secured in that fashion?

A. Yes, sir; to a slight extent.

Q. On which of the pines have data of that kind been secured?

A. There is a small amount of evidence available on Pinus ponderosa, but the largest amount of evidence on the durability of pines is on the southern yellow pines, because they are most commonly used in contact with the ground.

Q. Is there anything on any of the white pines resulting from that kind of actual experience in use?

1522 A. There may be, but I don't recall.

Q. What railroad has experimented on Pinus ponderosa for the purposes of poles or ties or both?

A. I cannot name the specific tests on the durability of untreated Pinus ponderosa ties. Such ties are used by the Santa Fe Railroad and the Southern Pacific Railroad, the Northern Pacific Railroad, I

believe by the Great Northern, and the Chicago, Milwaukee, St. Paul & Pacific, but they are almost invariably used after having received preservative treatment.

Q. I see; creosoting or something of that kind, you mean?

A. Chiefly creosoting.

Q. They creosote their southern pine logs, do they not?

A. Yes.

Q. In this matter of durability do you know of any tests that have been attempted which would show a comparison between the durability of the white pines and Pinus ponderosa?

A. No.

Q. Other than this one that was embodied in 173; is that true?

A. That is not a test. The comparison in 173 between the white pines and Pinus ponderosa are based on opinion and judgment and not on tests.

Q. Well, but there was a test made of these various woods.

A. There was no comparative test made in which Pinus ponderosa and the white pines were used under the same conditions of

1553 service. They were included in the flask test perhaps.

Q. They were included in the flask tests?

A. I think they were, but I would have to see the record again to be sure; but I am not positive they were; but there is no service record available that I have ever seen or heard of in which those pines in question have been compared under the same service conditions.

Q. Now, the results of the flask tests, were they ever given out?

A. Yes; they were published by Mr. Humphrey.

Q. What publication is that?

A. I would have to look it up for you. I think it was the Review of Applied Mycology.

Q. Was that gotten out by the Forest Products Laboratory?

A. No; that is a national publication, and his article was a contribution to it.

Q. How much did you have to do with that flask test?

A. Not a thing.

Q. You mean to say that 173 was gotten out by the Forest Products Laboratory without anything to back it up?

A. No, sir.

Q. What did they have to back it up?

A. The durability——

1554 Mr. MATTHEW. I suggest the witness should not read from the——

A. Well, I will tell you, upon the available evidence, where evidence was available, plus observation and general opinion—might call it expert opinion.

Q. What evidence did they have available as to the comparative durability of the pines—the white pines and ponderosa?

A. The general experience with the use of the white pines, during the 200 years since they began to be used, indicated that those pines

had moderately high durability. The general experience with Pinus ponderosa indicated that that wood had low durability in contact with the ground or any place favoring the growth of decay. That is a matter of common knowledge.

Mr. BURR. That is all.

Mr. MATTHEW. No questions.

(Witness excused.)

C. P. WINSLOW was thereupon called as a witness and, having been duly sworn, testified as follows:

Direct examination by Mr. BURR:

Q. Mr. Winslow, when was technical note 173 withdrawn?

A. Oh, approximately about eighteen months ago, I think, as I recall it, without looking up the date.

1555 Q. Was that withdrawn as the result of considerable pressure from various interests?

A. It was withdrawn—considerable amount of rather aggressive criticism of the correctness of the note by interests that felt they were affected by it.

Q. What interests were those?

Mr. MATTHEWS. If you will pardon me for a moment—

Mr. BURR. Pardon me.

Q. You are in charge of the Forest Products Laboratory?

A. Yes, sir.

Q. Director, are you?

A. Yes, sir.

Q. And you have been for how long a period?

A. Since April 1917.

Q. How large a staff have you, Mr. Winslow?

A. Technical staff of approximately 75 to 80.

Q. Now, where did the pressure come from for the withdrawal of this technical note?

Mr. MATTHEW. I don't think you should use the word "pressure." I don't think the witness did. I think he used the word "criticism."

Q. Where did the criticism of technical note 173 come from?

Mr. MATTHEW. Is that material?

Examiner SHEPARD. If you will object, I will rule on it.

1556 Mr. MATTHEW. I object on the ground criticism is not material in this case.

Examiner SHEPARD. I think so. I will support the objection. The matter was withdrawn by the Forest Products Laboratory. That is sufficient for me. I do not care why.

Mr. BURR. I think the ruling is in error for this reason: If it was withdrawn as the result of criticism and in order to avoid difficulty it might not be withdrawn on the ground it was inaccurate. If it was withdrawn on the ground of inaccuracy that is one thing. If it was withdrawn simply because somebody is hurt because their wood is put down at a low durability, that is something entirely

different; and I think it is highly competent to prove it was upon criticism and where the criticism came from.

Examiner SHEPARD. The matter does not come before us at all. The paper is not in evidence and has not been admitted to this record.

Mr. BURR. I am leading up to the offer of the document. If the document was withdrawn primarily on account of criticism and not because it did not represent the best judgment of the Forest Products Laboratory, why I think that the evidence is competent. If it was withdrawn because it no longer represented the views of the Department, why then I would not think it worth while to
1557 offer it. Therefore it seems to me the whole matter of the criticism is thoroughly competent, and I desire to lay a foundation for the offer of this document, and I am trying to do so.

Mr. MATTHEW. If a responsible Government body has withdrawn a given publication it seems to me that it must be deemed to be withdrawn fo all purposes.

Examiner SHEPARD. Yes; it is not up to us to inquire why the Forest Department withdrew it. I will state for your information, if the document testified to by the previous witness is offered for the record I will refuse it.

Mr. BURR. I so offer it.

Examiner SHEPARD. I do not think the document means anything to this case one way or the other. I see no reason why it should be in the record. It is a document that has been thoroughly discredited by the parties who issued it.

Mr. BURR. Absolutely not, if they withdraw it because it hurts somebody and not because it was not true.

Examiner SHEPARD. I say it is not an official document at all.

Mr. BURR. It was an official document issued, and the publication of it has now been stopped as a result of this pressure. It seems to me the facts contained in it as representing the best views of the Forest Department of Madison are now thoroughly competent
1558 and it seems to me that the pressure that was brought to bear makes the document stronger than weaker.

Mr. MATTHEW. I do not understand merely the cessation of publication; I understand it was withdrawn, that it was not regarded as being the publication of the Bureau.

Examiner SHEPARD. The position of the Bureau at all.

Mr. BURR. I have explained myself with sufficient fullness.

Examiner SHEPARD. Anything further?

Mr. BURR. Yes.

Direct examination (continued):

Q. Mr. Winslow, is it your view that Pinus ponderosa is a less durable variety of the wood than the northern white pine where exposed to the weather?

Mr. MATTHEW. Just a minute——

Mr. BURR. He is the head of this Bureau, with a large staff, and if he is not an authority on the durability of wood from the standpoint of a technician, I do not know who would be.

Mr. MATTHEW. It is entirely possible he may not himself have gone to the question of durability.

Examiner SHEPARD. Find out what he knows about wood; see if he has got a groundwork. A man may be in an
1559 executive position in a bureau having executive charge of a bunch of men without knowing anything about woods at all.

Q. What opportunity, Mr. Winslow, have you had for the purpose of reaching a sound opinion with regard to the durability of various pine lumbers here in controversy?

A. Almost entirely reliance upon the viewpoint of members of the staff who make a study of it and tell me what their thoughts or viewpoints are.

Q. Is it part of your duty to receive the reports from your staff?

A. Yes.

Q. Is it part of the duty of the staff to keep you informed as to the problems of their studies and as to the results they obtain?

A. Yes.

Q. And as to their methods of obtaining those results?

A. Yes.

Q. In connection with that work, have you had an opportunity to know what the studies of your staff are and the information that they have been able to obtain and the opinions they have been able to arrive at with regard to the durability of pine wood?

A. Yes.

Q. What in your judgment is the more durable of the four pine woods that we have here in controversy?

1560 Mr. MATTHEW. Is that answer based upon the opinions he received from members of the staff?

Q. Based in part upon opinions of members of the staff, is it?

A. The only way I could answer your question is that there was an abundancy of opinion that for conditions favorable to decay, that the tendency of the comparable durability would be about as shown in that technical note 173, but upon intensive consideration and scrutiny of that note, and so on, it developed that we had not enough real data of any kind to substantiate an opinion one way or another on it, and therefore it seems that the proper thing to do was not to give such a conclusion to the public, in spite of what might be the feeling or viewpoint of individual members concerned with it, since they were unable to firmly establish the correctness of those opinions regardless of the sincerity with which they might hold them.

Q. You frequently advise or your office advise as to the comparative durability of wood for various purposes, does it not?

A. Yes, sir.

Q. And the advice that you give is white pine in its three varieties is more durable than that of Pinus ponderosa?

Mr. MATTHEW. That is a little bit leading, I think. I object to that as leading.

1561 Examiner SHEPARD. Just turn it around and ask him the difference between the two and not lead him.

Q. What is the difference between white pine and Pinus ponderosa as to durability?

A. I don't know.

Q. Which do you regard as the more durable where exposed to the weather?

Mr. MATTHEW. He says he does not know.

Mr. BURR. That is a different question.

Mr. MATTHEW. He says he does not know which is the more durable.

Mr. BURR. Read the last two questions and the answer to the first one.

(Questions and answer read.)

Q. What advice do you give as to the durability of the pines?

Mr. MATTHEW. I think I shall object to that on the ground the witness has said he does not know which of the pines is the more durable, and therefore it should be immaterial as to what advice he gives.

Examiner SHEPARD. If you know, I will let you answer.

Q. What advice do you give as to the durability of these various pines when exposed to the weather?

A. Actually speaking, if somebody comes to the laboratory seeking that advice, I see that they get into the hands of the specialist

1562 on that whose opinion on that I consider more reliable than mine.

Q. Whose opinion?

A. Mr. Hunt's or Dr. Richard's.

Q. Do they answer letters in their own name or do they prepare them for your signature?

A. Matters of that type they answer in their own name generally.

Q. This technical note no. 173 was before your time, was it?

A. No.

Mr. BURR. It was in your time. That is all.

Examiner SHEPARD. Any cross-examination?

Mr. MATTHEW. No.

Examiner SHEPARD. You are excused.

(Witness excused.)

GEORGE M. HUNT recalled, and thereupon testified as follows:

Direct examination (continued) by Mr. BURR:

Q. Mr. Hunt, from time to time you have occasion to answer letters to the Forest Products Laboratory, or do you individually, with

regard to the various durability characteristics of Pinus ponderosa, monticola, and lambertiana and strobus, do you?

A. Occasionally; yes.

Q. What variety of pine do you advise as preferable for
1563 uses where exposed to the weather?

A. In answering such a letter we would explain first that the durability of any wood exists only in its heartwood and that the sapwood in all those pines, as well as all other species, has low resistance to decay. Now, if one can use the heartwood, then we say it is our opinion that the heartwood of the white pine has more decay resistance, will give longer service under conditions favoring decay than the heartwood of Pinus ponderosa. Furthermore, we sometimes say that the mill run of the white pine probably would average higher in durability under decay-producing conditions than the mill run of Pinus ponderosa, because we believe the mill run of the white pine has a lower percentage of sapwood than the mill run of Pinus ponderosa.

Q. Do you advise with regard to the relative durability of Pinus ponderosa and strobus as regards the heartwood?

A. Yes; that is what we would base our comparison upon.

Q. You base your comparison partly upon the greater percentage of heartwood in one rather than the other?

A. Yes.

Q. If you were to segregate all the sap of strobus and all of the sap of ponderosa, would you regard the heartwood of strobus as more or less durable than the heartwood of Pinus ponderosa?

1564 A. I believe the heartwood of Pinus strobus rather than the heartwood of Pinus ponderosa.

Q. Is the same true of the heartwood of other white pines?

A. We so believe.

Mr. BURR. I think that is all.

Cross-examination by Mr. MATTHEW:

Q. Has there been any tests which in your opinion are adequate, Mr. Hunt, which would enable you to advise with assurance as to to the relative decay-resisting qualitites of the heartwood Pinus lambertiana and the heartwood of Pinus ponderosa?

A. There have been no tests which we consider adequate to settle the question of comparative decay-resisting properties of those two woods.

Q. Have there been such tests as will enable you to advise with assurance as to the relative decay-resisting qualities of the heartwood of Pinus ponderosa and Pinus monticola?

A. There have been no tests that settle that question.

Q. Have there been tests which will adequately settle the question as to the relative decay-resisting qualities of the heartwood of Pinus ponderosa and the heartwood of Pinus strobus?

A. There have not.

Mr. MATTHEW. That is all.

1565 Redirect examination by Mr. BURR:

Q. Do you know of any efforts that have been made adequately to test the decay-resisting qualities of these varieties of lumber?

A. The only tests I know of in which that attempt was made was a series of flask tests by Humphrey, previously referred to.

Mr. BURR. That is all.

(Witness excused.)

HOWARD F. WEISS was thereupon called as a witness and, having been duly sworn, testified as follows:

Direct examination by Mr. BURR:

Q. Mr. Weiss, your business is what, please, sir?

A. I am in the industrial research work with the C. F. Burgess laboratories.

Q. Industrial research work in what line?

A. Largely in the wood line, wood cellulose.

Q. What is your experience with regard to wood technology been, Mr. Weise?

A. My experience in wood technology has been confined almost entirely to work I did while connected with the Forest Products Laboratory.

Q. You were director of that previous to Mr. Winslow, were you?

1566 A. Yes, sir.

Q. During what period does that cover?

A. I resigned, I think, in April 1917, and I was director for about three years—two or three years.

Q. Now, there have been certain references in the record of certain flask experiments. Were they carried on during your time?

A. Yes, sir.

Q. For how long a period was that carried on during your entire time? Do you remember?

A. No. I think those tests went over a period of about two years—about two or three years.

Q. Will you outline what the method adopted was in a general way?

A. We were trying at that time to get absolutely fundamental information.

Examiner SHEPARD. Wait a minute. If nothing came from this, why go into it.

Mr. BURR. I want to get, if the examiner please——

Examiner SHEPARD. If there are no results leading from it, nothing that I can consider, nothing upon which I can make a finding, why go into it and fill the record with it?

1567 Mr. BURR. If the examiner please, there are results that are published which I may desire to offer if I can lay the proper foundation. The author is in the Philippines; if I remember rightly Mr. Humphrey is in the Philippines.

A. Yes; the last I heard of him.

Q. This was Mr. Humphrey's article that was published. That, as I understand it, has nothing to do with the data published in 173; is that true?

A. Yes; that was gotten out prior to this.

Q. Prior to Technical Note 173, which was withdrawn, you mean?

A. Yes.

Q. Mr. Humphrey's publication in Mycologia; have I got it right now?

A. Yes.

Q. That was an official article, was it?

A. Well, it was written by Humphrey while he was in the employ of the United States Government. Yes; he signed it. It was not published as a formal Government document.

Q. Mycologia is a scientific magazine rather than a Government publication, is it not?

A. Yes; it is a scientific journal.

Q. Have you a copy of that article?

A. Yes.

Q. I believe I will ask you to produce it if I may. Did you see the article before it was published, Mr. Weiss?

A. Yes.

1568 Q. Has it ever been disavowed, so far as you know?

Mr. MATTHEW. Just a minute. I object to that question.

Mr. BURR. I withdraw it.

Examiner SHEPARD. Yes.

Mr. BURR. Off the record a moment.

(Discussion off the record.)

Mr. BURR. If the examiner please, I would like to question the witness with regard to this matter for the purpose of leading up to an introducton of a copy of this when I am able to secure one.

Examiner SHEPARD. All right.

Mr. BURR. And have it understood what number it is to be, and so forth.

Mr. MATTHEW. Do I understand counsel expects to offer through this witness an article published by a man named Humphrey who wrote it as his own personal contribution to a public magazine?—because I certainly object to it.

Mr. BURR. I want to see what I can do in the way of laying a foundation, then you can make such objection as you see fit.

Mr. MATTHEW. I object right now.

Mr. BURR. I would like to see what we can prove in regard to it first. It may be I won't want to offer it.

Q. Mr. Weiss, as I understand it, you looked over this article before it went out?

1569 Q. Do you recall whether you approved the article as being a correct presentation of experiments which were conducted under your supervision?

Mr. MATTHEW. I object to that question.

Mr. BURR. Perhaps I have not laid sufficient foundation. I am not pressing an answer for that. Just leave the question.

Q. Mr. Weiss, Mr. Humphrey, I understand, was under your supervision in connection with this work he was doing.

A. He was under my supervision and the supervision of Dr. Metcalf, of the Bureau of Pathology. He reported directly through Mr. Metcalf, and the Bureau of Pathology was cooperating at that time with the United States Forest Service in these investigations.

Q. Was Mr. Humphrey a member of your staff?

A. We considered him such.

Q. Was he such?

A. In my opinion; yes.

Mr. MATTHEW. To whom did he report?

A. To Dr. Metcalf and myself.

Q. Did Metcalf report to you?

A. No.

Q. Who did Metcalf report to?

A. He is in the Bureau of Pathology. That is another

1570 bureau of the Department of Agriculture. This was a cooperative undertaking between the two bureaus, the same as the Forest Service is cooperating with the University of Wisconsin.

Q. Then, as I understand it, did Mr. Humphrey give part of his time to your work and part of the time to the Bureau of Pathology?

A. Exactly.

Q. Now, then, was this regarded as part of the pathology work or part of your work?

A. Part of our work.

Q. This flask work was part of your work, was it?

A. Yes, sir.

Q. As regards this particular work which is reported in this article in Mycologia, or whatever it is, this work was under your Bureau rather than under the Bureau of Pathology, was it?

A. We asked the Bureau of Pathology to cooperate with us in making this study on the durability of American woods, and they detailed this Mr. Humphrey to the laboratory here at Madison to conduct this work; and he worked right with the same material that the men were using who were paid by the Forest Products Labora-

tory, and attended our staff meetings, and to all intents and purposes functioned as though he had received his pay from the United States Forest Service rather than the Bureau of Pathology.

1571 Q. As a matter of fact he was paid by the Pathology Bureau?

A. Yes, sir.

Q. But his reports came through you?

A. Yes.

Mr. MATTHEW. Through you or through Dr. Metcalf to you?

A. Through Dr. Metcalf to me.

Q. You approved of the publication of this article, did you?

Mr. MATTHEW. I object. I cannot see whether he approved of the publication of the article or not has anything to do with this case.

Mr. BURR. I submit I am laying the foundation.

Mr. MATTHEW. I submit it does not lay a foundation.

Examiner SHEPPARD. I have not seen any yet.

Mr. BURR. I will ask the privilege of the Commission appointing an examiner to take testimony out in the Philippine Islands and prepare interrogatories and try to get that out and introduce in that fashion. I had hoped to be able to get by, but I think it is practically impossible at the present statge of the game to technically qualify this papper.

Mr. MATTHEW. In view of the fact, Mr. Burr, that the prior witnesses for the laboratory testified respecting the inconclusiveness of that data and the fact that technical paper 173 is withdrawn,

1572 it seems to me it is quite unreasonable for you to expect to introduce in this fragmentary information.

Examiner SHEPARD. There is a right way and wrong way to do everything, gentlemen, and the only right way is to proceed.

Mr. MATTHEW. I want it to be clearly understood that my objection is not based on any merely technical ground but it is substantial.

Examiner SHEPARD. I understand.

Mr. BURR. If the examiner please, there was an effort here made to reproduce the functions of decay, the fungi which produce decay, the moisture condition, and to give the same treatment to a number of different classes of wood and combine the decay of many years in a short time, and it seems to me it is highly material, and it seems to me that it ought to be susceptible of proof as to what the results were as the very best thing that has thus far been attempted in the line of proof of durability of different species of comparison.

Mr. MATTHEW. Will you let me have the testimony of that witness? The witness regarded it as entirely inconclusive. I never heard of the so-called flask test until today. I am basing my objection on substantial ground.

Q. Did technical note 173 purport to give the result of the flask test?

1573 A. That was published after I left the laboratory, Mr. Burr. I mean 173.

Q. What was the general purpose of the flask test?

A. The general purpose of the flask test was to try and evaluate American woods under exactly identical conditions as to their relative durability.

Q. Were fungi introduced into each flask?

A. Yes; the same fungus.

Q. Were there several fungi?

A. Yes; that is one of the variables with which the technical man has to deal. There are several fungi that will attack any given kind of wood, and this test was run with just one fungus, trying to eliminate those variables.

Q. How about moisture condition?

A. The attempt was made to hold the moisture conditions constant, because that also affects durability.

Q. What was the comparative period that Pinus ponderosa lasted as contrasted with the white pine?

Mr. MATTHEW. I object. Counsel is making the same effort to get matter in without any proper foundation or qualification, either.

Mr. BURR. If the examiner please, this man had this work done under his supervision. The man who did it is out of the jurisdiction, and it seems to me that it ought to be possible to get this material in.

1574 Examiner SHEPARD. What was the question?

(Question read.)

Examiner SHEPARD. Do you think you can answer that question? If you have sufficient knowledge I think I will let you answer it.

Mr. MATTHEW. Before Your Honor rules finally, may I ask the witness one or two questions?

Examiner SHEPARD. Yes.

Cross-examination by Mr. MATTHEW:

Q. Can you tell me the period during which these flash tests continued?

A. The article in question was published in 1916. I think these tests ran about 1913 to 1915, about in there.

Examiner SHEPPARD. Nothing been done in this respect since that time; I mean by the Bureau.

A. I believe Mr. Winslow can answer that better than I could. You see I am not there any more.

Q. Were you Mr. Humphrey's chief during the entire period while these flask tests were being carried on?

A. No; Mr. Humphrey's chief was this Dr. Metcalf that I referred to.

Q. You went with the laboratory in about 1914?

A. No; I went with the Forest Service in 1905, and we started the Forest Products Laboratory about 1909. I went there

1575 as assistant director at that time.

Q. In 1909?

A. About that time; yes.

Q. What was your status when these flask tests were initiated?
A. I was regarded as assistant director.
Q. What relation did Mr. Humphrey sustain to you at that time?
A. Well, he worked out under our general direction and supervision in the carrying out of these tests.
Q. Were you the director when the tests were completed?
A. Yes.
Q. Did you have anything to do with making the tests?
A. Only in a supervisory way.

Mr. MATTHEW. I think it is clear that he is not qualified to state the results of the tests. We ought to have the man here who made them, so we have the opportunity to cross-examine him.

Mr. BURR. You surely would if he was in town, and I think the best evidence is through the man he reported to.

Mr. MATTHEWS. I have no opportunity to cross-examine this witness as to how that test was made or the details of the matter.

Examiner SHEPARD. Off the record.

(Discussion off the record.)

Mr. BURR. I think that is all.

1576 Mr. MATTHEW. I again want to assure the examiner and counsel I have no desire to hamper the Government in the development of its case, but I do not want to waive what I believe to be a substantial right, the opportunity to cross-examine the man who is reported to have made this test.

Examiner SHEPARD. That is a right that all defendants and respondents have, of course. Anything further?

Mr. BURR. I think that is all.

Examiner SHEPARD. Mr. Burr, do you want to adjourn to any time, or shall I adjourn without date?

Mr. BURR. If the examiner please, off the record.

(Discussion off the record.)

Examiner SHEPARD. Mr. Reporter, adjourn this hearing to reconvene again on five days' notice. The attorneys to be given five days' notice on reconvening again.

(Adjournment thereupon taken.)

1577 [Omitted.]

1578 Before the Federal Trade Commission

In the matter of White Pine cases

Docket Nos. 1620–1669, inc.

SPOKANE, WASH., *January 20, 1930.*

Met pursuant to adjournment, 10:00 o'clock a.m.

Before Ellis De Bruler, examiner (as per copy of order which is herein set out in full, the copy to be attached to the original transcript of testimony).

Appearances:

Eugene W. Burr for the Federal Trade Commission.

McCutcheon, Olney, Mannon & Greene, attorneys for all respondents for which that firm appeared as named at the original hearing in Boston, represented by Carl I. Wheat.

1579–1580 [Order appointing examiner omitted. Printed side page I, ante.]

1581 Examiner DE BRULER. If the parties are all ready, the hearing will now be resumed, pursuant to adjournment.

Mr. BURR. If the examiner please, I would like to call Mr. Dixon.

GRANT DIXON was thereupon called as a witness and, having been duly sworn, testified as follows:

Direct examination by Mr. BURR:

Q. What is your full name?

A. Grant Dixon.

Q. Mr. Dixon, your business is what, sir?

A. Manufacturing of lumber, also manufacturing from lumber sash, doors, moldings, frames, box shooks, inside finish, and so forth, I would say.

Q. And the name of your company is what?

A. The Western Pine Manufacturing Company.

Q. And in connection with your work do you sell lumber as well as manufacturing millwork?

A. Very little lumber. We sell some lumber.

Q. Now what is the lumber material out of which you make your millwork from?

A. I would say ninety-five percent pondosa pine.

1582 Q. Ninety-five percent pondosa pine?

A. Yes.

Q. And the balance of it would be Idaho white pine, would it?

A. No. It would be a mixture. We sometimes make some cottonwood, some spruce, and occasionally a little white pine.

Q. I see.

A. Special cases.

Q. Where is your mill located?

A. In Spokane.

Q. Now, for how long a period have you been calling your type of lumber pondosa?

A. (Pause.) Well, I would say since—it was called that when I bought the company.

Q. And that was when?

A. I think in 1922.

Q. Now, in your business you sell to what class of purchasers, retailers or jobbers, I mean wholesalers, or what is the line?

A. Well, we have sold our biggest items, are probably to jobbers, and we have sold to others. Now you understand we are in a

variety—we manufacture a variety of goods, as I told you—box shooks and such as that. Now, that is not sold to jobbers. That is sold in the community.

Q. I was referring to millwork.

1583 A. Well, millwork; yes.

Q. The millwork is sold to jobbers?

A. Principally to jobbers and some to wholesalers and retailers.

Q. Now, do you have salesmen in the organization to dispose of these products?

A. We have connections; yes.

Q. Do you come in contact with these salesmen? Are you engaged in supervising your sales operations?

A. To a certain extent; yes.

Q. And you do come in contact with the problems of the sales forces, do you?

A. Oh, yes.

Q. In disposing of the goods?

A. Yes.

Q. Do you find that there is any competition on the part of concerns making so-called California white pine millwork—I mean of the California white pine so-called millwork—any competition?

A. (Pause.) In one or two cases they sold California white pine. Whether that has been pondosa and sugar pine mixed, I don't know.

Q. You do not know, then, whether you meet in competition millwork which is sold to the trade as California white pine sash and doors, and so forth?

1584 A. We have, as I just said—we have one or two occasions where we have come across California white pine.

Q. Well, where is your market? What part of the country do you call upon—do your force call upon the jobbers?

A. All over the United States; principally east of the Mississippi River, and south quite a good deal. We have quite a trade in Texas.

Q. Do you regard the use of the word "white pine" in connection with the trade lumber California white pine as a disadvantage to you in disposing of your goods?

Mr. WHEAT. Now, if the examiner please, this man, this witness, has testified that he never has come in contact with California white pine except in one or two cases, and I think to ask him whether he finds any disadvantage in his business, without asking him the specific instances in which it might have been a disadvantage, is entirely immaterial in this case and is not a subject on which this witness is qualified to speak.

Examiner DE BRULER. The objection is overuled. Note an exception. Let him tell what he knows about it.

Mr. BURR:

Q. All right, sir.

A. Ask the question again, please.

Q. Will you read the question, Mr. Reporter, please?

(Question read.)

1585 A. (Pause.) Well, with the one or two exceptions, why it has not been a disadvantage.

Q. But where you have met the manufacturer of millwork made of California white pine do you regard it as a handicap, do you?

A. (Pause.)

Mr. WHEAT. May my objection be understood as to such a question as this, certainly?

Examiner DE BRULER. Read that question again there.

(Question read.)

I would suggest that you define it.

Mr. BURR. Let me take a little different course. I will withdraw that question, if I may.

Q. Now, your pondosa is made out of what species of pine tree, your pondosa products?

A. Made out of what species?

Q. Yes; the pondosa products.

A. Ponderosa pine. I presume that is what it is. That, *au* be the botanical name. I do not know exactly.

Q. Is that tree the same one as furnishes the California white pine products, do you know?

A. Well, that is—Mr. Burr, if I might refer to that other question, I was not sure that those other people were selling sugar pine or the California pondosa pine.

Q. I will withdraw the question. I will not press the question any further. Where do you sell lumber, aside from your millwork products?

1586 A. What?

Q. You are in the lumber business, too, are you not?

A. Not very much.

Q. Not very much?

A. No.

Q. That is negligible, is it, pretty nearly?

A. Yes.

Q. The sales of lumber?

A. Yes. We only sell lumber, the accumulated surplus from the manufacturing of different articles.

Q. Now, do you find that the wood made from ponderosa holds paint in the case of the heart portions as well as it does in the case of the sap portions, or better? Is that question clear?

A. The heart portions of the pondosa pine?

Q. Yes. Is there any difference in the paintability of the heart and the sap wood of the pondosa?

Mr. WHEAT. If Your Honor please, this witness has not been qualified to know anything about the paintability of these woods. If he

is an expert on paintability, I suggest that he will so qualify him. He says he manufactures millwork.

Mr. BURR. In manufacturing this millwork do you have an opportunity to learn as to the advantages and disadvantages of the wood that you manufacture in the actual use of it?

A. We do not make millwork out of the heart of a pondosa
1587 pine.

Q. You do not?

A. No.

Q. Why not?

A. It is not the type of wood to make it out of.

Q. Your millwork, then, is the sap portion of the tree, is it?

A. More or less the sap portion; yes.

Q. Exclusively, you mean?

A. Well, that is open to argument. What some might call sap, others might not.

Q. Well, the—define what you mean when you refer to sap?

A. What is that?

Q. Define what you mean, if you can, when you refer to sap?

A. It is the outside of the log, the outside of the log of pondosa pine. It is the cutting portion of the log. When you get into the heart portions of the log there is lots of knots and other defects that cannot be put into millwork, and it has not the texture that can be put into millwork.

Q. How much of the log do you regard as the heart portion? Are you talking about the very center of the tree?

A. That is according to the log, Mr. Burr. There is more in some than others. That is all according to the log.

Q. Yes; I understand it varies, but the sap portion is the part that inducts the sap, isn't it?

1588 A. What is that?

Q. The sap portion of the tree, of any tree, is the part that conducts the sap—isn't it?—to the leaf and to the outer branches? Is that right?

A. Well, I have never made a study of that, Mr. Burr; I could not tell you about that.

Q. Now, when you say that you use the sap portion only for millwork, did I understand you correctly?

A. Mostly, millwork is made out of the sap portion of the lumber.

Q. That is the light part of the wood, is it, in color?

A. Not only that, but that is the cutting type, more or less. When you get into the heart there is more defects show up in the heart of the log than does in the sap. It is a harder texture.

Q. Now, do you have experience as to which part of the wood will hold paint the best, as regards to the heart and the sap I am referring to?

A. (Pause.) Generally speaking, the sap will. You might find some that has more sap than others and some might class it as——

Mr. WHEAT. If your honor please, I move that that answer be stricken out as not responsive to the question. The question was whether or not the witness has had experience.

Mr. BURR. That is true.

1589 Mr. WHEAT. And I think that question can be answered by yes or no.

A. No. I am not a paint expert.

Mr. BURR. What?

A. I am not a paint expert; no.

Q. Do you in connection with your business post yourself as to the paintability of different parts of the wood?

A. No; I do not.

Q. You do not?

A. No.

Q. Now, do you know whether or not the product that you get out in the way of millwork must by the consumer in the ordinary instances be painted?

A. Not always; no.

Q. Beg pardon?

A. No.

Q. You think a sash and door is quite apt to be left unpainted, do you?

A. Sometimes they might oil it.

Q. Beg pardon?

A. Sometimes they might oil it.

Q. They may oil it?

A. They may make an oil finish.

Q. Now, in connection with your business, is it part of the manufacturer's duty to ascertain whether or not he is selling

1590 something that does not take paint and oil well, or whether he is selling a product that really will take paint and oil properly when it is installed for use? Is that part of your business?

A. I do not go out and do that myself, Mr. Burr.

Q. Yes; but your company has to know whether you are selling something that will hold paint and oil, or whether it won't; isn't that true?

A. We make the product according to the specifications. We do not tell them about paint.

Q. Of course not.

A. We do not make that study. We presume that the painters know that line of business, not ourselves.

Q. Well, now, what part of the forest are you familiar with in the West?

A. What part?

Q. You are familiar with the forest in Idaho, are you?

A. I have lived in Idaho; yes.

Q. And you have studied the forests in Idaho, have you? You are familiar with the trees and the timber and the forest products of Idaho, are you?

A. I have not made a study of that, excepting I have been in them all my life.

Q. I do not mean a technical, botanical study of them. You
1591 have studied the forests of Idaho from the practical standpoint, have you?

A. I have worked in them.

Q. And you have made a study of them now, haven't you?

A. It is accord'g to how you mean. What do you mean by study, Mr. Burr? I do not understand.

Q. In your answer, what you mean, you have made a study of the trees, have you? You have not gone through the forests and looked at nothing, have you, that is a certainty, that's a cinch?

A. If I go down to buy lumber manufactured from logs, I generally go out in the timber to see what kind of logs that will produce, the shop type.

Q. You are familiar with the trees in the pondosa forests, are you?

A. To a certain extent; yes.

Q. And you know what a pondosa tree is; they are cutting them every day, are they not?

A. I know the lumber; yes.

Q. And you have gone out there and given them your attention; is that true?

A. Let me correct you there.

Q. Yes. Please do.

A. Up to the present time our company has not manufactured lumber. We are now, some, but we have been remanufacturing lumber. We have bought our lumber.

1592 Q. You have bought your lumber?

A. And bought it on grades and manufactured different articles from the grades we bought.

Q. I see. And in that connection you have gone into the woods, and have been in the woods considerably in Idaho, have you?

A. I went and looked at timber, and I would buy the lumber to be produced from this timber on grades, and I would not base my estimate from the logs principally. It was from the manufactured lumber that came from them.

Q. Where else have you visited the forests besides in Idaho? Any other parts of the country?

A. In adjacent—around Spokane.

Q. Now, is the Pinus ponderosa a uniform timber, or does it vary considerably?

Mr. WHEAT. May I ask whether that is limited to the Pinus ponderosa of the Spokane area?

Mr. BURR. Yes. It is limited to his experience and as to which he has testified; that is all.

Q. Please confine yourself, sir, to your knowledge of the forests.

A. There is variations in the growths of ponderosa pine.

Q. To what extent is the variation, what is this departure, in what qualities?

1593 A. There are certain trees—certain parts of it—that you can get more what we say shop lumber and factory lumber out of than others. It would be a better texture.

Q. I see.

A. You can get some trees produce the fancy finish, and other trees are not so good.

Q. Now is there a variation in the trees as you have observed them of the ponderosa species as regards color?

A. (Pause.) Yes. There is some variations.

Q. Is it a variation between the color of the heart and the sap of the ponderosa tree?

A. Yes.

Q. Is that more or less marked than the variations of the Idaho type lumber?

Mr. WHEAT. Now, if Your Honor please, this gentleman has testified that he never uses Idaho white.

Mr. BURR. Oh, no; he has not.

Mr. WHEAT. He stated that he made millwork of cottonwood and spruce and occasionally white pine, I think he said.

Mr. BURR. I think he did say occasionally.

Examiner DE BRULER. That is my recollection, what he said.

Mr. BURR. Will you read the question, please?

(Question read.)

A. We have not used Idaho to the extent that I would be competent to testify whether there is as much variation as there is in ponderosa.

1594 Q. Is there much variation in the ponderosa tree with regard to the amount of heart and sap in the young tree, percentage?

A. Yes. There are some trees have more heart than others.

Q. And would that be true of trees about the same age and size, would some vary considerably?

A. Yes. I think you will find there is variation in different trees.

Q. Now, is there much variation in the ponderosa trees as to the amount of resinous, the pitchy substances, that there is to be found?—will you read the question, please?

(Question read.)

A. There is some variations, yes, in that.

Q. Well there is quite a considerable variation, would you say?

A. Well, in just what amounts I could not say. There is some variations, I would say.

Q. Are you familiar with the so-called Tokoa district in Idaho?

A. Yes.

Q. Now have you visited that district?

A. I used to visit it quite often. Not so much lately.

Q. Well, what is the characteristics of the ponderosa there?

A. What do you mean by characteristic?

Q. Well, is it a soft or a hard ponderosa?

1595 A. I must say the texture is very good, soft, a nice good texture for the manufacture of millwork.

Q. Do you regard that as of a superior character of ponderosa, that which grows in that section, in that district?

A. I would say a very good quality; yes.

Mr. WHEAT. May I ask, Mr. Examiner, whether the California white-pine industry is being tried on the Tokoa district, and others around Spokane, Washington? Frankly, Mr. Burr, I fail to see the pertinency of this line of testimony.

Mr. BURR. I am about through the examination, and I would say for the examiner's benefit that the species of Pinus ponderosa, in my judgment, is a species which is in interest here in two respects. In the first place, the species is in interest for the reason that the Commission's complaint alleges that it has been misnamed. Then it is of interest here, also, for the reason that the amended complaint alleges that that misnaming is of detriment to five different classes of the public. The one is the consumer, another is the manufacturer of the same type of lumber made in the Pacific Northwest, and not misnamed according to the theory that is embodied in the complaint, and called pondosa instead of a name which embraces the word "white." Then there is also the interest, inasmuch as it constitutes when sold as California white pine, according to the theory embraced in the complaint, unfair competition against not only the pondosa

1596 wood but also the wood which is manufactured and sold of the three various white-pine species. So that it seems to me that the character of the lumber made from Pinus ponderosa, and the character of the tree, on the side of those that are injured——

Examiner DE BRULER. I think it is very material. Answer the question.

Mr. BURR. And also on the part of others.

Examiner DE BRULER. I understand it is to prove the characteristics, the different points, in different localities, is that it?

Mr. BURR. Yes, sir. And one of the things that we have alleged in the complaint is that the Pinus ponderosa varies very widely in three respects: One is that it varies in its wide range; another is that it varies in its stand and character in the same locality; and, thirdly, that it varies in the same tree between heart and sap, more than some woods mentioned in the complaint.

Examiner DE BRULER. I think those questions can be asked to a limited extent. I would not want to go too far into them.

Mr. BURR. Yes. I do not want to go too far in the field, and that was the only district I wanted to ask about. I think I am through with that, practically.

Q. Will you read the last question?

(Question and answer read.)

Q. Now, there are other sections, would you say, within the
1597 district that you have become familiar with that are not as good as the Takoa district as regards to the character of the pondosa that is produced. Is that true?

A. It may be just as good for some purposes, but not for millwork.

Q. Not for millwork?

A. Yes.

Q. What are the characteristics that you need for millwork; what do you seek to find in the Pinus ponderosa you use for millwork in a high degree?

A. You want soft, high-textured wood, with not much grain to it.

Q. With not much grain?

A. Yes.

Q. Have you ever observed the differences between the spring and summer wood in the same annual ring, as having a bearing upon softness; have you ever observed that?

A. The spring and summer wood?

Q. Yes.

A. I do not know as I understand that question.

Mr. BURR. I will withdraw the question, then. I guess that is something that you have not given very much attention. All right. You may step down, sir.

1598 Cross-examination by Mr. WHEAT:

Q. Mr. Dixon, you really do not know a very great deal, do you, about the sale of Pinus ponderosa as California white pine?

A. Is that the botanical name for what we——

Q. I am asking you whether or not you know. I will reframe the question, Mr. Dixon. You really do not know much, do you, about the sale of what is known in the trade as California white pine?

A. (Pause.) I cannot say that I know so much about it. I know the wood. I know that we compete against it right along. I know that—you understand California makes sash and doors and millwork the same as we do out of something of the same class of wood, and we have——

Q. Now, out of what botanical species is the wood commonly called in commerce California white pine produced?

A. I do not know.

Q. You have not made any particular study of botany, I take it, have you?

A. No.

Q. Your interest is, isn't it, more in the quality and utility of the lumber as it comes than in the tree?

A. That is it.

Q. You are not familiar with the wood now marketed as
1599 pondosa under any other trade name, were you? May I say that I think you testified that when you bought this company, in 1922?

A. Yes.

Q. That wood was called pondosa in the market?

A. Well, I think really about that time or may be a little later, somewheres about that time, the wood was sold and looked at as western white pine.

Q. Yes.

A. But I do not think that is sold much that way any more. Anybody that is dealing in the woods knows one wood from the other. When you talk pine, you do not have to go and say mine is pondosa white and that is Idaho white pine. When we are talking about white pine, we refer to it as Idaho white pine. It is not necessary for anybody in the lumber business to go into botanical names. They want the quality of the goods. They do not care what we call it. They can tell by looking at it.

Q. And they are not so much interested in the botanical end of it?

A. No; they are not. They are not interested in that at all.

Q. No.

A. No.

Q. You said that, with only one or two exceptions, you have
1600 not found it disadvantageous in your business to have certain wood whose botanical species you do not know marketed as California white pine. Now, I would like to ask that you give me a specification of exactly what these one or two exceptions are.

A. I would probably have to go in detail a little bit and explain that.

Q. I would like to have you do so, sir.

A. One of our customers—I think it was a couple of years ago—that we used to sell quite a good deal of sash to, I was in there visiting with him, closing up some business matters, and asked why we had not been receiving his sash orders, and he said, "I have been getting sash a little bit cheaper and of a lighter texture, or, I mean, not as heavy in weight as yours." We argued the question a little bit, and I went out and looked at them, and I could not see any difference, practically, in the looks of them, excepting that—he showed me several bundles, and I said, "What do you call it?" I wanted to know where it came from. It came from Texas—I know the concern's name—and they had represented it to be California white pine to him. I could not see much difference. I do not know whether it was sugar pine or not. In fact, sometimes you cannot tell the difference between the woods; at least, I cannot.

Q. Which woods?

A. You take the finished product of a nice soft pondosa
1601 pine and Idaho white pine or the sugar pine, and, after it is manufactured up, I cannot tell much difference between them. Maybe a better man than I can. I cannot.

Q. Do you find that it is equally usable in the market?

A What is that?

Q. Do you find that it is equally usable in the market?

A. Some may use it and some may not. I do not know. I have not been on the retail end back there.

Q. You have not been on the retail end at all, have you?

A. Yes; I have. I want to correct that. I mean back East. I followed the retail business in the city of Spokane for eighteen years.

Q. Now, that is your chief example, is it, of competition between your wood and what you say was California white pine?

A. That was one of the chief examples. I never run into it very much anywhere else. Yes; I believe in Philadelphia, too, I had one example.

Q. Will you just describe that, sir?

A. Well, that—we disputed about that. He claimed it was a white pine and we went out in the works and he said it came from the river mills. I told him it was just the same as ours, and we finally came to the conclusion, we both looked at it that neither one of us knew exactly what it was.

Q. Now, Mr. Dixon, will you describe where the so-called
1602 clears in lumber come from in your pondosa logs?

A. Principally out of the sap.

Q. On the outside of the log, do they?

A. Yes.

Q. Now, where do you get your common lumber?

A. Out of the heart of the log, or out of the small tree.

Q. And is what you have termed shop lumber a lumber which contains a certain amount of knots?

A. Clear cuttings between knots is factory lumber.

Q. It contains knots, though?

A. Yes.

Q. I take it that the grad'g rules provide that there shall be a certain proportion of clear cutting between knots in each grade of shop lumber?

A. That is it.

Q. So that the shop lumber comes from that portion of the log where you would meet the knots, does it?

A. To a certain extent; yes.

Q. Now, how many logs per thousand feet on an average does it take to produce your pondosa lumber?

A. I do not know as I quite understand that question.

Q. How many logs does it take on an average of the pondosa trees to produce a thousand feet of lumber? I am speaking of logs in their technical sense, sixteen-foot lengths, cut from the living tree?

A. Well, I think that varies. You probably had better
1603 get more expert testimony than I can give you. I would generally say, though, that if a man had four log timber, he would have pretty good timber.

Q. Have you any idea about what it runs, an average? If you do not know, just tell me.

A. I would not be competent enough to state.

Q. Well, now, what is clear lumber in pondosa used for?

A. Finish.

Q. Finish?
A. Yes.
Q. What type of finish?
A. I think both outside and inside finish.
Q. Well, what do you mean by finish? I just want the record to show what you mean.
A. Casing and factory lumber, made in doors, and outside lumber——
Q. I am talking about clears?
A. Yes; I am talking about clears.
Q. You do not cut up clears for factory lumber?
A. Sometimes I do; yes.
Q. Do clears call for a higher price than the so-called factory or shop grades?
A. They do usually; yes. Not always, they have lately.
Q. How long have they sold for a higher price than the shop grades?
1604 A. How long have they?
Q. Yes. How long have the clears of the pondosa logs sold for a higher price than the shop grades?
A. Well, the clears always sell for more, but I misunderstood your other question. I thought you asked me if we cut up clear lumber into factory lumber. I told you sometimes we did.
Q. Then I asked you whether or not the clear lumber *did not sell* for a higher price than the shop grades.
A. Oh, it always does. Clear lumber always sells for more than shop grades, particularly before it is manufactured. Usually shop grades, after it is manufactured, generally sold for——
Q. You were buying from a manufacturer here in Spokane?
A. Yes.
Q. You would pay more, would you not, for the clear grades of lumber than for the shop grades?
A. Oh, yes; sure, anybody would.
Q. Then it would follow, would it not if you were making and remanufacturing, cutting up lumber to make doors and sash and millwork, that it would be cheaper for you to cut up the shop lumber, providing you could get your cuttings out of it, than the clear lumber?
A. It would be cheaper if we could buy clear lumber at the
1605 same price, because the knots do not always come to suit us, you understand, but we buy shop lumber because we can buy it cheaper and we can in most cases get up the cuts by watching our shop lumber just the same as in clear lumber.
Q. You do not know that lumber sold as shop grades has more or less cuttings between the knots than that sold as California white pine? I am asking whether you know.
A. (Pause.) I do not know.
Q. Now, is pondosa, so-called, a valuable wood for the uses to which it is ordinarily put?

Mr. BURR. Wait a minute. Do you mean to compare it with something?

Mr. WHEAT. I am asking whether it is a valuable wood in general for the uses to which it is ordinarily put. I am not comparing anything.

A. Yes; it is.

Q. Do you think it in general satisfactorily fulfills the uses to which it is ordinarily put?

Mr. BURR. Wait a minute. I object to that. He has not qualified to prove that he is familiar with the satisfaction of the lumber. In fact on direct examination he proved that he knew very little about the paintability and various other characteristics because, he said, he does not follow it through to that degree.

Mr. WHEAT. I will reframe the question, then.

Q. How long have you been in the lumber business, Mr. Dixon?

1606 A. Practically all my life.

Q. Yes. That is twenty or thirty years, is it?

A. I am forty-seven years old and I went to work in a sawmill when I was fourteen.

Q. You have been manager, have you, of the Western Pine Manufacturing Company for some little time?

A. Eight years. Going on eight years.

Q. How many sash on an average do you produce a day?

A. Do you mean our total capacity, or do you mean what we really ship?

Q. Well, I know that at the present time, and the record, I think we can take judicial notice of the fact, and Mr. Burr, I think, will agree with me, that the lumber market just now is in pretty low condition.

Mr. BURR. I think so.

Mr. WHEAT:

Q. But on the average over a period of years about what do you produce a day in sash?

A. Well, I think—for several years the output, we averaged around three-quarters of a million sash a year.

Q. That would be several thousand a day, wouldn't it?

A. We have run between three and four thousand a day.

Examiner DE BRULER. I do not think it is necessary to follow this up. Ask him your leading question.

Mr. WHEAT:

Q. Now, having sold all these sash, how many million was it a year?

1607 A. Three quarters of a million.

Q. Three quarters of a million sash are sold a year. Is it your opinion that the pondosa lumber from which you produced this sash satisfactorily fulfills the uses to which it is put?

Mr. BURR. One moment. I object to that for the same reason, that complaints as to that sash and lumber, it is not shown that he would get them, and after a building has been sold, and if it does not prove to be satisfactory and durable, does it ever get back to the manufacturer? He has not so proved and I do not believe it does. I do not believe this witness is qualified to answer the question.

Examiner DE BRULER. Can you answer that question?

The WITNESS. I certainly can.

Examiner DE BRULER. Answer it.

Mr. BURR. What is the knowledge of the witness?

Mr. WHEAT. May I ask that the question be read?

Mr. BURR. I take an exception to Your Honor's ruling.

Examiner DE BRULER. Exception allowed.

Q. (Question read.)

A. It certainly does, or we would not be making sash today.

Examiner DE BRULER. Do you know anything about its lasting qualities?

A. I can only testify as far as I know. I know that we
1608 built a house when I was a boy. The house still stands. It was built entirely out of pondosa pine, 30 some years ago.

Mr. WHEAT. Q. Then I take it, Mr. Dixon, that, in your opinion, pondosa lumber sells on its merits for the uses to which it is most fitted by its appearance and quality and utility; is that so?

Mr. BURR. Object to that on the same ground.

Examiner DE BRULER. Objection overruled.

Mr. BURR. Exception.

A. Yes.

Mr. WHEAT. Q. Has there been any material change in the uses to which pondosa pine is put since they changed the name from western white pine to pondosa?

A. I do not think to any great extent; no.

Q. Now, does the trade in general, in your opinion, you dealing with the trade quite largely throughout the United States——

A. Yes.

Q. Does the trade in general——

Mr. BURR. Wait a minute. I object to any such question, trade in general throughout the United States. The witness is not qualified.

Examiner DE BRULER. No; you are not qualified to testify to that.

Mr. WHEAT. I asked him whether he dealt with the trade
1609 in general through the country and he answered yes. I take it that is a perfectly proper question. That is exactly what Mr. Burr asked, as to where he dealt, and perhaps it is objectionable on the ground it has been asked and answered, but, of course, on cross-examination I am entitled to ask it again.

Q. May I ask you this, then? Does the trade in general that you deal with understand the term pondosa and what wood it is that is being sold as that?

Mr. BURR. Just a moment, please. He is asking for the mental state of the buyer. I do not believe he is qualified. He does not personally wait on this trade. If he gets it through other sources of some kind, it is hearsay. I do not think the witness is qualified to answer any such question at all. We have called the retailers back East, and we have called the trade, and we have obviated the necessity at this time of speculative testimony of these men in the West.

Examiner DE BRULER. That is pure speculation.

Mr. WHEAT. I will withdraw that question for the moment as far as this witness goes and reframe the question.

Examiner DE BRULER. Yes.

Mr. WHEAT:

Q. Is the term pondosa in general use in the lumber trade with which you deal?

A. I will have to explain a little bit, if I answer that
1610 question.

Q. Yes; I would like to have you.

A. I do not think that we in our quotations or in our correspondence, I do not think we are particular all the time drawing the line to pondosa or what kinds. We quote them on doors, inside casings, finish, and we quote them on the outside. The customer we have been doing business with, have been doing business for years, and I think they know what it is without writing back East, is the material pondosa or what it is.

Q. You have reorders, then, from customers who have been your customers for years, have you?

A. Yes, sir. There is never a question as to wood.

Q. And they come back year after year for the same kind of sash and doors they get before?

A. Absolutely.

Examiner DE BRULER. Does that show what kind of wood it is when you sell it?

Mr. BURR. You bill it as pondosa, do you not?

Examiner DE BRULER. How do you bill it?

The WITNESS. I do not know as we—I do not think we put a name after it, say this is pondosa sash. Our headline is Western Pine Manufacturing Company. Our customers generally know what we manufacture. We are in the pondosa-pine business, and there
1611 is no question ever raised what kind of wood or anything.

Examiner DE BRULER. What is on your billheads?

The WITNESS. Western Pine Manufacturing Company.

Examiner DE BRULER. Western Pine Manufacturing Company?

The WITNESS. Yes. Manufacturer of sash, box shooks—probably I had better get a billhead. I cannot remember everything that is on it.

Mr. BURR. Doesn't the billhead say pondosa?

The WITNESS. I really forget.

Mr. BURR. You know it does not say white pine?

The WITNESS. Yes, sir; I know it does not say white pine.

Mr. WHEAT:

Q. If you should receive an order from somebody in the East for, say, western white pine sash, what would you send them?

Mr. BURR. Ask him if he ever does receive such an order, not speculate.

A. If there was a doubt in our mind that the customer was expecting a certain kind of wood, we would certainly get in touch with him.

Mr. WHEAT:

Q. Yes.

A. I have in mind one instance where we had a customer up in Massachusetts that we were quoting on hotbed sash, and I cannot remember the details, but there was something that we had the idea that he wanted Idaho white pine, and we took the matter up with him and found out what he wanted.

1612 Q. What did he want?

A. He wanted Idaho white pine, and he had a special use for it, for a special—I don't know what it was, but we furnished it in that wood.

Q. Do you by any chance know what the Forest Service generally calls Idaho white pine; that is, the wood that is commonly termed Idaho white pine? What does the Forest Service call it when they sell the lumber, sell the tree?

A. I do not know. I have never bought any. I do not know.

Q. You do not know whether they use the term in general western white pine for that wood, do you?

A. I have always thought they used Idaho, but that would only be conjecture on my part.

Q. Well, now, in general and laying aside from our thoughts for the moment the present difficulty just at the present moment in the lumber market, is the sale of pondosa lumber in general increasing or decreasing?

A. I have always thought that it is increasing.

Q. Well, now, in your business through the East and Middle West, regarding which you have spoken, do you compete primarily with the southern yellow pines or with some other woods?

A. No; we do not compete with the southern yellow pines. We compete with—our own locality here and California.

Q. And why don't you, why doesn't your wood come in
1613 competition with the southern yellow pine? What is the reason?

A. Why, that is a different texture of wood and not fit, in our estimation, to make the millwork out of.

Q. Now, does your wood come in competition in general with Idaho white pine?

A. I do not think so, like——

Q. It is cheaper in general, isn't it?

A. Yes.

Q. The millwork, the mill-manufactured quality, sells for less money, doesn't it?

A. Yes.

Q. But do you compete with sugar pine?

A. Well, to the same extent that we compete against Idaho white pine.

Q. Do you know whether or not any of the so-called northern white pine, the botanical genus strobus, is in competition with your wood?

A. Well, I think that would be the same as Idaho white pine or sugar pine. We do not have much occasion for them but I have heard of them.

Q. Yes.

A. Not in a competitive way, though.

Q. Now, when you come into your mill—perhaps I had better ask you first, have you used much of any Idaho white pine,

1614 in your mill?

A. Just as I said, a very small amount.

Q. Just a very small amount?

A. To special customers.

Q. Then I won't pursue this question. Do you belong to the Western Pine Manufacturers' Association?

A. I do not.

Q. Do you sell or buy pondosa from or to the Weyerhauser interests?

A. We buy some from the Weyerhauser interests.

Q. What companies? There are a large number of companies in that group, aren't there?

A. There are a large number of companies; yes. We generally place it with the central office, and I don't know—usually they place the orders. Sometimes different mills.

Q. They represent a number of mills?

A. Yes.

Q. Have you ever been in their employ?

A. I never have.

Q. Now, you are not qualified, I take it—I want to get it from some witness, I will say in explanation—you are not qualified to tell us, are you, the cut, the amount of pondosa pine in the inland empire region?

A. I would not be competent enough to tell. It might be more or less a guess. While I do have some statistics, I

1615 might guess but I could not tell you; no.

Q. Now, Mr. Dixon, how many needles are there on Idaho white pine in the bundle?

A. I have never paid any attention. I always thought about five.

Q. Five?

A. Yes. I might be mistaken.
Q. And how many are there on the sugar pine?
A. On the what?
Q. On the sugar pine?
A. I could not tell you.
Mr. BURR. He has never been in the sugar pine woods, he says.
Mr. WHEAT. How many on the Pinus ponderosa?
A. I always thought three, making a complete circle.
Q. Do you know whether there any five-needle pines that are not white pines?
A. I do not know.
Q. You do not know?
A. No.
Q. Do you know of any white pines with other than five needles?
A. I do not know.
Q. Do you know how many needles Pinus monophylla has?
A. No.
1616 Q. You are not really interested in the botany, are you?
A. No.
Examiner DE BRULER. He said he was not, and I do not think it ought to be continued at length.
Mr. WHEAT. By the way, grade for grade, the Idaho white pine and its manufactured products sell for more money than the pondosa and its products, do they not?
Mr. BURR. He has answered that already.
Mr. WHEAT. Has he?
Examiner DE BRULER. Yes; I think he has answered that.
Mr. WHEAT. All right. I think that is all.

Redirect examination by Mr. BURR:

Q. Now, Mr. Dixon, you say you can tell—that the customer can tell by looking at the lumber whether it is satisfactory when he purchases. Is that true? I understand you to say that.
Mr. WHEAT. Now, if Your Honor please, the witness never said anything of that sort.
Mr. BURR. Well, then, I misunderstood him.
Mr. WHEAT. I am confident that he did not. He said that the sale of his wood in large quantities was satisfactory with the trade, and that is the question I asked him.
Mr. BURR. No. You asked him that question, but long before that the witness made this reply, that when the lumber came
1617 the man could tell by looking at it whether it was satisfactory grade, and so forth.
Mr. WHEAT. Yes.

Mr. BURR:

Q. Did you not so testify?
A. I do not remember testifying that way, Mr. Burr. I might have said something like that. We do not go and ship our lumber on approval. We generally think we know what they want. They

buy it on grades. If they want select lumber, they buy it on a certain grade and price.

Q. Yes.

A. And if they want sash, want trim, they ask us for quotations, and we quote them, and there is no argument on the wood or anything like that.

Q. Yes. Now, by looking at lumber, as I understood you, you cannot always tell whether it is ponderosa lumber or whether it is sugar pine. Didn't you so testify?

Mr. WHEAT. He said he did not know anything about sugar pine.

Mr. BURR:

Examiner DE BRULER. You may answer the question.

A. Let me reiterate what I said.

Mr. BURR:

Q. Yes. Please.

A. That there has been times when they claimed it was sugar pine or Idaho pine or pondosa pine, and there is times I cannot tell which it was.

Q. Which of those three varieties it might have been?

A. Yes. They look so much alike sometimes. You

1618 can get those species to look so much alike.

Q. Now, there are differences between species which are similar in appearance as to durability, are there not? In other words, two species might resemble each other and yet have very different qualities in the long run, are there not?

A. Well, that might be the case. I could not say offhand.

Q. Well, there are differences in the reputations of woods as to durability, aren't there?

A. Probably more in the reputation than actually.

Q. Than in actuality?

A. Yes.

Q. But you are still of the opinion that there are differences in the durabilities of woods, aren't you?

A. It is according to what you refer to. Do you mean hardwoods and softwoods?

Q. Yes; between the hardwoods there would be probably differences, but you are not an expert on hardwoods, I take it?

A. No.

Q. Now, there are differences between the characteristics of woods that are based upon their constituents, what they are made of—woods are made of different substances, are they not, as a matter of growth?

A. I am not an expert to know in that line.

1619 Q. But by looking at a wood you would not be able to tell whether it had durability or not, would you?

A. You can tell if it is properly handled, if it is properly dried and properly taken care of.

Q. What do you mean by properly taken care of?

A. Well, I think any kind of wood should be taken care of, whether it is put in sash or casing.

Q. What do you mean by taking care of; you mean painting, do you?

A. Yes. And then it should be taken care of before it is put in the house. It should be warehoused, and such as that.

Q. Well, after it is installed in place, it should be painted in order to get the necessary durability, in your judgment, should it?

A. Yes.

Q. Now, that house that you lived in, was it in Spokane?

A. No. It was Idaho.

Q. Beg pardon?

A. Idaho.

Q. Whereabouts in Idaho?

A. Nes Perce County, Idaho.

Q. Is that up in the Panhandle?

A. Oh, no. That is south.

Q. South.

1620 A. Out from Lewiston.

Q. Is that an irrigated country?

A. No.

Q. Is it dry country?

A. I would say it was very wet, sometimes.

Q. What is the rainfall there; do you know?

A. I could not tell you as to the rainfall; no.

Q. I believe you testified that pondosa pine is cheaper on the market than Idaho white pine. Is that true?

A. Generally speaking, I think that is a matter of record.

Q. Do you know why that is?

A. Do I know why that is?

Q. Yes.

A. I would only have to give you my views.

Q. Yes.

A. That would be that Idaho has had a reputation for years and it was the same as northern pine, what we used to call northern pine, from Michigan there, and some people just get used to using it, and they want it.

Q. Northern white pine has the reputation for high durability, has it not?

A. I do not know.

Q. You do not know?

A. I could not answer that.

Mr. BURR. That is all.

1621 Re-cross-examination by Mr. WHEAT:

Q. By the way, Mr. Dixon, just one or two questions. What is the climate generally at Nes Perce? What is the altitude of Nez Perce, where you said you lived?

A. I believe it is 2,800 feet.

Q. And is the climate, is that a nice mild climate, or is it a rather severe climate?

A. It is a rather severe climate, I would say. A little more severe than Spokane.

Redirect examination by Mr. BURR:

Q. You mean severe as to temperature?

A. Yes.

Mr. BURR. That is all.

Re-cross-examination by Mr. WHEAT:

Q. And severe as to wind and rain?

A. Yes, sir.

Mr. WHEAT. That is all.

Mr. BURR. That is all.

(Witness excused.)

1622 GEORGE A. HOLDEN was thereupon called as a witness and, having been duly sworn, testified as follows:

Direct examination by Mr. BURR:

Q. State your name?

A. George A. Holden.

Q. You are with the McGoldrick Lumber Company, are you, sir?

A. Yes.

Q. How long have you been with them?

A. Approximately seventeen years.

Q. In what capacity are you with the McGoldrick Lumber Company?

A. Sales manager.

Q. And how long have you held that position?

A. Nine years.

Q. Were you connected with sales prior to that nine years' period?

A. Yes.

Q. And you were probably on the road for them at that time, were you, in part?

A. Not at that time, but I have been on the road off and on.

Q. Now, the McGoldrick Lumber Company sells princi-

1623 pally what product?

A. They manufacture Idaho white pine, pondosa pine, fir and larch, white fir.

Q. Now, referring to the Idaho white pine and pondosa pine, what proportion, roughly speaking, would you estimate your company sells of each, referring now merely to the pines?

A. Do you want percentage or footage?

Q. Yes. Approximate it.

A. Well, we perhaps sell each year about equal amounts of Idaho white pine and pondosa pine.

Q. And the Idaho brings you in a little more revenue than the pondosa, because it is higher in price?

A. Yes.

Q. Now what is the nature of your sales; is it the ordinary lumber trade, or do you make sash and door millwork?

A. We do not make millwork to any great extent. We are principally engaged in the selling of lumber.

Q. Now your ponderosa or pondosa sales that you say go under the name of pondosa entirely—are they?

A. Yes.

Q. Do you ever get orders for white pine?

A. You mean merely white pine, without——

Q. Yes. Do they ask for white pine?

A. Yes.

Q. And you furnish them Idaho white, do you, or do you
1624 write and find out?

A. That depends on the territory. For instance, if we get an order here anywhere from, we will say Missouri or Kansas, in that territory down there, and it says white pine, in quoting we call attention to the fact that we are quoting on pondosa pine. If they send us an order for white pine, we write and find out whether they want pondosa white pine or Idaho white pine, because they do not seem to know the difference down there. They call it Idaho white pine, California white pine, Arizona, or whatever it is.

Q. Then when you get an order, generally speaking, for white pine, you consider what the man generally understands in that locality, is that true?

A. That is true; yes.

Q. Are there any localities when you get an order for white pine you are unable to tell whether they mean Idaho or whether they mean pondosa?

A. Yes. That is true.

Q. Where are those localities?

A. Well, I would say principally in Missouri, Kansas, Oklahoma, that district there.

Q. Then when you get an order from that district, what procedure is followed by the sales force of your company?

A. Well, we confer with the customer and have a definite understanding of what he wants. We do not ship anything
1625 until we know that the customer knows what he is going to receive and what he wants.

Q. And sometimes it is one and sometimes it is the other, is that true?

A. That has happened; yes.

Q. In those localities do you have competition from so-called California white pine?

A. Very largely; yes.

Q. And do you find that the use of the word white in connection with California white pine products is a handicap to your pondosa?

A. Yes; I think it is.

Mr. WHEAT. May I ask that that answer be stricken out until I have opportunity to object to the question?

Mr. BURR. I will consent to that.

Mr. WHEAT. I desire to object to the question in that form unless the witness is asked specific instances. We are here with a large industry through a large portion of the West, being tried for a claim of fraud and deceit, and we are entitled to know in what way we are complained of and the complainants, whoever they may be.

Mr. BURR. I do not think the word fraud has been used, if the examiner please.

Mr. WHEAT. It is the word deceit, and in the trade commission the word fraud is very frequently used in similar cases, and
1626 we are entitled, we believe, in order that we may produce the testimony to meet these questions, to have specific instances only and not witness' mere opinion stated.

Examiner DE BRULER. Read that question.

Mr. BURR. I will withdraw that question for a moment and lay a little broader foundation.

Q. In connection with your work as a sales manager do you have occasion to do any advertising; does your company advertise?

A. To some extent; yes.

Q. And they occasionally insert an advertisement in the trade journals or the newspapers, do they?

A. Yes, sir.

Q. Do you have a share in making recommendations and forming the policy of your company as to advertising?

A. Yes.

Q. Do you have an advertising agency at all?

A. No.

Q. Do you have occasion, then, in your department to frame those advertising insertions?

A. Yes.

Q. Do you yourself write the text of advertisements on occasions?

A. No. To some extent. Just, for instance, one paper, for the American Lumberman, they prepare our advertising
1627 for us, subject to our approval, but outside of that the small amount of advertising we do we prepare in our own office.

Q. Now, in connection with that work do you have occasion to study the effect of the phraseology which you use in your advertising upon the prospective buyer whom the advertising is intended to appeal to?

A. Well, our particular line of advertising is not directed to the consumer.

Q. No; it is directed to the——

A. Wholesaler.

Q. The buyer, is it not?

A. Wholesaler, or the men, largely, to whom we sell our lumber.

Q. And in connection with that you regard the phraseology of your advertising as being of some importance to you?

A. Yes.

Q. And do you have occasion to consider the question of how the advertisement can be worded so as to appeal to the buyer and make him buy from you rather than from some other manufacturer of lumber?

A. Well, we usually have our advertisements, the wording and so forth, conform to the Western Pine Manufacturers' Association.

Q. As to terminology?

1628 A. Yes. And further than that we do not go much into detail except to say our name and our location and our capacity and the woods we produce, and that is practically the extent we go to in our advertising.

Q. Well, now, do the salesmen travel part of the country?

A. We have some salesmen traveling the West; yes.

Q. Do they report to you?

A. Yes.

Q. Do you have occasion to study that they—do they come back to Spokane and meet you here occasionally? Do you have occasion to study with them their problems as to competition and as to selling in disposing of your product for you?

A. Yes.

Q. And do you ever travel yourself in this manner?

A. Yes.

Q. Do you call upon the trade when you have an especially important buyer, or where there is a problem involved, do you help your retailers?

A. I very seldom call on the trade, no, because our sales outside of one or two territories are usually through wholesalers, and we call on the wholesalers and they in turn call on the trade. Occasionally we go into a retailer's yard with the wholesale man.

Q. Their customers?

1629 A. Yes.

Q. And sometimes are you desirous of getting an outlet through a different wholesaler?

A. That may be true; yes.

Q. In that case you might call upon him, is that true?

A. Yes; we might possibly call upon him.

Q. In connection with that work, have you had occasion to study the effect of the use of the word white pine on the part of ponderosa products competing with you?

Mr. WHEAT. May I now interpose again my same objection. These questions, if the examiner please, have all been leading up to what I was expecting to be Mr. Burr's question.

Mr. BURR. Yes.

Mr. WHEAT. Mr. Burr says, do you have occasion to call on people? The witness says, we may call on people, and I expected Mr. Burr

would ask him, have you called on people, have you instances of this matter, but instead of that he has repeated the same question, whether or not there is some tendency in this way. I say we are entitled to the specific instances so that we may inspect them and cross-examine them as to that.

Examiner DE BRULER. Just read that question. What is the question.

(Question read.)

Examiner DE BRULER. You may answer.

1630 Mr. WHEAT. Exception.

A. Yes.

Mr. BURR:

Q. Now, what effect does the use of the word white in connection with California white pine have upon your ability to sell pondosa pine, if any?

Mr. WHEAT. Now, if the examiner please, clearly that——

Examiner DE BRULER. Let me ask you, do you know what effect that has?

The WITNESS. I think so. That is, I have some idea; yes, sir.

Mr. WHEAT. Clearly, Mr. Examiner, that is the very question that this Commission is going to be called upon to decide, and this Commission can only decide that question on facts which are brought before it, and it has been held already in this case by the examiner formerly sitting in the case, by a ruling on page 1028 of the transcript, that the witness may state the facts, but not merely his opinion in regard to any tendency.

Examiner DE BRULER. There is not any doubt about that. Just state the facts upon which you base your statement. Give the facts.

A. We come into instances where wholesalers have told us that retail yards have in instances where the article may have specified——

Mr. WHEAT. May I ask whether this witness is to be allowed to go into hearsay testimony?

1631 Examiner DE BRULER. Are you talking about something that you personally know now?

The WITNESS. What has been told to me, yes, upon occasions.

Examiner DE BRULER. By your customers?

The WITNESS. By people who we sell lumber to, or who sell our lumber back East.

Mr. WHEAT. Of course, I shall object to that as hearsay. We have no opportunity to meet these gentlemen on the stand and cross-examine them and have their background.

Mr. BURR. If the examiner please, I will ask the witness in connection with that answer to confine yourself to your relations with the prospective customer.

Q. Does your ability to sell to these jobbers, is that affected by the name white in connection with ponderosa products that are sold

as California white pine, Arizona white pine, and New Mexico white pine?

A. We consider it so.

Q. Now, why do you consider it so?

Mr. WHEAT. Before we go further, may the record show my objection to that question and any line of questions that does not go to definite instances mentioned by the examiner in his question to the witness, goes to all such questions, and I will ask a ruling on that.

Mr. BURR. If the examiner please, in my judgment that goes to the weight very strongly. I think it would be much more
1632 entitled to great weight if he were able to say on the 27th day of January I called with so and so upon Mr. A and so and so, and on such another date I called upon this other man. That goes to the weight, and true it would be very much stronger, but I do say that this man with his long experience in this trade is competent to testify as to the competition difficulties that he encounters when he goes to see these men, even though he is not able to put his finger on the day and the date and the man.

Mr. WHEAT. I still press my objection, Your Honor, to any question that does not deal with specific instances and facts so that we can have an opportunity to look into them. As a matter of fact, this Commission is not interested in occasions of this sort. It is interested in facts, and facts alone. On those facts it must make its own determination of the very question as to this man.

Examiner DE BRULER. What was the question?

(Question and answer and question read.)

Examiner DE BRULER. In answer to that, state the facts.

The WITNESS. Well, he asked me why I considered that, so I am entitled to give my own reasons.

Examiner DE BRULER. All right. Give them.

Mr. WHEAT. May I have the record also show, this is one of the main reasons, including the one I stated, I feel I must press this objection, because there are so many other factors
1633 regardless of the name that enter into the marketing of lumber, there are general economic conditions, freight rates, and different conditions of manufacturing lumber, and if a sale is lost it is not shown that the name has anything to do with the loss.

Examiner DE BRULER. Let the record show your exception. You go ahead and answer the question the best you can.

A. Some territories formerly white pine was sold from out of the North and from Maine as white pine.

Examiner DE BRULER. When was that?

A. That was a great many years ago, before my time. But before the manufacturers, we will say, came out to the West to manufacture this Idaho white pine, consequently over a large territory I think white pine was known as white pine. It was not known as northern white pine or Idaho white pine, or California white pine,

or Arizona pine. It was known as white pine; true white pine. In territories where they have used white pine as white pine, if we find that—where we must—we are not allowed to quote white pine except as Idaho white pine, or Pinus ponderosa as pondosa pine. Frequently where we quote pondosa pine where a customer has asked for white pine, we are at a disadvantage because some other district quotes California white pine, which is the same species as our pondosa pine.

Examiner DE BRULER. Have you run across that?

1634 The WITNESS. Yes, sir.

Mr. BURR. Q. How many instances?

A. That I cannot say but that comes up now and then in exchange of correspondence and inquiries, and so forth.

Q. Over what length of time has that been?

A. Well, I would say within the last thirty days, perhaps.

Examiner DE BRULER. Well, what instance was it?

The WITNESS. Would you like to——

Mr. BURR. Q. Did you bring into the courtroom this morning a letter?

A. Yes, sir.

Q. And you handed it to me during the course of the examination of another witness, did you?

A. Yes.

Q. I will hand this to you and ask you to refresh your memory from that letter, if you can, and answer the question?

A. Would you like me to read from the letter, Mr. Commissioner?

Examiner DE BRULER. Just state the facts.

Mr. WHEAT. I have not seen the letter.

Examiner DE BRULER. Pass it to him.

Mr. WHEAT. Why don't you state what the facts are?

Examiner DE BRULER. What are the facts?

The WITNESS. I would rather read the letter. It is more clear. I do not see any reason why it could not be read as

1635 well as told.

Examiner DE BRULER. Just wait a minute and you can state the facts.

Mr. WHEAT. I will look at this letter.

Examiner DE BRULER. You look at the letter.

Mr. WHEAT (examining letters). I would be very glad to have these letters put in the record. I think they are excellent. I would like very much to have that done.

Examiner DE BRULER. That may be done.

Mr. BURR. If the examiner please, with that understanding, I now offer for the record a letter of Putnam & Jones, December 13, with a carbon copy of reply of the company of the witness of December 16, followed by the letter of the Putnam & Jones Company in rejoinder, being dated December 23, 1929, and ask that the same be

received as Commission's exhibit for the record number 33, with the understanding that the originals will be returned to the witness and that the final exhibit shall be the photostat copy.

Examiner DE BRULER. Commission's exhibit 33 admitted.

(Thereupon said letters were received in evidence as Commission's exhibit no. 33-A, 33-B, and 33-C admitted; and photostatic copies thereof are transmitted herewith.)

Mr. BURR. Q. Now, have you found in your experience as sales manager that there is any disadvantage to your company as regards its sales of Idaho white pine by the use of the
1636 term white as part of the trade name of ponderosa products?

Mr. WHEAT. Before the witness answers——

Mr. BURR. Q. I am not asking for your opinion now. I am asking for your experience and the facts of any trade disadvantage that you are placed under.

Examiner DE BRULER. Just state what you know about it.

Mr. WHEAT. May the witness be advised by the examiner that he should state the instances rather than some general opinion?

Examiner DE BRULER. Yes.

Mr. BURR. I think, if the examiner please, that he may summarize these instances.

Examiner DE BRULER. Just state the facts, what you actually know about it.

A. We feel that we are at a disadvantage.

Mr. WHEAT. Now, Mr. Examiner——

Examiner DE BRULER. That may be stricken.

A. If you ask me for specific instances, that is, dates, company, and so forth, I am unable to give them to you, because I do not know.

Mr. BURR. If the examiner please, if he has experienced this on several occasions the fact that part of the facts have slipped from his recollection does not mean that his experience is not a matter of facts.

Mr. WHEAT. Mr. Examiner, may I ask, then, that he be
1637 advised not to speak of those things which have slipped from his recollection, but to speak only of those things as to which his recollection is clear?

Mr. BURR. Yes, sir; those things as to which his recollection is clear.

Examiner DE BRULER. Just speak to the facts in your trade; what are the facts?

A. Well, the facts are that California white pine has been used, we feel, where Idaho white pine or white pine may have been specified.

Mr. WHEAT. Well, now, if Your Honor please——

Examiner DE BRULER. You say you feel, but——

A. Well, our connections back East at different times have told us——

Mr. BURR:

Q. Never mind that now. Just a moment. Do you find that in marketing your Idaho white pine there is a difficulty that is based upon the fact that the other man is selling so-called California white pine?

A. We do; yes.

Q. Now, can you be more full in your answer on that point, how you know that that is the case?

A. Well, we know it is the case because we have had many conversations with people that are selling the lumber.

Mr. WHEAT. Now, if Your Honor please——

Mr. BURR:

1638 Q. Do you have conversations with the man who buys the lumber?

A. You mean the ultimate consumer?

Q. No. The man who buys from you?

A. Yes; we have.

Q. You have contracts and relations with your purchaser, do you?

A. That is true; yes.

Q. And do you or do you not learn from him that the California white pine is enabled to sell partly because of the fact that it is named white?

Mr. WHEAT. Just a moment, before the witness answers. The witness should really, I think, be advised that he is a little quick on the trigger.

Mr. BURR. I am agreeable to the objection preceding the answer.

Examiner DE BRULER. You may answer over objection. Objection noted, and you answer.

Mr. WHEAT. Exception.

A. Yes; we feel——

Examiner DE BRULER. Not what you feel.

A. We believe, then——

Mr. BURR:

Q. Do you find that to be the case?

A. We find that to be the case.

Mr. WHEAT. May I ask what he finds to be the case?

Examiner DE BRULER. Has that been your actual experience

1639 in the trade?

A. That has been our actual experience, although I am unable to give specific dates and instances, because in these things with the trade I did not note down on such and such a date I had such and such a conversation. You form your opinion of the things you have learned.

Examiner DE BRULER. That is what you did?

The WITNESS. Yes.

Mr. BURR:

Q. What is the nature of the experience that you have testified to; is that based upon conversations with the buyer on occasion?

A. The things that I have in mind at this time are based on conversations with wholesalers who have in turn sold our product to the retail yard. Those same wholesalers may have sold Idaho white pine and are selling California white pine, may sell the same two woods.

Mr. WHEAT. On the strength of this answer I move that the answers that the witness has made be stricken from this record. He states what he has stated about his actual experience is based on conversations with wholesalers. Now, that certainly is not actual experience. That is the merest of hearsay, and we are entitled to have these men, to meet concrete facts on which we can cross-examine and on which we can call other witnesses.

Examiner DE BRULER. I will let the record stand as it is
1640 and note an exception.

Mr. BURR:

Q. Now, has anyone on occasion said to you that he preferred to buy a cheaper product that was equally with Idaho white pine designated white pine?

A. Would you ask that question again, please?

Q. Read it, please.

(Question read.)

Examiner DE BRULER. Answer that only if you have a specific instance in your mind.

A. No.

Mr. BURR. If the examiner please, I would object to reducing that to a specific instances, for this reason, that unquestionably goes to the weight, but it seems to me that it is entirely possible that down through the years when this man waited on customers and other connections, when he has called with his salesmen upon certain parties, that might have occurred five hundred times and he not be able to testify to a single instance, and the fact that he is unable to testify to a single instance may only mean that it happened so often that it does not stick in his memory.

Examiner DE BRULER. Let me ask him this, then: Do you know, as a matter of fact, there are instances of that kind?

The WITNESS. No, sir.

Examiner DE BRULER. That is what I mean.

1641 Mr. BURR. I see.

A. Because that could——

Mr. WHEAT. May I ask that the witness——

Mr. BURR. I think he has a right to explain his answer. A man always has a right to answer yes or no, and then explain why he has answered yes or no.

Mr. WHEAT. When he states a fact, I do not know of any such instance.

Mr. BURR. I will ask you why do you not know?

A. Because we do not in the manufacturing proper, handling and selling the product, we do not come in contact with the retail yard who ultimately sells that product to the consumer. We come in contact largely with wholesaler who buys and sells whatever the retailer—buys whatever the retailer buys from him.

Mr. BURR. Will you read the question prior to my last question?

Examiner DE BRULER. Yes; read the question and see what that is.

Mr. BURR. I think the witness misunderstood the question.

(Question read.)

Q. Now, I am referring to instances of the wholesaler or jobber who is buying from you; have you had occasions, although the specific instance has left your recollection, have you had specific in-
1642 stances in your experience where the Idaho white pine that you were trying to sell has been refused because the buyer preferred to have a product that was cheaper but was still known equally with Idaho white pine as a white pine in its trade name?

A. No; I cannot say that I—that such is the case.

Q. In other words, you do not recall whether that has ever occurred; is that true?

A. No; I do not.

Q. I am not asking for a specific case, but you are not sure whether that has ever occurred?

A. I feel that it has, but I have nothing concrete to base my thoughts on.

Q. I am now saying, do you know whether or not it has occurred, even though the instances have slipped from your memory or recollection?

A. I do.

Q. It has occurred?

A. Yes.

Mr. WHEAT. If Your Honor please, the witness says he felt it occurred and now he comes back and says it occurred. I believe that the witness' testimony along this line is all subject to objection because he has shown his entire ignorance in the matter, and that it should be stricken out.

Mr. BURR. If the examiner please——

Examiner DE BRULER. I will let the record stand as it is,
1643 with exception noted.

Mr. BURR. Now, Mr. Holden, how long has your ponderosa product been known as pondosa pine, that is, that sold by your company?

A. I believe approximately five years.

Q. What did you designate your ponderosa product prior to about that time or to about five years ago?

A. Western white pine.

Q. What led you to make the change in name of that product?

Mr. WHEAT. May I here interpose what I consider to be the most fundamental objection, perhaps, of this whole case. Some of the producers, Mr. Examiner, of lumber from the wood, the tree Pinus ponderosa, have seen fit to change the trade name of that lumber as it goes to the trade. Others of the producers of that wood have seen fit to retain the name which the record in this case shows has been used continuously for a period of approximately forty years. The reason why some producers of the wood from this tree at one hearing may have gotten together and changed the name of their wood, are certainly not pertinent to a question whether there is fraud and deceit and misleading, which is the gist of this case, in the use of the old trade name by the respondents from another part of the country.

The question in this case is only the fact, and it is the fact
1644 only. I want the record to show this. Now the fact of the matter of the change of name, of course, can enter, and properly should, I suspect, be brought out in this record, but this Commission throughout its whole history has shown that it deals with facts and it does not deal with conclusions of one set of people in an industry as to the acts of another set of people in the same industry. I think that is absolutely fundamental.

Now the only question in this case that can be determined by this Commission is whether or not the term California white pine as used to designate in the trade products of Pinus ponderosa from a certain area does in fact operate as unfair competition against their competitors who produce true or so-called true white pine. Now I say this, the mere fact that Mr. Brown has divorced his wife is no reason to argue that Mr. Greene should go and do likewise, and this action is brought against the California white pine people.

Mr. BURR. I object to all this argument going into the record.

Mr. WHEAT. I consider it is very important.

Examiner DE BRULER. Let him state the objection.

Mr. WHEAT. I have stated the objection.

Examiner DE BRULER. I think the objection has been stated fully enough.

Mr. WHEAT. It is fundamental, Your Honor. That is why I stated it fully.

1645 Mr. BURR. I would like to state that this is merely asking the Commission to amend the complaint. We have alleged, if I recall correctly, that change of name and something about why it was made.

Examiner DE BRULER. That is my recollection of it.

Mr. BURR. And this is in the nature of a motion to strike, and I think it ought to be overruled.

Examiner DE BRULER. I think that is covered.

Mr. WHEAT. May I add to the record this, in our opinion, is not in any sense a motion to strike. It is in the sense that if the complaint

said white is black I do not take it that you would receive evidence on that matter. The question is whether or not the California white-pine people are deceiving the public and whether Mr. Brown has changed the name is no——

Examiner DE BRULER. Just read the question, please.

(Question read.)

Mr. WHEAT. I ask that the witness be advised to state the facts again.

Examiner DE BRULER. Just state the facts.

A. We sell all of our products under whatever name is adopted by the Western Pine Manufacturers' Association, of which we are a member; and when they changed the name to pondosa pine we, of course, automatically changed our name under which we were selling that wood.

Q. Was your company a party to litigation brought by the
1646 Federal Trade Commission about that time with regard to the name of the product that you were selling—the ponderosa product?

A. I believe it was.

Q. Did that have anything to do with the change of name? Was there a committee appointed at that time, as a result of those proceedings?

A. Well, my recollection is that a committee was appointed by the Western Pine Manufacturers' Association, who afterwards adopted the name of pondosa pine, and nationally advertised it, and it has since been sold only as pondosa pine.

Q. That was the result, in part, was it, of certain investigations that were undertaken about that time in the Inland Empire by the Federal Trade Commission?

Mr. WHEAT. If the witness knows.

Examiner DE BRULER. If you know.

A. I think so.

Mr. WHEAT. I ask that that be stricken out as hearsay.

Examiner DE BRULER. I will let that answer stand. He seems to be pretty well advised on the situation.

Mr. WHEAT. Exception.

Mr. BURR. Q. Do you remember who were members of that committee?

A. My recollection is that Mr. Geddes, of the Craig Mountain Lumber Company at Winchester, Idaho, was chairman, and
1647 who the other members were I cannot say. I do not recall accurately enough to give their names.

Q. And that committee reported in 1925, early in 1925, or was it 1924, if you recall?

A. I cannot recall. I believe it was 1925, but I am not certain.

Q. Do you know whether since that time the Inland Empire producers of Pinus ponderosa have been designating that species of lumber as pondosa?

A. I believe so, universally.

Q. Your company has not varied from it in the meantime?

A. Not in a single instance.

Mr. BURR. I think that is all.

(Witness temporarily excused.)

(Thereupon an adjournment was taken until 1:30 o'clock p.m. of the same day, Monday, January 20, 1930, at which time the hearing was resumed and the following proceedings were had:)

1648 Docket No. 1620-1669, inc.

SPOKANE, WASH., *Jany. 20, 1930.*

Met pursuant to adjournment, 1:30 o'clock p.m.

Before Ellis De Bruler, examiner.

Appearances: Eugene W. Burr, for the Federal Trade Commission.

McCutchen, Olney, Mannon & Greene (by Mr. Carl I. Wheat), for the respondents.

GEORGE A. HOLDEN resumed the stand and further testified, as follows:

Cross-examination by Mr. WHEAT:

Q. Holden, what has your experience in general been in the lumber industry?

A. Well, it has always been connected with the manufacturing and sale of lumber.

Q. Have you had any experience in the woods themselves?

A. Not to speak of.

Q. And then you are not very definitely familiar with that end of the game?

A. No; not thoroughly.

Q. Do you know of your own knowledge the type of lumber which various of these pine trees and others that you have testified to produce?

1649 A. I should say so; yes.

Q. The Pinus ponderosa produces some percentage, does it, of what is known as shop lumber?

A. Yes.

Q. About what percentage is this territory?

A. Why, I should say eighteen to twenty percent.

Q. And does the Idaho white pine tree produce as much percentage of shop as that?

A. The Idaho white pine tree produces a very small percentage of shop. Possibly 3 percent of the log.

Q. Now, are you familiar with the general uses of the wood sold as pondosa?

A. Yes. I should say so.

Q. What in general are the main uses of that wood?

A. Well, your selects are used usually for inside trim. A certain portion of your selects are re-worked for beveled siding, for use on the outside of the building.

Q. Let's for the record show what [redacted] select?

A. That would be C and better, possibly D. Your selects are divided into three grades, D, C, B, and better.

Q. And those, you say, are the clear grades which you have named?

A. Yes. Those are considered the clear or select grades.

Q. Now, what are the shop grades used for?

A. The shop grades are used for remanufacturing into
1650 frames, window frames, door frames.

Q. Those are boards, are they not, with knots in them but clear cuttings between the knots?

A. That is it. The shop grade is divided into a—we will say—three different grades, number one shop, number two shop, and number three shop, in proportion to the clear cuttings that that particular plank will produce.

Q. And those clear cuttings, after having the knots cut out, are used, are they, for these remanufacture purposes?

A. Yes.

Q. Now, what is the common lumber used for?

A. The common lumber is used oftentimes for sheathing in a building. It is also used in the manufacture of boxes.

Q. That is the lumber with a number of knots so close together or defects so close together?

A. Yes; that is the lower grade your lumber produces; three, four, and five, common.

Q. And your shop grades come out of the part of the log with knots in it, do they?

A. Yes.

Q. First let's go back to your general experience. Where did you begin working with lumber?

A. At the McGoldrick Lumber Company.

Q. In this city?

A. Well, my first year was for a short time at a mill in
1651 British Columbia. Then from there I came down here and was here ever since with the exception of time out for school and the war.

Q. You have always been with the McGoldrick Company?

A. Yes.

Q. And have you had any direct experience with what we termed in your direct testimony as northern white pine?

A. Only as I have seen it in retail yards.

Q. You have not ever handled it yourself?

A. Never sold it or interested in the manufacture of it.

Q. Now, about when did you say the name ponderosa was adopted for this wood?

A. I thought about 1925.

Q. Wasn't it prior to that? Probably, wasn't it?

A. I hardly think so. That is my recollection, that it was in 1925 sometime. The controversy extended over a period of several months before the name was finally adopted, in discussions, and so forth, but I recollect it was pretty close to 1925.

Q. And up to that time—that is, say, 1922, 3, and 4—this wood was generally sold on the market, was it, as western white pine?

A. Yes.

Q. Do you happen to know, by the way, what term the Forest Service uses in its sale of Idaho white-pine standing timber,
1652 standing trees?

Mr. BURR. I would stipulate that, if you like?

Mr. WHEAT. Yes.

Mr. BURR. I will be willing to stipulate, if counsel is agreeable, that the regular term that the Forest Service uses in its publication for Idaho white pine in general is western white pine.

Mr. WHEAT. Thank you.

A. That is true.

Mr. WHEAT. That will meet all that line of questioning.

Examiner DE BRULER. That will shorten it up.

Mr. BURR. Will you, in turn, stipulate that our regular term is western yellow pine for ponderosa?

Mr. WHEAT. I understand that it is.

The WITNESS. Western yellow pine for the pondosa and western white pine for the Idaho.

Mr. WHEAT:

Q. Now, you testified on direct examination that universally the Pinus ponderosa from this area is now sold as pondosa?

A. Yes.

Q. Do you know whether the Biles-Coleman Lumber Company, of Omak, Washington, is a member of the association which you mention?

A. They are not.

Q. Do you know how they are selling their lumber as with
1653 regard—first, where is Omak?

A. That is in the north central part of Washington, I would say, above Wenatchee. I don't know how to give you any closer description.

Examiner DE BRULER. In Okanogan County?

The WITNESS. In Okanogan County; yes.

A. I think they marked their products as Omak white pine. I am not certain, though, but I believe that is the trade name they apply to it, as Omak quality white pine.

Q. Did you ever hear of it being sold in very recent periods as Okanogan white pine?

A. No; I do not think so.

Mr. WHEAT. I think I should like to offer that.

Mr. BURR. I shall have no objection if he wants to offer.

Mr. WHEAT. This, if Your Honor please, is a page taken from the American Lumberman and Trade Journal under date of January 11, 1930, showing the advertisement of this Biles-Coleman Lumber Company, Inc. I would like to offer that as respondents' exhibit.

Mr. BURR. No objection.

Examiner DE BRULER. Admitted.

(Thereupon said advertisement was received in evidence as respondents' exhibit no. 24 admitted.)

Mr. WHEAT:

Q. I ask you whether you know whether this com-
1654 pany ever was a member of the Western Pine Manufacturers' Association?

A. I do not believe so. To the best of my knowledge they never were a member.

Q. Is your company, by the way, a member of that association?

A. Yes.

Q. Now, does the trade with which you come in contact in your selling work generally understand that the term pondosa which you now use refers to the same wood that was formerly marketed as western white pine?

A. Yes. I think they very clearly understand that in most territories. I will have to qualify that, because there is a certain district that I do not believe that they are entirely familiar with the differentiation of the different woods.

Q. Now, where is that?

A. Well, I refer particularly to the South Central States, such as Kansas, Missouri, Oklahoma, and Texas.

Q. Those are the ones mentioned in your direct testimony, are they not, as the ones where you had some difficulty in explaining the wood?

A. Yes. I could go further into detail if you would like to have my thought on that.

Q. I would be very glad to.

A. Most other territories were familiar with northern white
1655 pine, Bemidji white pine, and Maine white pine.

Q. May I ask that you stay within your own knowledge?

A. Yes. And consequently they came to know this wood as white pine.

Q. Which wood do you refer to?

A. Well, I am talking about northern white pine or Maine white pine, they called that all white pine, and that, of course, go back many, many years ago, but in the States that I speak of, in Missouri and Kansas, Oklahoma and Texas, I believe their principal source of supply always came from the South and they used southern yellow pine. In the transition of buying, I think California perhaps got

into that territory quicker than we did, selling California white pine, and consequently the trade of that particular district came to recognize, came to call it white pine. You see what I mean. Whether it came from California or Arizona it was sold in there as white pine, and their previous first introduction to that wood was knowing that particular type as white pine. Do you see what I mean?

Q. Yes. Now, you are advertising your pondosa pine, are you not?

A. As pondosa; yes.

Q. Is it usually association advertising, or is it individual mill advertising?

A. It is very largely with our particular company asso-
1656 ciation advertising. We do not do any advertising much, except in certain trade journals as a means of supporting the trade journals. We sell so small a portion of our product now direct to the trade that we do not go out and advertise ourselves particularly for the purpose of increasing the sale of our product, because most of our sales being through wholesalers we cultivate the wholesaler through other means rather than advertising our products through newspapers or trade-promotion work or trade papers.

Q. Do you invoice your Pinus ponderosa lumber as pondosa?

A. Yes.

Q. Exclusively?

A. Yes.

Q. Did you ever receive any orders for western white pine?

A. No.

Q. No orders for that?

A. We have not for a good many years.

Q. Do you know of your own knowledge the amount that has been spent on advertising pondosa pine?

A. I would not be in a position to give the exact figures, but I would estimate perhaps $300,000.00, perhaps a little more.

Q. That is the complete amount for all the advertising of pondosa pine, or just the association?

1657 A. That is just the association I take into consideration. I base that on the fact that I think they spent in the neighborhood of $100,000.00 for two or three years and then had to cut that down. I would say possibly $300,000.00, might be a little more, possibly less.

Q. They are advertising both in the general markets—in the general magazines and the trade magazines, are they not?

A. Yes. Their appeal is usually to the consumer instead of possibly to the wholesaler, such as we aimed to sell.

Q. In general do the advertisements of pondosa pine state the botanical names of the tree from which it is taken?

A. I do not think so. I do not believe it does. You see, pondosa pine has a trade mark, a registered trade mark, and I do not believe

that in their advertisements they refer to the botanical name, although I am not absolutely certain as to that.

Q. You think that more people with whom you come into contact in the trade are acquainted with the quality and character of the wood under the name pondosa than they were when it was called western white pine?

A. No. I would not think so.

Q. About the same?

A. I would imagine practically the same. Possibly a little better advised, because they have been handling it that many more
1658 years and of course their knowledge has probably increased a little.

Q. Forgetting your present slump in the lumber market, did you notice that when the name was changed there was any particular drop in the price of the wood?

A. No; I cannot say that there was.

Q. You do not think that there was any particular lost ground which had to be regained by all this advertising?

A. No; I do not think so. Of course, the reason for advertising was to acquaint the trade with the new name, and, of course, as the advertising went along it was naturally hoped that it would increase the sale of that particular wood.

Q. And it has somewhat increased it, has it?

A. Well, that I cannot say. I have not the exact figures, but I think that possibly sales and production are pretty much the same now that they were in 1925, in pondosa pine.

Q. Now, does this pondosa pine that you sell meet any very active competition from the producers of southern yellow pine?

A. In some territories and in some classes it does; yes.

Q. In general, what is the nature, if you know, of southern yellow pine?

A. Well, of course, I am not in position to speak with authority concerning yellow pine, but——

Q. If you do not know, just answer——

A. We fell that our product is somewhat superior to cer-
1659 tain grades of southern yellow pine; that is, it is lighter in texture, softer in texture, possibly lighter in weight, does not contain as much resin as yellow pine, and is a more select grade possibly than lots of the pine they get from the South now, and in certain classes we find for particular purposes the trade has had to turn to this district for certain of their requirements they used to get in southern yellow pine.

Q. Is this pondosa very largely used for millwork and remanufacture purposes, sash and doors?

A. Yes, sir.

Q. That is rather general over the country, is it not?

A. That is true from all over the country; yes.

Q. What other woods in general are used—what other pines are used mostly for sash and door purposes?

A. Well, you mean not out of pondosa pine? Of course, California white pine is used quite extensively.

Q. And what other bontanical wood?

A. Idaho white pine is used to a certain extent for millwork.

Q. Yes; you said the production of shop lumber from Idaho white pine was three percent?

A. That is true, but at the same time that three percent is used for the manufacture of frames and sash.

Q. Then it does, do I understand, come in direct competi-
1660 tion with white pine?

A. It does. While you do not cut the percentage of Idaho white pine shop lumber in this State, that percentage you do cut is used for the manufacture of door and window frames to the extent that all there is of it is available, don't you see?

Q. And, as I understand it, then, it is in direct competition with your pondosa pine?

A. Yes.

Q. Sells at higher price, does it?

A. Yes, sir; it sells at a higher price.

Q. Is that true in most of the grades of the pondosa; does it sell higher than pondosa pine?

A. That is true; grade for grade it sells higher than pondosa pine.

Q. Do you have any competition between your pondosa and the northern white pine?

A. I would say the northern white pine competes more with the Idaho white pine than it does with our pondosa pine.

Q. Have you run into instances of competition between Idaho white pine and northern white pine?

A. I cannot give you any specific instances.

Q. You cannot recall any?

A. No.

Q. How about sugar pine?

A. We run into competition with sugar pine, both Idaho
1661 and pondosa oftentimes run into competition, usually where they are using the wood for pattern purposes.

Q. That is competition between the Idaho white pine and sugar pine?

A. Sugar pine; yes, sir.

Q. Do they use pondosa for pattern purposes?

A. I do not believe they use pondosa for pattern purposes; no.

Q. Do they use Idaho white pine for pattern purposes?

A. Quite a good deal.

Q. Do you find that the fact, if it is a fact, that Idaho white pine has a very large number of small knots in it interferes with its general use for pattern purposes?

A. Well, of course, I believe that they use more clears for pattern purposes than they do the common product.

Q. By the way, about what proportion of clears does Idaho white pine produce?

A. From eight to twelve percent, depending on whether it is second growth or old growth timber.

Q. Now aside from your clears and your shop lumber, the rest of the production is, of Idaho white pine, what is known as common lumber, I take it?

A. Yes; I think so.

Q. And in general does the Idaho white pine common lumber, grade for grade, obtain a higher price than the pondosa?

1662 A. Yes.

Q. Or California white pine?

A. Yes; either.

Q. About the same as sugar pine, is it, do you know?

A. I am not familiar enough with the prices of sugar pine to say.

Q. Well, if you are not familiar, don't——

A. Exactly, but my understanding is that the selects are about the same as sugar pine and the commons perhaps command a higher price than the commons of the sugar pine.

Q. Whay is that?

A. I believe you will find in your Idaho white pine there are know defects which are smaller than in sugar pine, and consequently it lends itself to uses for those purposes to better advantage than sugar pine. That is my impression.

Q. The knots are small and tight, are they not?

A. Yes; I believe that is true.

Q. Now, in general would you say that number three common Idaho would be about equivalent in character to number two pondosa?

A. The grade is similar in the two woods.

Q. Well, is it true that the Idaho white pine common grades, for the reason of these know defects, are better than the common grades of pondosa?

A. You mean grade for grade?

1663 Q. Yes.

A. Yes; that is true. The Idaho white pine is considered better, grade for grade, than the pondosa pine.

Q. That is because of this peculiar and excellent knot defect?

A. It is because of the peculiar knot defect and the general appearance of the wood. For instance, your white pine, because of its uniform and small knot defect, has a more pleasing appearance than your pondosa pine.

Q. Does it cut more to the tree?

A. I do not believe, as a rule. Of course, in the Idaho white pine you have second growth and old growth.

Q. You are cutting second growth?

A. Yes; to a certain extent. I think that the average run of Idaho white pine will be more logs to the thousand in Idaho than it is in pondosa.

Q. Do you recollect how many it runs in pondosa?

A. I would say the average would be about five logs to the thousand.

Q. That would be fairly good, would it not?

A. That would be. Four and five log timber is very good; yes.

Q. How many logs to the thousand is the minimum size that they log now?

A. That I cannot say. I would say about eight-inch tops,

1664 six- or eight-inch top is the smallest log that they take.

Q. That would be how many logs to the thousand?

A. Of course, that depends on the size of the tree, but your white pine, I think, will run from eight to twelve logs to the thousand, possibly a little less than that in old-growth timber, and more than that in second-growth timber.

Q. By the way, how is your pondosa that is sold to wholesalers resold by them?

A. I am not in position to answer that. I believe that it is sold as pondosa pine.

Q. You are not sure, are you?

A. I have never seen the invoices to the trade, but my personal acquaintance with the wholesalers that we sell wood lead me to believe that they do not misrepresent the product to their trade.

Mr. WHEAT. I have not asked anything of that sort and I will ask that that particular answer be stricken out as not responsive.

Examiner DE BRULER. I will let it stand. His answer shows how much he does know.

Mr. WHEAT. I want it understood that his conclusion as to whether or not it was misrepresentation is objected to.

Q. Well, aren't you interested in how it is resold by your wholesalers?

1665 A. Yes; we are. We are very much interested in that.

Q. And you make a study of that matter?

A. If we thought—yes; to a certain extent.

Q. All right. Let me ask you what concrete efforts have been made by either your company or the association, if you know, to have people to whom you sell this pine resell it as pondosa?

A. Well, we have not made any direct efforts in that direction to insist that they are. We sell our lumber and sell it as pondosa pine. We assume that the people we sell our product to sell it for what it is.

Q. Do you know whether or not any of those persons resell that for western white pine?

A. No. If we had a concrete example of it, we would not sell it again.

Q. As a matter of fact, the lumber is the same as it always was, isn't it?

A. The same lumber; yes, sir.

Q. And do you know whether or not there has always been a price differential between California white pine and ponderosa pine?

A. No.

Q. Do you know whether there is now?

A. No; I do not.

Q. Grade for grade?

1666 A. No.

Q. You are not familiar with that end of it?

A. Only in a general way. I am not familiar enough to quote the comparison or price of California white pine, although I say I feel that, grade for grade, our prices are practically the same. I will give you an example. We cannot expect to sell out 12-inch no. 2 ponderosa pine in the Chicago market at a higher price than California white pine of the same item is being sold in the Chicago market; consequently as the price varies in California white pine, sooner or later we must vary our price here to meet that competition if we expect to sell our product there, because it is a common market.

Q. That has been true throughout your experience with the ponderosa wood, has it?

A. Yes, sir.

Q. That ran back for a number of years prior to the change of name?

A. I think that is pretty generally true, since they have been operating in California.

Q. Well, did your pine, western white pine, when it was called western white pine sell for any more than California white pine when it was sold under that name?

A. I do not believe that it did; no.

1667 Q. In other words, what I want to get at is this, the situation is about the same now as it was about ten years ago, is it?

A. I think that is the price situation; allowing for fluctuations in the market and less demand and so forth, I would imagine they are comparatively the same, although as certain districts became more familiar with the California product they may have been willing to pay a little better than our price, or people who understood our product might have preferred certain types of our product.

Q. But you have not seen any marked change in the price over a period of years?

A. I do not believe so, offhand.

Q. The term California white pine, you have been familiar with that for a number of years, have you?

A. Yes, pretty.

Q. When did you first hear of it, do you know?

A. As far back as I can remember it was California white pine, to the best of my knowledge.

Q. Do you know how many needles there are in Idaho white pine?
A. Three—five.
Q. How many are there in the northern white pine?
A. I believe there is five.
Q. Do you know of any five-needle pines that are not white
1668 pines?
A. No. I will say that I am not a botanist, however.
Q. I see. Do you know of any white pines with other than five needles?
A. I cannot say that I do.
Q. You are not familiar with Pinus monophylla, are you?
A. No; not at all.
Q. Does the purchaser who buys from you ever ask for any number of needles?
A. I have never had that happen.
Q. He is not interested in needles or bark or the foliage?
A. I do not think he is interested in the botanical; he is interested in the commercial name.
Q. He is interested in the lumber and its quality and utility, isn't he?
A. Yes.
Q. Have you cut any two-needle pine?
A. No.
Q. Oh, you do not cut any lodgepole pine?
A. No.
Q. Not a bit?
A. No.
Q. You do not cut any lodgepole pine?
A. Not to my knowledge.
Q. On any sales invoice, you do not note it?
1669 A. No. To the best of my knowledge I don't believe we have ever manufactured any, although I never stood and watched the logs going onto the bull chain in the mill.
Q. Does it occur in the forest mixed with the white pine?
A. That I do not know. As far as my company is concerned, we do not consider lodgepole pine commercial pine, and I do not believe we have ever logged any.
Q. Where is your Idaho white-pine mill located?
A. In Spokane.
Q. In the State of Washington?
A. Yes.
Q. You still sell it as Idaho white pine?
A. Idaho white pine.
Q. That is a trade usage, is it, to call it Idaho white pine?
A. Yes; that is a trade usage.
Q. Is sapwood considered a defect in grading Idaho white pine?
A. Well, it is given some consideration, I believe.
Q. Referring to your grading rules, you are familiar with those, of course?

A. To a certain extent, but I do not believe sap is considered a defect.

Q. Do you know if it has ever been?

A. That I could not say.

1670 Q. Not in the grading rules as a defect, is it?

A. That I could not say. I believe it is given consideration, but I am not familiar on that point. If I had my grading book here, I could tell you.

Q. Are you familiar through your sales experience with what the approximate demand is through this country for shop type of lumber for remanufacture?

A. You mean the total? Total averages?

Q. Yes, about.

A. No. I could not say what the averages are on shop.

Q. A very large amount?

A. It is considered approximately 20 percent of pondosa pine purchased through the country; it is all used for that purpose eventually.

Q. And many other woods?

A. Four——

Q. For shop purposes?

A. No, I do not think so; outside of Idaho white pine.

Q. A very small amount of that?

A. As I said, about 3 percent of the log.

Q. You do not know, then, you would not be able to give the amount in figures as the general demand in the country for shop type lumber?

A. No; I could not, not exact figures. I would have to know the production of Idaho and California.

1671 Q. You know it is very large?

A. All the shop that is produced, all pondosa is eventually used for cutting up purposes.

Q. And all the shop of Idaho white pine?

A. Yes, sir; all the shop of Idaho white pine is eventually sold for cutting up purposes.

Q. And northern white pine?

A. I presume that is true; yes.

Q. And that is true of sugar pine?

A. I presume that is true; yes.

Q. Now, is this price differential, by the way, between white pine and pondosa something new, or has it always existed?

A. As far back as I can remember, there has always been a price differential in the return of Idaho white pine as against pondosa pine.

Q. That is grade for grade, of course?

A. Grade for grade, or log run, which ever way you want to call it.

Q. For what purposes is the pondosa lumber used now that are different from the purposes for which it was used when it was called western white pine?

A. I would not say that the uses have changed any with the name.

Q. And does it still—it still, I take it then, enters the
1672 trade for the uses which grow up when it was known as western white pine?

A. I think that is true, with the changes that have taken place in demand since that time.

Q. Do you know whether western white pine, or pondosa as it is now called, is used much for structural purposes or heavy timbers of building construction?

A. It is not used to any extent for heavy timbers.

Q. Do you know whether southern yellow pine is used for heavy timber construction?

A. It is.

Q. Do you cut any pseudotsuga taxifolia?

A. You will have to give me the commercial name for that. I do not know what it is.

Q. You did not give me any commercial name for it by which it is ordinarily sold. You said that you produced pondosa, Idaho white pine, larch, fir, and white fir?

Answer. Yes.

Q. Now, what is this fir that is produced?

A. Well, we feel that it is the same species as Douglas fir, only it grows in a different territory.

Q. But you do not know?

Examiner De Bruler. Wait a minute. I did not know there was any question about fir in this case.

1673 Mr. Burr. No.

Examiner De Bruler. I think that is beside the question.

Mr. Burr. I think so. We will be here a month.

Examiner De Bruler. Let's confine it to the field under investigation.

Mr. Wheat. Q. Then I will ask this question, we will get away from pseudotsuga tasifolia temporarily. Your customers are not interested in these botanical matters, are they?

A. No; I believe not.

Q. They are interested, as you said before, in the quality of the lumber?

Mr. Burr. I think you proved that by the other witness.

Mr. Wheat. We are going to prove that by every witness in the case.

Mr. Burr. I think it is time the examiner cut out something that is merely corroborative. When you ask it of all the retailers on the stand. I think the rest is corroborative, and I am going to object.

Mr. WHEAT. Of all the people we are going to ask that question.

Mr. BURR. We are going to have an extensive record.

Examiner DE BRULER. Let's get as near to the point as we can in these matters and not drag out the record.

Mr. WHEAT. That is all.

1674 Redirect examination by Mr. BURR:

Q. I think you said ponderosa pine was not used for pattern purposes?

A. I think that is true.

Q. Is it less suitable for pattern purposes than Idaho white pine?

A. Yes.

Q. Why?

A. Due to the fact that it is not considered as easily workable as Idaho white pine. I think it contains more resin than Idaho white pine and more pitch.

Q. Is it more subject to shrinkage for those purposes?

A. That I would not be in position to answer correctly or accurately.

Q. Is northern white pine, do you know, much used for shop purposes?

A. I could not answer that question, because I do not know the production of shop that they get out of northern white pine exactly.

Q. What percentage did you say of Idaho white goes into clear?

A. I said between eight and twelve, I believe, depending on the type of timber that you are cutting.

Mr. BURR. That is all.

1675 Recross-examination by Mr. WHEAT:

Q. Just one question. You are not a patternmaker, are you?

A. No.

Q. You never did any of that work?

A. No; I never did any. What I said is merely saying here what has been told by the trade.

Mr. WHEAT. That is all.

(Witness excused.)

G. T. NORKEN was thereupon called as a witness and, having been duly sworn, testified as follows:

Direct examination by Mr. BURR:

Q. What is your name, please?

A. G. T. Norken.

Q. And you are with the Winton Lumber Company, are you?

A. Yes, sir.

Q. And you are in the business of Idaho white pine, or pondosa, are you not?

1676 A. Largely Idaho white pine.

Q. And where is the stand located, roughly speaking?

A. On what we call the Coeur d'Alene River territory.

Q. And that is up in the State of Idaho?
A. Yes, sir.
Q. Is it?
A. Yes, sir.
Q. And the lumber is divided into about what percentage of Idaho white pine?
A. What do you mean? Our product?
Q. Yes, sir.
A. In the last few years our product has been ninety percent or more of white pin.
Q. And could you tell me about how large those timbers run, say, breast high, about how large the timber is as an average? Could you do that?
A. We average about a nine log timber.
Q. That is, nine logs to the thousand feet of the timber measure?
A. Log feet.
Q. Beg pardon?
A. Nine logs to a thousand feet of logs.
Q. Of logs?
A. Yes, sir.

Q. Now, a thousand feet of logs; that is, linear measure?
1677 A. That is log measure.
Q. What is log measure? Is that different from board measure?
A. Scale, log feet. There is a lumber scale on log rule.
Q. Now what part of the work of the Winton Lumber Company are you concerned with?
A. With the manufacturing of it.
Q. Are you concerned at all with the sales?
A. No; only indirectly.
Q. Do you happen to know how much higher the stumpage of white pine is then the stumpage of the yellow pine?
A. Approximately; yes.
Q. Can you give about what they are?
A. The white-pine stumpage now is around six, six and a half dollars, and yellow pine, I think, about three, although we have not bought any pondosa pine or yellow pine.
Q. In other words, when a cruiser scales up that is about what you pay, is it, if you buy it on the market?
A. Yes.
Q. Is that the market including the land.
A. That is stumpage.
Q. Or is that what is sold by the Forestry Service?
A. That is stumpage.

Q. By the Forestry Service?
1678 A. Yes, sir.
Q. Just what relationship do you have to manufacture?
A. I do not know as I understand the question.

Q. What is your function in getting out this lumber?
A. Why, I am superintendent, superintendent of operation.
Q. Concerning the manufacture?
A. Yes, sir.
Q. Are you familiar with the specie Pinus ponderosa?
A. To some extent; yes, sir.
Q. Is that a more variable wood in its texture than Idaho white pine?
A. Yes.
Q. Is it remarkably so, is that quite a wide variation in texture of the Pinus ponderosa?
A. I think so.
Q. Is it more variable than Idaho white pine as regards its density and weight?
A. Yes, sir.
Q. Is it more variable than Idaho white pine with regard to its ease of working?
A. Yes.
Q. Now is that true in the same stands of ponderosa; that is, will one tree be considerably more dense right in the same stand than another?
A. Yes, I think that is true.
1679 Q. Does that vary with the topography, or would that be right in the same piece of soil?
A. (Pause.) Well, I would not want to say, because——
Q. One might come from a rotten place, and it might be due to that, then; is that true?
A. It might be. I would not say.
Q. Does your connection with the business enable you to say whether—do you come in contact at all with the man who buys your lumber?
A. Very little. No, sir.
Q. You have seen him on occasions; is that true?
A. Once in a while we have buyers at the mill visit the plant.
Q. And then you talk to him?
A. At times; yes.
Q. Have you ever found in your experience that the fact that your product was called Idaho white pine and that there is other wood that is designated as California white pine is a handicap to your white pine selling at a higher price?
Mr. WHEAT. Now, before the witness answers, of course my objection with reference to the matter of instances goes to this testimony, and I take it the examiner will make the same ruling he did this morning with reference to the other witness.
Examiner DE BRULER. State the facts.
1680 A. I have no specific instance that I could quote on that.
Mr. BURR. Q. Well, we do not restrict you to specific instances, if you have experience that enables you to know the facts,

whether it is a handicap to you or not, I would like to have that fact one way or the other.

Mr. WHEAT. I will ask that it be restricted to the specific instance.

Examiner DE BRULER. Let me ask you, is it a handicap to you?

The WITNESS. Yes.

Examiner DE BRULE. You can note an exception. In what way?

Mr. WHEAT. I want an exception to that question.

Examiner DE BRULE. You can note an exception.

The WITNESS. Because it competes with our white pine.

Mr. BURR. Q. Because it competes with your white pine? Is it sold at a lower price than your white pine?

A. Yes, sir.

Q. Do you have any experience that leads you to be able to contrast the durability of Idaho white pine with pondosa?

A. No.

Q. Ponderosa?

A. No.

Q. You have none?

1681 A. No.

Q. How about the lumber cut from ponderosa; is it more liable to shrinkage or warping, if not handled precisely correctly, than Idaho white pine is, or less likely to warp and shrink?

A. There is very little difference, according to reports gotten out by the engineer for the Western Pine Association.

Q. You have no information other than reports?

A. No.

Q. That you have received of that kind?

A. No.

Q. Now, do you sell Idaho white pine for pattern purposes?

A. Yes, sir.

Q. Are you able to sell that in competition with California white pine for pattern purposes?

A. We sell white pine for pattern purposes.

Mr. BURR. That is all.

Cross-examination by Mr. WHEAT:

Q. How many logs would it take to make a thousand feet of board measure? I think that is what we have been talking about with other witnesses?

A. About seven logs?

Q. Seven logs?

A. That is, our timber. It varies, you understand, some-

1682 times we have timber that runs four or five logs to a thousand, sometimes fifteen, but the average would be about eight or nine log timber we are logging.

Q. And about how much does it run in the ponderosa which you cut?

A. That I could not say, because we have not cut any for some time, but the pondosa timber runs heavier, averages larger than our white.

Q. Where does Idaho white pine largely grow?
A. Well, right through this territory.
Q. In the inland empire?
A. Yes.
Q. Runs east to Montana, does it?
A. East to Montana and north as far as the Canadian line.
Q. South as far as——
A. Not very much south of here. Probably——
Q. West as far——
A. Not very much farther west than what we are.
Q. How long have you been familiar with ponderosa pine?
A. Twenty years.
Q. You were familiar with it under some other trade name first?
A. Yes, sir.
Q. What was that?
A. Western pine was the only name we ever used.
1683 Q. Western pine. When did you change your name to ponderosa?
A. When the association changed.
Q. And that was about 1925, was it?
A. Yes, sir.
Q. Are you members of the association?
A. Yes, sir.
Q. That is known as the Western Pine Manufacturers' Association, isn't it?
A. Yes, sir.
Q. Headquarters in Portland?
A. Yes, sir.
Q. Is there an Idaho white pine association?
A. No, sir.
Q. Well, now, your Idaho white pine is in competition with a number of other pines, is it, in the market?
A. Yes, sir.
Q. What are they?
A. It competes with the ponderosa pine, the California pine, sugar pine, to some extent, I believe, southern pines.
Q. Northern white pine?
A. Northern pine, northern white pine.
Q. Northern white pine is the old Pinus sprobus, is it?
A. So I understand.
Q. Now, have you at any time cut large quantities of Pinus ponderosa?
1684 A. No, sir.
Q. Your experience has been largely with Idaho white pine, has it?
A. Yes, sir.
Q. Are you familiar in detail with the price matters on sale, or do you go into that very much?

A. Very little. I am not familiar enough to quote you prices, comparative prices.

Q. Your Idaho white pine does have—does enjoy a differential over this pondosa, does it?

A. Yes, sir.

Q. Has it always enjoyed a higher price?

A. As far as I can remember; yes.

Q. How long ago was that that you went into the lumber business here?

A. I have been with the Winton Lumber Company about twenty years.

Q. And as far back as that you recall that there was a differential in price, do you?

A. To the best of my recollection; yes, sir.

Q. You do not come directly in contact, except very seldom, with the purchaser of lumber?

A. No, sir.

Q. Do you cut any lodgepole pine?

A. No, sir.

1685 Q. What do you do with it when you find it?

A. We do not have any that I know of. We never log it, anyway.

Q. Do you sell much Idaho shop?

A. We sell what our logs will produce.

Q. That is not a great deal, then?

A. No.

Q. Is there a good demand for shop lumber?

A. Not now.

Q. May I qualify it. Aside from just at the present, the slump in the lumber market, is there ordinarily a good demand for shop lumber?

A. At a fair price, a fair demand; yes.

Q. You sell your pondosa that you cut, when you cut it, for the ordinary uses to which that wood is put, do you?

A. Yes, sir.

Q. Are you familiar with California white pine?

A. I am not.

Q. What are, in general, the natural uses of your Idaho white pine, would you say?

A. Inside and outside finish, mouldings, sheathing, and siding.

Q. That would be the common, would it not?

A. Common.

Q. Sheathing and siding?

1686 A. And there is pattern stock, shops.

Q. That would be the clear?

A. Pattern stock is clear.

Q. The shop is used for what purposes?

A. Usually used for cutting up stuff, sash and doors.

Q. Such type of millwork as require cut-up lumber?
A. Yes, sir.
Q. And do you of your own knowledge know what the ordinary uses of southern yellow pine are?
A. I do not.
Q. You are not familiar with that?
A. No.
Q. Have you had any experience in northern white pine?
A. No, sir.
Q. You never have cut any Pinus strobus, then?
A. No.
Mr. WHEAT. I think that is all.
Examiner DE BUTLER. Let me ask, What is your address?
The WITNESS. Gibbs, Idaho.

Redirect examination by Mr. BURR:

Q. Mr. Norken, the log scale was referred to in your testimony. Please give us a definition for the record of what you refer to by the log scale.

1687 A. Scaling the board feet contained in a log.

Q. Now, when you referred to the overrun what do you mean by overrun?
A. It is the increased percentage of board feet that you get off of the actual scale of feet in scaling the log.
Q. In other words, it takes about 1,200 feet by the log scale to make a thousand feet of board measure, does it not?
A. Just the other way.
Q. The other way? Will you define it accurately, how many feet of log scale does it take to make a thousand feet of lumber?
A. Twenty percent less; that would be about 800 feet.
Q. About 800 feet?
A. That is the general run. That may vary. The overrun varies with the type of logs you have.
Q. Now is that log scale used throughout the country?
A. Quite generally; yes.
Q. That overrun will vary on account of rot and various defects?
A. Yes, sir.
Q. The more you have, the less the overrun?
A. Yes, sir.

Mr. BURR. That is all.

1688 Recross examination by Mr. WHEAT:

Q. I want to be sure about that question. You said about nine logs on the average in your Idaho white pine made a thousand log feet?
A. In the timber we are cutting right now; yes, sir.
Q. And you said that would make about 1,200 feet, board measure, cut up?
A. Yes, sir.

Redirect examination by Mr. BURR:

Q. And if there is an excessive amount of rot and defects, there might be an underrun?

A. Yes, sir.

Q. At any rate, there is no misrepresentation as a result of this log overrun or underrun, is there?

A. No.

Q. And the same scale is used in western pine?

A. Yes, sir.

1689 Recross-examination by Mr. WHEAT:

The more defects there are, the more overrun there is?

A. The less overrun, because you scale that out from the log as you scale your log.

(Witness excused.)

JAMES M. BROWN was thereupon called as a witness, and having been duly sworn, testified as follows:

Direct examination:

Examiner DE BRULER. What is your name?

The WITNESS. James M. Brown.

Examiner DE BRULER. What is your address, Mr. Brown?

The WITNESS. Spokane.

By Mr. BURR:

Q. Now, Mr. Brown, you are with what company?

A. Long Lake Lumber Company.

Q. How long have you been with that company?

A. Since its organization. Eleven years.

1690 Q. And what is your capacity with that company?

A. President.

Q. How long have you been president?

A. Since its organization.

Q. And in what line of forest products are you engaged?

A. Well, our major production is pondosa pine.

Q. And what else do you produce, any other variety of pine, I mean?

A. Idaho white pine.

Q. And referring only to your pines now, what proportion would be pondosa and what proportion would be Idaho white?

A. About 80 percent of pondosa and about 12 percent white.

Q. And the balance would be what?

A. The common mixed woods here, fir and larch.

Q. Now, do you have to do with the sales of the pine lumber?

A. Yes. Only in a supervisory way now. I did up until a year and a half—two years ago.

Q. And did you go out in other parts of the country where you encounter competition, promoting and representing sales?

A. No.

Q. Up until two years ago?

A. No; I did not. I made trips, but not for the express purpose of doing that. We sold to wholesalers.

Q. Don't your company have anybody call on wholesalers?

A. We do; yes.

1691 Q. Have you ceased to have any direct connection there with the traveling part? Didn't you, when you made trips, call upon wholesalers for the purpose of helping your company in its sales?

A. Yes.

Q. Now, then, in that connection did you find that the word "white" as part of the trade name of California white pine was a handicap to you in your sales of pondosa, or didn't you find that to be the case?

Mr. WHEAT. If the examiner please, we have gone over this before, but we will go over it again. In the first place, this witness has not said he ever heard of California white pine. We do not know whether he even competes with California white pine. We do not know what his experience has been, so I take it that my first objection is that there is not any foundation laid for this question. Of course, when the question arises again I shall have our objection.

Mr. BURR. Well, I think it can be judicially noticed. Notice can be judicially taken that these are competing woods, but I will go down the line with all the questions there are, if it is necessary.

Examiner DE BRULER. Just a moment. What is the question?

Mr. BURR. I will withdraw that question for the moment and will lay a further foundation.

Examiner DE BRULER. Just let's go back a minute.

1692 (Question read.)

Examiner DE BRULER. You may answer the question. Note an exception.

Mr. WHEAT. I wanted that exception noted.

Examiner DE BRULER. Yes, sir.

Mr. WHEAT. I think that is the most important objection in this case.

Mr. BURR. Do you remember the question, Mr. Brown?

A. Yes.

Q. Can you answer?

A. I have found it a sales resistance.

Q. You have found it a sales resistance?

A. Yes.

Q. Just how does that operate? Can you be more specific? Just what would happen that leads you to the statement of fact that you find that to be a sales resistance? Will you describe how that comes up?

A. If a man were to come in to our office and we would quote him on the same grade on the basis of the prices of California white pine, we would not get the business, but we have a usual rule that we follow. For instance, in shop lumber we—if California prices—

Idaho pine prices are a certain price, we drop, depending upon who the customer is, from a dollar to two dollars a thousand, because of the fact that it is quoted as pine, or white pine.

1693 Q. Now, do you recall any specific instances—that you could relate, or don't you recall any specific instances of conversations with buyers?

A. Well, no; I cannot recall a specific instance, but I can say that that is such a common statement among the lumbermen that it is the first thing that we hear.

Q. They want to have something with the trade name white in it, do they?

A. That has happened very shortly and very recently with us.

Mr. WHEAT. Now, if the examiner please, I think we have here a further instance of the very thing we tried to cut out this morning; that these witnesses should not discuss their general thoughts on the case, but this Commission is dealing with facts.

Examiner DE BRULER. As I understand it he is stating his experience he actually had. Is that right?

The WITNESS. Yes.

Mr. BURR. Q. Have people come in your office to your knowledge and asked these questions?

A. Yes, sir. Many of them.

Examiner DE BRULER. That is the way I understood him.

Mr. WHEAT. Then I ask that he be required to produce those instances instead of telling what might have happened or would have happened.

Mr. BURR. That goes to the weight, if Your Honor please.

1694 Examiner DE BRULER. Let the question stand as it is answered, with exception noted.

Mr. WHEAT. I would like to have that statement you made finished in the record. What did you say?

Mr. BURR. Where somebody interposed there?

Mr. WHEAT. Well, he said it is not as weighty and did not finish the statement.

Mr. BURR. I will fix that. I will admit that the testimony of a witness in general terms is not as weighty as such testimony would be if he were able to go down with each specific instance and say that on a certain date Smith called on me in February at my office, and then were to go on down the line with a great many other instances. That would be more weighty, but the objection of counsel goes to the weight rather than the competency itself.

Examiner DE BRULER. The Commission will weigh the weight of the testimony.

Mr. BURR. Certainly.

Q. Now, then, in connection with the marketing of your 12 percent of Idaho white pine, do you find from your experience that there is a sales resistance by virtue of the fact that it is a higher-priced product and is competing with another product equally called white

pine in the trade, is there a sales resistance against Idaho white from the same circumstances?

1695 A. Well, I am sure there is, from general knowledge of the handling, the manufacturing, and selling of the lumber; but I am really not competent to say, for the reason that for the past two years we have been selling our white pine green and not shipping it.

Mr. WHEAT. May I ask that my objection be shown in the record to go to all this line of testimony?

Examiner DE BRULER. I understand that.

Mr. BURR. That is conceded.

Examiner DE BRULER. Let the record show it.

Mr. BURR. Q. Up to two years ago did you experience a sales resistance in disposing of your Idaho white pine, resulting from the combination of facts that your Idaho white pine is higher priced, and that the other—the California white pine—contains the word "white" in its trade name?

A. I think I—yes; I have. I said, I think before, in all species of pine we have run against that sales resistance.

Q. How familiar are you with these species of trees in the forest itself, and with these species of logs? Do you get out into the woods a good deal and see these logs as they come into the mill?

A. Yes. I superintend our own woods operations.

Q. Are you familiar in California with the ponderosa trees down there, the logs?

A. No.

1696 Q. You have not become familiar with that?

A. No.

Q. Is the Idaho white pine a more uniform tree, a more uniform species of lumber, in its texture and in its lightness and so forth than is Pinus ponderosa?

A. Yes; I believe it is.

Q. Greater variability in the ponderosa, is there?

A. Yes, sir.

Q. Is the same true with regard to the amount of resinous substances in the two woods, is there a greater variability in the resinous content of either of these woods than the other?

A. Yes. There is greater difference in the pondosa.

Q. There is more variability?

A. More variability; yes.

Q. In the content of resinous substance, is that what you said?

A. Yes.

Mr. BURR. I think that is all.

Cross-examination by Mr. WHEAT:

Q. Mr. Brown, what is your definition of this term "sales resistance" you mentioned?

A. Might I cite——

Q. I want to know what it means first, and then we will talk

1697 about instances.

A. Well, in my experience, a customer who wishes to purchase pine lumber for shipment to the Middle or Eastern States, considering the same grade, and so forth, would prefer a lumber with the word white, or a pine with the word white attached to it, and I think I have found that true for years.

Q. All right. Now go into your specific instance that you have found this true for years. You can remember some instances, can't you?

A. No; I do not believe I can remember any. It is so general.

Q. You do not remember any instance, do you?

A. It is so general.

Q. In other words, there are so many such instances that you cannot remember any, is that true?

A. Yes. In fact, I would say that the greater part of our contacts, particularly in our shop lumber, are such.

Q. Well, now, then would you say that if we should interview all of the people who buy shop lumber from you that we would find most of them making this statement?

A. They might not make that statement to you, but they do to us. I could not say what they would make to you.

Mr. Burr. That would be highly speculative.

Mr. Wheat. Well, this gentleman has said that most of his trade make these statements to him, but he says he could not remember a single instance.

1698 Q. Now, I want to know, Mr. Brown, how I could ascertain what was said. Can you give us one conversation with the time and place and people present, and what was said on this matter?

A. Well, I do not remember one conversation. If I were to remember it, it might be very embarrassing to my friend whom I would quote.

Q. I am not speaking of that. I am talking about a specific instance?

A. I do not remember a specific instance.

Q. In all your experience, then, in all those years, you do not remember any specific instance of this situation?

A. No.

Q. Now, what was this you said about a drop of a dollar or two dollars a thousand in price with various customers? I did quite understand that. I would like to have you tell us over again?

A. For illustration, if a man were to come in to our office to buy, say 25 cars of shop over a period of shipment for 90 days, and we wished to sell him that 25 cars of shop, it would be necessary for us to cut the price from a dollar to two dollars under the going market. There is a general market on California white pine, that is, a joint market.

Q. You mean under the price what California white pine sells for?

A. Yes.

1699 Q. Well, now, how long has that situation existed?

A. Well, it has only been to us in the past three or four years, particularly on shop, because previous to that time we sold all of our shop green to the local manufacturers.

Q. Well, now, are you a member of the Western Pine Manufacturers' Association?

A. No.

Q. Did you keep fairly close tab on prices of lumber?

A. Yes, fairly close.

Q. Is it not true, Mr. Brown, that over a long period of years the quoted prices on California white pine have been slightly in advance in general and on the average over the quoted prices of Pinus ponderosa out in this area?

A. May I have that question again, please?

Q. Yes. Read the question, Mr. Reporter, please?

(Question read.)

A. Well, I could not answer that. In fact that would be hard, there are so many governing factors in that. I can remember a year ago there when we were selling box lumber at a greater price than they were getting for it in Klamath Falls.

Q. There are a great many factors, aren't there, that go into these matters of relative prices?

A. A great many factors?

Q. General economic conditions, do they affect it?

1700 A. Something affects the price.

Q. Do freight rates affect it?

A. Naturally; yes.

Q. Can you think of any other factors that affect the relative prices of your pondosa lumber and California white pine?

A. Well, I think of some, but I was called here as a witness, not knowing anything that you wanted me to say. The trade name California white pine would be a determining factor.

Q. I am talking about other things than what you said on your direct. You said the trade name had something to do with it. Now I want to know what other things have?

A. Well, for distribution I believe the dominating factor is the freight rates—are the freight rates.

Q. Do you or does the California ponderosa producing region enjoy a better freight rate to your main markets?

A. Well, I think that—of course, that would depend on what you call the main markets. In the southern markets they have an advantage. Some of the main markets in the South they have an advantage, and some of the main markets in the East they have an advantage.

Q. So that that particular matter varies with the locality?

A. Yes.

Q. General economic conditions do have a certain influence, do they not?

A. Well, now, certain influence over what, Mr. Wheat?
1701 Q. Over the relative prices between your two woods?
A. I do not know why general economic conditions would have any bearing on it.
Q. Now, some time ago this wood was sold as western white pine, was it not?
A. Yes.
Q. Did you sell it as western white pine?
A. Yes.
Q. Now, say, take a period there, a date some time in 1922 or 3, just fix your mind on some particular time and tell me whether or not there was a differential in price at that time between the California white pine and the western white pine?
A. I do not remember.
Q. You do not remember?
A. No.
Q. Do you remember any change in any differential that has existed over a far longer period of years?
A. No; I do not remember of any change.
Q. This differential has, so far as you know, then, always existed? Has it?
A. Yes, sir; so far as I know. There was a variance in price between 1922 and the present time, if that is what you mean, both one way and the other.
Q. Oh, yes; I do not doubt that, but I am talking about this general differential you are talking about that has sort of
1702 run along through your experience, hasn't it?
A. Well, now, when I speak of mine, it was only on shop.
Q. That is all I am talking about.
A. I am talking about the past three years. Prior to that my shop was sold green. I am talking about the past three years.
Q. That is the only experience you have had competing with the California white pine?
A. If I did not say that, that is what I was talking about.
Q. By the way, do you sell a good many manufactured sash and doors of pondosa pine, do you not?
A. I do not sell any.
Q. How do you sell it, all as green lumber?
A. No. We ship the lumber dry and green, both.
Q. You sell it as shop lumber?
A. Yes.
Q. Yes, sir. You do not manufacture it; you have no mill?
A. Just planing mill.
Q. Oh, you have a planing mill here?
A. Yes.
Q. And what do you produce there?
A. Pondosa pine.
Q. Where do you sell it?
A. All over.

Q. Now, let's get clear on that.

1703 A. East. Principally east of Chicago.

Q. I thought you just testified that you sold no shop lumber, I mean no manufactured products, that is, sash and doors, anywhere?

A. I did.

Q. Now, but you also testified, did you, that you produced shop lumber from your ponderosa trees, and sell it through the markets of the country?

A. Yes.

Q. Now, what do you produce at your planing mill?

A. Just lumber.

Mr. BURR. Surfaced lumber.

A. Just surfaced lumber. You see, the mills cuts rough lumber, the green lumber, and the planing mill surfaces it.

Mr. WHEAT. It is not remanufactured?

A. No remanufactured; no.

Q. When you first began cutting ponderosa and Idaho white pine, they were pretty well known woods, were they not?

A. Yes.

Q. And you sold one of them as Idaho white pine and the other one as western white pine?

A. Yes.

Q. And just what material change in the uses of Pinus ponderosa has there been in the last few years?

A. I do not believe there has been much of any change in

1704 the uses.

Q. The clears are still used for about the same purpose, are they, and the shops for the same purpose, and the commons for about the same purposes?

A. I would think so; yes.

Q. That covers your full experience?

A. Yes.

Q. Does that cover more than this three years you have mentioned?

A. Beg pardon?

Q. Does that cover more than the eleven years that you have been with the Long Lake Lumber Company?

A. I do not understand you.

Q. When you say that includes your lumber experience, did you have lumber experience before you were with the Long Lake Lumber Company?

A. Yes. I am forty-five, and I have been at it since I was nineteen.

Q. All in this area?

A. No. I was for a while in northern Minnesota. I was a boy there.

Q. Oh, yes. You cut what lumber there?

A. Well, cut pine.

Q. What kind of pine?

A. Northern white pine.

1705 Q. Did you find any other pine mixed with that pine?

A. Well, I was very much of a boy at that time. I do not believe it would be hardly fair for me to answer. I would not know.

Q. Your experience, then, with northern white pine has not been great?

A. Has not been great.

Q. Since that time you have been engaged in the inland empire?

A. Yes.

Q. You have?

A. Yes.

Q. Now, do you find that the term pondosa is pretty well known through the market?

A. Yes; pretty well.

Q. The trade that you come in contact with understands what they are getting, do they?

A. Yes and no. Some do and some do not.

Q. They still come back for more, whether they do or not?

A. Beg pardon?

Q. They still come back for more, do they?

A. Yes; I assume they do.

Q. You sell, do you, year after year to the same customers?

A. Yes, sir.

1706 Q. By the way, has there been a great change in those customers since you changed the name to pondosa?

A. Well, there is always a change. I find the turnover in that, in eleven years, the turnover in customers. That is all too uncertain.

Q. You sell to the same general type of customers, do you, you sold to then?

A. Yes; I believe so.

Q. And for the same purpose?

A. I believe so; yes.

Q. Do you receive orders for western white pine?

A. Not to the best of my knowledge.

Q. Do you ever receive orders for just white pine alone?

A. Yes, we do, quite frequently.

Q. Then you say you write them, do you?

A. Yes.

Q. What do you say in your letter?

A. Well, we tell them that we furnish only pondosa pine, which would be the natural thing.

Q. Did you ever get any orders as the result of such letters?

A. Oh, I do not know. I could look it up and tell you. I do not know whether we do or not, to be frank.

Q. By the way, are you familiar with southern yellow pine?

A. No.

Q. Not at all?

1707 A. No.

Q. You do not know whether your wood competes actively with southern yellow pine, do you?

A. Well, I know as a general—I know from general conditions in the lumber industry that we compete with all wood, of course, a little.

Q. As a matter of fact, it is true, I suppose, isn't it, that all lumbers compete with all other lumbers?

A. Yes. Some to a greater and some to a lesser extent.

Q. And some for particular uses compete more with some types of lumber than others?

A. Yes, sir.

Q. Is that true?

A. That is natural.

Q. Now, when you say—would you say that you are in general active competition with southern yellow pine, and if so, for what purpose?

A. Well, to the best of my belief we would be in active competition with southern yellow pine only where the freight rates meet and in a low grade.

Q. Does your pondosa compete with Idaho white pine?

A. Well, it does, only there is a differential of eight or ten dollars a thousand in price between Idaho and pondosa.

Q. I take it that difference in price is something that has been in existence for a long time, isn't it?

1708 A. Yes; it is.

Q. That difference in price existed between them prior to the change of name to pondosa?

A. Yes; it did.

Q. There has not been any particular difference in that price differential over that period of years, has there?

A. Only the general and natural fluctuations.

Q. Now, would you say that in general pondosa pine is in active competition with Idaho white pine, and if so, in what grades?

A. (Pause.) Well, it would be hard for me to determine what active.

Q. May I frame the question another way then, Mr. Brown? Do you find that the pondosa lumber that you produce goes into the trade in this country for any of the uses to which Idaho white pine is put?

A. Oh, yes.

Q. Now, what are those uses?

A. (Pause.) Well, I would think to mostly all uses. If you wanted to build a frame, why it would be up to the man building this frame; he would decide whether or not he wanted to put that much additional money into Idaho white pine.

Q. I see; and that would be a natural use of both of those woods, would it?

A. Yes; it would.

1709 Q. And now, going from frames, let's take sash. Do those two woods naturally, so far as they produce sash lumber, go into the sash business? Are they naturally fitted for that use, in the way they cut up, and so forth?

A. Well, I am not competent to say whether they are naturally fitted. I would say they do go into it. So does fir and other woods.

Q. Let's take doors. Are they both cut up for doors?

A. Yes.

Q. Idaho white pine does not produce as much shop lumber as the pondosa?

A. Well, when you said doors I was not thinking of Idaho as the shop. I was thinking of Idaho for the panels, and so forth.

Q. Oh, yes. And what would you use for sills and rails in such a door?

A. You mean in this territory?

Q. Yes; so far as you are familiar with the general lumber business.

A. Well, they would use pondosa for the frame.

Q. For the sills and rails they would use pondosa, and for the panels they would use Idaho white pine?

A. No. I do not think you quite understood me. May I make myself clear? There is a very small percentage of shop in Idaho white pine.

1710 Q. Yes.

A. And the percentage of shop in Idaho white pine would be so small that it would not supply the demand, very little demand; therefore it would be necessary to go to some other wood, and those other woods are pondosa pine, California white pine, and sugar pine, that are used mostly for the frames, on account of there not being enough shop type in that Idaho white pine, they go to those other woods. Now, with panels, and so forth, in this town they make doors, I believe, with both panels.

Q. But you do not make those yourself, do you?

A. No.

Q. By the way, how long have you been familiar with the term, California white pine?

A. Oh, for—for years.

Mr. WHEAT. I think that is all.

Redirect examination by Mr. BURR:

Q. Is there a difference between the market, the quoted market price that appears in the trade journals, and the prices that are quoted by you as an individual firm sometimes?

A. Oh, yes.

Q. Now, there might therefore be a parity or price between California white pine and pondosa pine, and you might find that

1711 you were not able to get the quoted price of the trade journals for your particular product, might that be true?

A. Yes, sir.

Q. That is true on occasion, is it?

A. On many occasions.

Q. Now, is it also true that you may quote a price for pondosa and then as a result of talk back and forth and correspondence back and forth you may take some other price than you are generally quoting on an order; is that true?

A. I do not like to admit it in front of this crowd, but it is true.

Q. Then it may be that sales resistance—sales resistance interferes with the market parity of the two woods; is that true?

A. Yes.

Q. Now, when opposing counsel, my friend here, was talking to you about your experience in disposing of your products you used the words "I might cite." I am afraid you will have forgotten it, but counsel interposed at that point and said, never mind the specific instance now; I would like to have you go ahead with that answer that you were preparing to make at that moment, if you can recall what you had in mind, what you were going to say. Is that clear? It is not clear to me, but maybe it is to you. I do not know what you had in mind, but counsel asked you a question, and you thought
1712 he was asking for specific instances, it seemed to me that you thought so, and you said "I might cite", and then counsel did not want you to cite, apparently, and he interposed, and I would like you to go ahead with that answer, if you can remember just what was the answer that you were expecting to make when you were interrupted.

Examiner DE BRULER. Does the witness remember anything about it?

Mr. WHEAT. I want to say that I do not understand it either.

Mr. BURR. But if there is any specific instance of any of those things I would like to hear them.

Mr. BURR. Well, he said "I might cite", and then you interposed and interrupted him, and I was wondering if I could bring him back to that point. All right, I will waive that question.

Mr. WHEAT. I interpose no objection to it, sir.

Mr. BURR. No; you cannot interpose any objection to it. I do not expect you to.

Q. Now, in 1921 and 1922 do you recall whether Idaho white pine was carrying a price differential over pondosa of between sixteen and seventeen dollars?

Mr. WHEAT. On what grades?

Mr. BURR. Q. On any grade?

A. 19—

Q. Do you remember there was a high differential there along about that time? That was a rather high mark, was it not, for lumber in 1921 and 1922? Can you recall how the market
1713 was about that time?

A. Well, I remember there was a difference in the market, but I thought it was 1922 and 23.

Q. Well, now, 1922 or 23, how much, if you can recall, was the extreme differential on the better qualities of lumber between white pine and ponderosa?

A. Well, I do not remember the exact figures, but the average differences was almost twice what it is today, I believe.

Q. Well, when did it come down to one half of the former figure, the differential?

A. In a certain September, if I can remember the year, September 1927.

Q. 1927?

A. I believe; yes.

Q. It took that drop?

A. Yes.

Q. Well, do you know whether that was due to the coming down of Idaho white pine, or the advancing of Pinus ponderosa, or was it a mutual movement together, in other words, was the one dropping, or did the other raise, or did each one drop a little and the other raise a little?

A. No. I believe Idaho white pine dropped, I believe.

Q. Was that due to the opening up of new mills, or the increased production of Idaho white, do you know?

A. I do not know.

1714 Q. You do not know as to that?

A. No.

Mr. BURR. I think that is all.

Recross-examination by Mr. WHEAT:

Q. May I ask whether you know there were any large new mills that came into production about that time?

A. (Pause.) I could not fix it with the date. I do remember that September was the particular time of the falling in Idaho white pine, but I could not say the date as to any new mills coming in. There were some came in and some went out about that time, and I do not remember whether that was the date.

Q. In some fall, prices took a drop?

A. I remember in September 1927 prices took a drop.

Q. Let me ask you again whether or not you can think of any instances where you have taken less money than what you had originally asked? You said it was rather a general practice, didn't you?

A. Yes. I could not cite any specific instances.

Examiner DE BRULER. You have reference now to his trade practices?

Mr. WHEAT. Q. I have reference to when he said that there might be a parity of price in quotations, but he could not get
1715 that quoted price, and I am asking him whether he has any instance of when he could not get that quoted price, and he has stated that he has no such instance that he can remember.

Q. Do you know whether any other lumbermen in this area have the same practice that you have along these particular lines?
A. I know from what they have told me.
Q. You do know it then, do you?
A. Yes; I do.
Q. And can you cite instances of that, sir?
A. Not specific.
Mr. WHEAT. All right. I think that is all.
Mr. BURR. I think that is all.
(Witness excused.)

I. N. TATE was thereupon called as a witness and, having been duly sworn, testified as follows:

Direct examination by Mr. BURR:

Q. What is your name?
A. I. N. Tate.
Q. Mr. Tate, what is your present position?
1716 A. I am with the Weyerheauser Sales Company as general manager.
Q. How long have you been general manager of that company?
A. For two years and a half.
Q. Now, that is the sales corporation for certain lumber companies which are known in general as the Weyerheauser group of lumber companies?
A. Yes.
Q. Sometimes referred to as the Weyerheauser interests, together with the sales corporation; is that true?
A. Yes.
Q. How many such companies, without naming them, are there?
A. Well, it is a little hard to answer that, because some of them have a number of different branches. Do you mean different organizations or different mills?
Q. I mean different corporations or organizations. They are all incorporated, I suppose?
A. I would say ten or twelve.
Q. And in connection with the Weyerheauser Sales Corporation, you have a staff engaged in selling?
A. Yes.
Q. That is composed of about how many men?
A. We have over a hundred actual salesmen and eight district offices, with a district manager in charge of each one of them.
1717 Q. And your sales and operations extend to all parts of the country, do they not?
A. They extend to all that part that we can reach on present freight rates with the lumber manufactured at the Weyerheauser mills.
Q. Which section of the country does that exclude?
A. That excludes in general, the territory south of the Mason and Dixon line and east of the Mississippi River.

Q. Now, the buyers belong to what class, retailers, jobbers, wholesalers or brokers?

A. The largest part of our lumber is sold to the retail lumber delivery. We also sell some lumber to the large industries under certain circumstances, the large industry delivery under certain circumstances.

Q. And to railroads to some extent?

A. Yes, sir.

Q. And in that work the Weyerheauser Sales Corporation is engaged in selling practically all varieties of soft lumber, is it?

A. Except southern yellow pine, I would say.

Q. How about cypress? Do you sell cypress?

A. No cypress. We sell the lumber that is produced, in general, in the north and in the west, the softwood.

Q. You do not ship any varieties of lumber, do you, that is, buying from producers to sell again?

1718 A. In emergencies we do. In certain cases we do, but it is negligible.

Q. Before your appointment as general manager, you were assistant general manager, were you?

A. I was, since the organization of the cooperative sales company.

Q. And as general manager you are over and sales sales manager for the entire Weyerheauser interests, is that true?

A. Yes.

Q. Now, in connection with your experience, do you still have on occasion the necessity for travel in various parts of the country?

A. Yes; I get around to our district offices and contact a number of our men two or three times a year.

Q. And you travelled more up until two years ago, did you, when you were assistant manager?

A. Possibly more.

Q. Now, do you have your district sales managers into headquarters, so that you see them there?

A. Usually I see them only in the district offices.

Q. In the field?

A. We get them together occasionally for a meeting in Chicago or some convenient point.

Q. Now, do you have to do with the conferences over advertising matters?

1719 A. Yes.

Q. For your company?

A. We consult with our advertising department, although we do now write the advertising, or control it ourselves. It is all part of the sales program, however.

Q. Well, now, when the contact man of the advertising agency has a copy, an illustrative matter ready, he submits it to you, does he, or to a board of the Weyerheauser interests?

A. Both.

Q. Both?

A. He submits it to a board and we usually see it and comment on it.

Q. And you give your attention to the advertising campaign and the use of phraseology in the advertising, do you?

A. Yes.

Q. Now, as the result of the experience and contacts and duties that you have outlined, do you have occasion to study the sales resistances, if any, that your products come in contact with?

A. We do.

Q. Now, what are the pine products that your company is charged with responsibility for selling?

A. Pinus strobus from the North, also some mixed pine from the North, Idaho white pine, and ponderosa pine, all of which in
1720 our companies is produced in Idaho. At the present time our people have a new mill in Oregon which is now producing ponderosa pine.

Q. Now, your use of the words "all of which" might by some reader of this record be deemed to include strobus. I think you do not mean strobus was produced in Idaho, do you?

A. No. I beg pardon.

Q. Well, then, go into that more carefully. Where is your strobus white pine coming from that you are charged with responsibility for?

A. It is coming from northern Minnesota and all manufactured at Cloquet, Minnesota.

Q. Do you have holding of strobus outside of Minnesota that are not yet in course of development?

A. The stumpage that is tributary to the Cloquet mills is all located in the State of Minnesota.

Q. Do you own any Canadian—do any of your interests own Canadian strobus?

A. I do not know.

Q. You do not know as to that? At any rate it has not become your responsibility to sell Canadian strobus?

A. Not yet.

Q. Now, have they been taking the northern white pine or strobus from Minnesota during the entire time of your experience?

A. And long previous.

1721 Q. Does your experience go back to any other source of the strobus supply than Minnesota?

A. Yes. I have done nothing but sell lumber since I got through school, which was twenty-seven years ago, first in a retail yard as the—operating a retail yard, then a line of retail yards, afterwards in a wholesale way with headquarters in Minneapolis, and during that period I both bought and sold strobus from Wisconsin, Minnesota—I think Wisconsin and Minnesota.

Q. Now, have you had any experience to speak of in the woods?

A. Not except as I get it in visiting the mills.

Q. I see. How long——

A. Perhaps I should change that. I spent a year in a Canadian sawmill, working in the sawmill and in the woods, but that has nothing to do with strobus or with the present situation.

Q. What line of timber was that?

A. It was spruce and larch, largely.

Q. Now, then, your Idaho white pine, if I understand you correctly, comes exclusively to the sales corporation from Idaho?

A. That is true.

Q. You have none in Montana, then, or Washington?

A. No.

1722 Q. And your ponderosa at the present time is coming from Idaho exclusively?

A. That was true until last month, when this mill in Oregon commenced to saw.

Q. That is in the Klamath Falls section, is it?

A. Yes; it is in the Klamath Falls section.

Q. And you are already marketing some of the Klamath Falls ponderosa?

A. We sold very little of it; yes.

Q. Now your ponderosa lumber is being marketed at the present time under what trade term?

A. Pondosa pine.

Q. And how long has that been true?

A. Since the name of pondosa was adopted. Prior to that it was sold as western soft pine.

Q. Prior to that, ever how long a period anterior to the change to pondosa, was it sold under the last name that you have quoted?

A. I think the first of the mills was sawing about 1900—we manufactured ponderosa and it was sold from that time on, either as western pine or as western soft pine, never as western white pine.

Q. You have never used the word white for any of those companies in any of your advertising or other sales efforts, you have never used the word white?

1723 A. No.

Q. Now, as the result of your long experience and as the result of your contacts to which you have testified, have you given—have you found yourself under the necessity of considering the result in sales resistance of the word white as attached to the trade terms California white pine, Arizona white pine, and New Mexico white pine, and also western white pine?

Mr. WHEAT. Of course, Your Honor, I take it that we shall ask again for specific instances and facts?

Examiner DE BRULER. He may answer the question. Exception noted.

A. That is a constant factor in our sales problem.

Mr. BURR. Q. Will you state more specifically how that works out and hot it is encountered?

A. I personally have very few contacts with our customers. I do get our occasionally to meet customers with our salesmen. My contacts are largely with the salesmen and our district managers. They are constantly bringing to our attention as an almost weekly problem, perhaps I would say, I would guess, the customer that they cannot sell because he wishes to buy at our prices, or as nearly our prices as possible, a wood which he can have invoiced to him, which he can order and have invoiced to him as white pine.

1724 Mr. WHEAT. Well, now, Mr. Examiner, this is starting a new line and I think that it is proper that at this time we interpose an objection. It goes somewhat to a different point, and I think it is fully as weighty as the one I interposed to the other line of questions. This witness has to do with a large number of salesmen and he states that almost weekly he has a certain type of report.

Examiner DE BRULER. The record shows what the witness has stated.

Mr. WHEAT. Yes, sir.

Examiner DE BRULER. State your objection briefly, please.

Mr. WHEAT. My objection is that if this witness has such instances, this is certainly the place where the Federal Trade Commission should demand instances rather than mere statements of what his opinion is. Also I wish to add that he has made a statement which attempts to bring the mind of the buyer of lumber from him into this record, and unless he is a mind reader, I object to that attempt going in.

Mr. BURR. If the examiner please, I think the record——

Examiner DE BRULER. The answer may stand, with the exception noted.

Mr. BURR. Q. Now, you have been referring in your last answer to the sales resistance of Pinus Ponderosa, have you not?

A. I have.

Q. That is your trade-mark for your company's pondosa?

1725 A. Yes, sir.

Q. Now, then, will you state whether there is a sales resistance found by you as the result of your experience to the sale of Pinus strobus and Idaho white pine through the naming of ponderosa products with the termination, with the term white pine as part of the ponderosa trade name?

A. Yes. There is a very decided confusion existing there, and we know from experience that it works to the detriment of the genuine white pine, that other woods of the same species, where we are not using the white-pine name, shall be sold under the white-pine name.

Mr. WHEAT. My objection, of course, will be noted to this line of questions.

Examiner DE BRULER. Objections noted and exception allowed.

Mr. BURR. Q. Now, there is a differential in the cost of getting your genuine white pine out, is there, as contrasted with getting out Pinus ponderosa?

A. You are referring to the cost of producing the lumber?

Mr. WHEAT. If the court please, this goes to a new point, which was the subject of great argument.

Mr. BURR. I think I will withdraw that; I think that is true.

Examiner DE BRULER. Yes.

Mr. BURR. Q. Now, there is a differential in the market between the Pinus ponderosa on the one hand and the genuine
1726 white pines on the other, is there?

A. Yes, sir.

Q. When you refer to genuine white pines, what commercial varieties do you refer to?

A. I refer to Pinus strobus—I refer to the five-leaf—the five-needle pines; that is, Pinus strobus, Pinus monticola, and Pinus lambertiana. They are the northern white pine, the Idaho, and the sugar pine. Do you want that?

Q. Now, monticola is Idaho white pine, is it?

A. It is.

Q. And lambertiana is sugar pine, is it?

A. It is.

Q. And strobus is northern white pine?

A. It is.

Q. Or sometimes gives various names, such as northern white pine, and so forth, such as Minnesota?

A. Yes.

Q. And Wisconsin white pine?

A. Yes. Also Maine white pine.

Q. Now, can you explain more fully, in view of the higher prices of genuine white pines, the sales resistance that you encounter from the calling of Pinus ponderosa white pine in the trade term?

Mr. WHEAT. I assume my objection to the fact that you are not giving specific instances will go to this?

1727 Mr. BURR. Will go absolutely.

Examiner DE BRULER. The question may be answered and exception noted.

A. May I ask you to read that question, please?

(Question read.)

A. White pine is a trade name, has established for itself a very definite preference in the lumber world because of the record that white pine uses have established, have built up. A great many specifications call for white pine. It is extremely hard for the man who wants to furnish white pine to know when he is furnishing genuine white pine, if as a trade name it may be used to cover other species. Our experience has been that there is a very considerable confusion in the mind even of pretty well posted lumbermen as to how he can specify white pine and get white pine when he required it. Does that answer your question?

Mr. BURR. Q. Yes, sir. I think so. Now, in what respects does ponderosa vary from qualifying as a genuine white pine? Are you qualified to answer that?

A. Well, I know that it is—that we have been taught that it is not a true white pine. We do not regard it as a true white pine. The appearance is not the appearance of a true white pine, and in many cases the last thing qualities are not such as to justify us in thinking it is a white pine.

Q. Now, when you say its appearance is not that of a white
1728 pine, in some grades it is very close in appearance, is it not, to a genuine white pine?

A. Yes, sir. But taking the tree as a whole you can tell the difference. Taking the products of the log as a whole, you can tell the difference. Some parts of the log are very similar in appearance to parts of the genuine white pine.

Q. Which grades of ponderosa approximate in appearance the genuine white pine as a matter of lumber?

A. The upper grades.

Q. You mean B and better, B select and better?

A. I would say that all selects.

Q. Now, there is a greater variation, is there, of ponderosa, is there, than there is of genuine white pine that you are familiar with?

A. More variation in what respect, please?

Q. Variation in quality and characteristics?

A. Yes.

Q. There is a greater departure from the average, is there?

A. Yes.

Q. The extremes are greater?

A. Yes.

Q. Is that purely a question of texture?

A. There is more variation in texture also.

1729 Q. Is there more variation in the content of a resinous or pitchy character?

A. Yes.

Q. Which is the more pitchy on the average, the genuine white pines or the ponderosa?

A. The ponderosa.

Q. How about the weight of the two; is there a greater variation in weight between the extremes of Pinus ponderosa?

A. Yes.

Q. Than there is between the extremes of genuine white pine?

A. That would necessarily follow.

Q. Pitch is heavy stuff; is that true?

A. Yes.

Q. Now, has the market for Idaho white pine remained stationary, approximately or does it vary, taking a period, say, for the last fifteen years?

A. I am sorry to say that it varies.

Q. It has varied up and down by quite radical gradations, has it?

A. Yes.

Q. Have some of those changes been sudden fluctuations?

A. Yes.

Q. Now, can you describe any of the fluctuations of prices of Idaho white pine wsich took place about the year 1924 to 26?

1730 A. Yes.

Q. What variation took place in the price of Idaho white pine at that time?

A. In general the peak price is all softwood lumber was reached in the year 1920. Since that time, following that time there was a rescission in price up to about 1924 or '25.

Q. Was that gradual rescission?

A. Well, a very precipitous rescission during 1921.

Q. Yes.

A. More gradual during '22 and '23 and '24.

Q. Now, then what happened about 1925?

A. In 1925 and '26 the Idaho white pine was stationary or increased slightly, while the price of ponderosa continued to slightly decline.

Q. To what do you attribute that? Was that purely economic causes?

A. (Pause.)

Examiner DE BRULER. If you have sufficient knowledge, answer that question.

A. I think any reply would be largely conjectural on that.

Mr. BURR: Q. Have you ever made any cut in the price of Idaho white pine, which you made because in part of the use of the word "white" in connection with the California white-pine trade term?

A. I do not know that we ever made any that was entirely

1731 due to that cuase.

I said in part.

A. But certainly in part. It has been referred to in evidence here today. There was a considerable rescission in price during 1927. The prices as reported by the Western Pine Manufacturers' Association for the years 1922 and '23 showed a premium for Idaho white pine over ponderosa pine of from sixteen to seventeen dollars a thousand feet. Since the decline of 1927, in other words, during the years 1928 and '29, there has been a premium in price for Idaho white pine over ponderosa of from five dollars and fifty cents to eight dollars and fifty cents.

Q. Now, have any of those changes been made as the result of the action of your company?

A. Our company has, of course, no large control on the general lumber market, but we have—we did in September 1927 purposely make a drastic reduction in the price of our white pine. Do you want me to explain the reasons for that as we saw them?

Q. Yes, sir; if you please.

A. The principal reason for it was that we were not selling a sufficient quantity of Idaho white pine to satisfy our needs. The use of Idaho white pine had been reduced, I believe, because of the difficulty on the part of the buyer in being able to

1732 specify and surely buy a genuine white pine. White pine has gotten its price premium very largely over the years because of its superior lasting qualities, because of its ability—its adaptability to use where it would be exposed to the elements. We have felt that white pine should be made largely a specialty wood, to the extent that it is best adapted to those uses where it is exposed to the elements, in siding, in cornice work, in sash and frames. There is another point, another place where it is specially adapted for superior use, it it——

Mr. WHEAT. May I ask, Mr. Examiner, whether this is all in answer to the question why they reduced the price?

Examiner DE BRULER. It is somewhat prolonged.

Mr. WHEAT. Yes.

Examiner DE BRULER. I think what the Commission would want to know is what influence has the sale of the California white pine over the reduction of your prices, if any?

Mr. WHEAT. May I say this, it makes it very difficult for me to have to object to a question asked by the examiner.

Examiner DE BRULER. I understand. Exception noted.

A. I am sorry if I trespass. Just let me say this——

Mr. BURR. No, no. Let me say I am perfectly agreeable to not making the objection to a question and motion to strike as not having been made timely, but it does seem to me that this witness should get before the examiner and the Commission the motives which

1733 lead that company to that charge of price, and those motives are——

Examiner DE BRULER. As to the fact.

Mr. BURR. Are based right down on the market conditions and the necessity that they were under to maintain the market. I think if you will give him a little leeway, he will show us the bearing of the market situation and the status and reason whey they found it necessary to cut.

The WITNESS. I am trying to answer you. I think I can do it in another sentence.

Mr. BURR. Q. I think you can. I think we are interrupting unnecessarily for the defense's purpose or the Commission's.

Examiner DE BRULER. All right.

A. What I mean to say is there are certain uses to which Idaho white pine is especially adapted. One is in a place where it stand exposed, another is for pattern purposes, the making of patterns. We had come to the conclusion that because other woods not true white pines were being marketed under the white pine name, that it was no longer possible to get the price preferences that we had previously gotten, and that a drastic reduction was necessary to reintroduced genuine white pine and get it into the places where we believed it would best furnish us a permanent market.

Q. Now, that cut was made and the differential since that time has been less than it was for several years previous thereto; is that true?

1734 A. It has never been over eight dollars and fifty cents since that time.

Q. Since that time?

A. Yes.

Q. Now, yet me ask you this: As a matter of fact there was a new Idaho white mill that came into operation about that time, was there not?

A. Yes.

Q. That had some influence upon your decision, did it?

A. It gave us a larger proportion of the white pine cut to sell.

Q. A larger proportion to sell?

A. But the—perhaps I should add; in order to be entirely fair, that other small mills getting out about that time naturally reduced the total amount of Idaho white pine on the market, the year following that mill's coming into production as compared with the year previous.

Q. In other words, the Weyerheausers, while they were producing more others were producing less?

A. Yes.

Q. On account of exhaustion where they were working, is that true?

A. Yes; exhaustion, or unprofitable marketing conditions.

Q. Now, I want to ask you about a topic as to which you touched on in your last and rather long answer there. I want

1735 to ask you this: Is there a future for the genuine white pines in specialty work? If so, I would like to have you explain it a little bit more fully.

A. Certainly we can get permanently a premium for white pine only in those places where it will serve better than some other wood. Therefore we hope to push the selling of white pine for those uses where it is most exposed and where it does stand up best, also for those uses requiring the greatest nicety of work, as in patterns, which I suggested previously. We believe that white pine should be used very generally but we must look for our price premium on white pine to those special uses for which it is best adapted.

Q. Your premium does not apply to the low grades of common, does it?

A. Only to this extent, that the white-pine log cuts a higher percentage of grades than the average ponderosa log. Part of the additional price premium arises from that fact.

Mr. WHEAT. A greater percentage of what grades?

A. I said that the average white-pine log produces a higher percentage of the upper grades than the average ponderosa log, or the average grade log.

Examiner DE BRULER. You are speaking of Idaho white pine?

The WITNESS. Yes.

Mr. BURR. Q. Now, is there much of a use for wood for ornamental and scroll work and things of that kind?

1736 A. Not a great deal.

Q. Interior ornamentation?

A. Not a great deal. Much less than some years ago.

Q. There—they are not going into geegaw stuff quite so much, the fashions may change?

A. We hope not.

Q. For that kind of work white pine is superior to most varieties of wood, is it not?

A. It is the softest wood we know and is the most easily worked and has the least grain.

Q. It is of more uniform texture, is it not?

A. It is more uniform texture.

Q. And so far as that kind of work can be done by machinery, it can be done in white pine better than in most other varieties of wood, is that true?

A. I think that is true.

Q. And that is true as contrasted with Pinus ponderosa, is it?

A. Yes. Pinus ponderosa works well, but there is more variation. It takes more choosing in order to get the piece that is workable, and the grain is harder in it.

Q. Is there a little more shrinkage to Pinus ponderosa than there is to genuine white pine?

A. I would not like to testify on that. I do not know.

(At this time a short recess was taken.)

1737 Mr. BURR. You may cross-examine.

Cross-examination by Mr. WHEAT:

Q. You say you are selling strobus on the market now?

A. Yes.

Q. Are you familiar with the general sources of Pinus strobus at the present time?

A. I am familiar in a general way.

Q. Where does it come from?

A. Our own supply, as I said, comes from Minnesota. It is still being produced in the Lake States, Minnesota, Michigan, and Wisconsin. It is being produced, and still in considerable quantity, along the Appalachian Range from New England south to Virginia.

Q. How much virgin strobus is there left in Massachusetts?

A. I am not qualifying as a technical witness. I cannot tell you.

Q. You do not suppose it is very much, do you?

A. I think it is considerable.

Q. Virgin strobus?

A. Oh, virgin strobus? I beg pardon. No.

Q. No?

A. Not a great deal.

Q. Do you imagine there is very much virgin strobus left

1738 in Maine?

A. I have seen some conflicting statements. I do not think there can be a great deal.

Q. By the way, are you cutting virgin strobus yourself?

A. Yes. Not entirely.

Q. What proportion of your strobus that you sell is what you would call virgin strobus?

A. Less than half.

Q. Now, from what portions of the country do you meet effective competition from other strobus lumber to the strobus that you sell, to your virgin strobus?

A. Well, I could never make that classification in my mind as between virgin and second growth. We meet active strobus competition from Canada and from the Lake States, and from the East, in all of our sales, Chicago and east.

Q. Do you have any effective competition to your strobus from New Hampshire?

A. Yes, sir.

Q. What kind of strobus is cut in New Hampshire at the present time?

A. I think that is largely second growth.

Q. What is it used for?

A. It is used very largely for box manufacture and for house construction, too, in sheathing, lower lines.

Q. Common lumber?

1739 A. Common lumber, largely.

Q. From what point do you meet competition in Pinus strobus of the clear grades?.

A. The clear grades is a dangerous way to put it, if I may draw back a little from that.

Q. Selects, B and better?

A. In the selects, we meet it all through the East.

Q. From what portion is that cut largely?

A. I think from the Lake States, largely, and from Canada.

Q. By the Lake States, do you include Michigan?

A. I mean Michigan, Wisconsin, and Minnesota.

Q. Do you know what the cut of strobus in Michigan was last year?

A. I do not.

Q. You would be surprised, would you, if it were said to have been less than 100,000 board-feet?

A. I knew it was very small.

Q. How much Pinus strobus do you manufacture in a year?

A. I would guess something less than a hundred million feet.

Q. So your competition with Michigan strobus, that would not be a drop in the bucket, would it?

A. It would be equal to yours, if it is a hundred——

Q. Hundred thousand feet?

A. Hundred thousand feet, you said?

Q. Yes.

1740 A. I beg pardon. No; I do not think there is much competition from home-produced lumber in Michigan.

Q. How about home-produced lumber in the New England States of good grades of strobus?

A. That does not compete with us very actively.

Q. Your active competition comes from Canada, does it not?

A. Yes.

Q. There is not a great deal of strobus being cut in Minnesota, is there?

A. Apparently not; with the old days, it is growing less.

Q. The cut of strobus is growing less in Wisconsin, isn't it?

A. Yes.

Q. Nearly cut out in Wisconsin, isn't it?

A. I could not tell you that.

Q. Have you any idea what the cut is there?

A. I have not.

Q. It is small, relatively, is it not?

A. Yes.

Q. Now, do you know when the term Idaho white pine was first applied to Pinus monticola?

A. I do not.

Q. Was that before your connection with the lumber business?

A. I cannot tell you that.

1741 Q. Do you happen to know, or is your knowledge of the lumber business sufficient for you to tell us what the term white pine meant in the New England States fifty years ago?

A. I think it meant exclusively strobus.

Q. And when do you imagine, if you have any knowledge on which you can base such a guess on the matter, when did the term white pine become broadened out to include some other wood?

A. I think it was broadened to include white pine from Idaho at the time that the mills out here became active, which was around 1900.

Q. That is a different botanical species, isn't it?

A. It is a true white pine.

Q. I said it is a different botanical species, though, isn't it?

A. It is a different botanical species.

Q. Is it not?

A. I do not know that I would let that pass. I do not know whether it is a different botanical species. It is, but——

Q. You are not familiar with the botany?

A. Well, I know that it is a five-needle pine and is classed as a white pine. If by a different species you mean it is not a white pine, I do not believe that.

Q. Are you familiar with the term species as it is used in botanical studies?

A. In a general way. I do not know as I can define it for you.

1742 Q. You understand that the first name in the three names of all botanical objects——

A. Yes.

Q. Is the name of the genus, do you not?

A. Yes.

Q. That the second botanical Latin name is the name of the species, do you not?

A. Yes.

Q. And that the third is usually the distinctive name used for specific purposes, such as the name of the man who discovered that?

A. Yes. That is true with certain exceptions, as psedatsuga taxefolia.

Q. And I suppose at the end of that, I suppose you would add "du." I am trying to get at just this one point. What is known as strobus is a definite botanical name, is it not?

A. Yes, sir.

Q. And that refers to a certain species of white pine?

A. Yes, sir.

Q. Or pine which has been called white pine commonly?

A. Yes.

Q. And Pinus monticola is another botanical name referred evidently, is it not, to another species of pine?

A. Yes.

Q. That is all I wanted to get at. Now, you spoke of Pinus
1743 lambertina. Now, what is the common name for that?

A. Sugar pine.

Q. And how long, if you know, has sugar pine been known as a wood to be used for lumber purposes?

A. I cannot tell you.

Q. You are not familiar really with sugar pine, are you?

A. Only as you are familiar with an active competitor always.

Q. Did you ever manufacture sugar pine yourself?

A. No.

Q. Are you generally familiar with its qualities and utility?

A. Yes. We are manufacturing some of it at the present time in this new mill in Oregon.

Q. You have hardly started there?

A. Yes.

Q. Now, I understood you to say that you had also marketed no southern yellow pine?

A. I have wholesaled it in previous days.

Q. I am talking about the Weyerhearusers?

A. Not in the present connection.

Q. By the way, you said you were assistant general manager here prior to two years and a half ago. How long were you assistant general manager?

A. Since November 1916. That would be thirteen years ago—a little more.

1744 Q. And before that you were in the wholesale, and before that the retail——

A. Yes.

Q. Lumber business in Minnesota?

A. Yes.

Q. And what experience have you ever had in the woods, except your one year up in Canada, when you said you were cutting something else than pine?

A. None, in active work in the woods.

Q. Now, would you be surprised, Mr. Tate, if the quoted price for ten-inch no. 2 common Idaho white pine at the present time were $35.00 average, as against a quoted price for ten-inch no. 2 common ponderosa pine of $24.85 or a spread of approximately $11.00?

A. No, sir.

Q. You would not be surprised at that?

A. No, sir.

Q. Your testimony as I had it down is that never since 1927, when your company dropped the price of Idaho white pine, has there been a spread in these prices greater than $8.50?

A. If I may refer to this paper that I showed you a while ago.

Q. Yes. We want to straighten that out, if we can.

A. The quarterly reports of the United States Experiment Station at Missoula giving the average prices as reported to
1745 them by the Western Pine Manufacturers' Association shows a variation in the average price of white pine as compared with ponderosa running from five dollars and fifty-four cents up to a maximum of eight dollars and sixty-one cents. That is during 1928 and '29.

Q. Do these show, by the way, the average differentials in price between what is marketed as California white pine?

A. They do not. This is the report of the Western Pine Association.

Q. You have not those other figures?

A. I have not the other figures.

Q. Have you made a study of those other figures?

A. Not in detail; no.

Q. I will ask you a few questions on prices a little later, but first I want to ask you this, on this botanical matter, have you ever studied botany?

A. Long ago.

Q. Now, do you know that what botanist look for when they attempt to classify trees or other plants?

Mr. BURR. I do not think he is qualified to answer on this.

Mr. WHEAT. I want to know if he knows. If he does not know, he may say so.

A. I think I will say, no.

Q. Do you know whether or not the Pinus strobus tree as you look at it in the forest is white?

1746 A. You are referring to the bark of the tree?

Q. I am talking about looking at a Pinus strobus tree in the forest. Is it white?

Mr. BURR. The foliage, or the bark?

Mr. WHEAT. I am talking about the tree.

A. No. Looking at the tree, no tree is white.

Q. Then, in other words, in using that word white, it does not refer to anything that is apparent in the forest, does it?

A. Not in the standing tree.

Q. Now, does it refer to anything in the needles?

A. It has come to mean a five-needle tree, if that is what you mean.

Q. No; I am not asking you that question.

A. In appearance the needles are not white.

Q. Do you know whether the flowers of that tree are white?

A. No.

Q. Do you know the reason for calling—do you know what the reason was for calling it white?

A. I do not know, except as we reach upon conclusions, because the wood is white.

Q. Now, is the wood of the Pinus strobus white all the way through?

A. Compared with other woods; yes.

Q. What color, in actual color, is the heartwood of Pinus
1747 strobus?

A. It is almost as white as the sap, almost as white as any of the wood.

Q. The sap is?

A. It is not as white as the sap, of course.

Q. Has it a pinkish tinge?

A. I would not say it has a pinkish tinge. I never saw a pinkish tinge.

Q. What kind of a tinge has it? Is it gray or brown, or what?

A. It is gray, almost white.

Q. Almost white?

A. Yes, sir.

Q. How white is the sapwood.

A. It is a little whiter than the heartwood.

Q. The sapwood is around the outside edge of the wood, is it not?

A. I understand it is.

Q. Now, what color is the wood of Pinus monticola?

A. Almost identical with Pinus strobus. Very hard to distinguish.

Q. And do you know the color of the wood of Pinus lambertiana?

A. Almost the same.

Q. Almost the same?

A. Yes.

1748 Q. Do you know whether or not the shop lumber of the ponderosa tree is taken from that portion of the log which contains knots?

A. If it did not contain knots or other defects, it would not be in the shop, but it comes from near enough to the surface so that enough

of the limbs have dies out to leave large clear spaces between the knots that remain. Then it comes from near the surface.

Q. It must, then, come from where the limbs have dies off?

A. Yes.

Q. Some time ago?

A. Yes.

Q. Then what are the general uses for the ponderosa pine which you sell as ponderosa? Take for instance first the clears, what do you use those for, your selects, as you call them?

A. The selects are used for practically all purposes for which the white-pine selects are used for, whether rightly or wrongly.

Q. Yes; we are not going into that matter now. Now, what about the shop lumber from that tree, what is that used for largely?

A. The shop lumber is used wherever small clear cuttings are required.

Q. You sell, do you not, in the general market a considerable amount of ponderosa shop lumber?

1749 A. Yes.

Q. Every year?

A. Yes.

Q. Can you approximate the footage of that?

A. I cannot now.

Q. Well, does it run into a considerable amount?

A. Very large amount.

Q. By the way, do you sell any pondosa ponderosa shop lumber to what is known as the Weyerheauser sash and door mill, the technical name being the Rock Island Sash and Door Company?

A. We try to, not always successfully.

Q. Is that operated so that you are really in competition with other producers?

A. Really.

Q. Do you know whether or not the Rock Island Sash and Door Company is operated by the Weyerheauser interests?

A. I believe it is. I have never seen their stock records.

Q. Still it is one of the companies that you understand to be in that group, is it not?

A. Yes.

Q. And do you know whether or not the Rock Island Sash and Door Company purchases any California white pine for sash and door purposes?

A. I do not.

Q. Do you know whether you sell all of the shop lumber

1750 that that company buys?

A. I know we do not.

Q. Do you know whether all the rest that they buy is pondosa from some other section?

A. I do not.

Q. Do you know how much Pinus strobus they buy in a year?

A. I do not.

Q. Do you know anything about how much Idaho white pine you sell them per year?

A. I do not. Very little.

Q. Do you sell them any Idaho white pine shop lumber in the year?

A. I do.

Q. About how much?

A. I cannot answer that without referring to the record.

Q. Well——

A. A much smaller amount than the ponderosa.

Q. That is because the Idaho white pine produces a much smaller amount of shop, isn't it?

A. Quite so.

Q. In general, in selling Idaho white pine you have not a great percentage of shop to sell, have you?

A. No.

Q. But you have a considerable percentage of shop to sell from you ponderosa trees?

1751 A. Yes.

Q. You do not know, then, whether or not the Rock Island Sash and Door Company buys some Pinus ponderosa for sash or door purposes from the California region?

A. I do not.

Q. You never have this matter reported to you?

A. I have no direct knowledge of it.

Q. Who would in your organization?

A. No one in our organization.

Q. You mean in the Weyerheauser Sales Company?

A. In the Weyerheauser Sales Company.

Q. You are a portion of the Weyerheauser interests, are you not?

A. Yes.

Q. Now, who would in the Weyerheauser interests?

A. The management of the Rock Island Sash and Door Works.

Q. Referring to Mr. Esplund?

A. Mr. Esplund or Mr. Hanson.

Q. You know, however, that you do not sell all of the Pinus ponderosa that they buy for that purpose?

A. I am sure that we do not.

Q. But you do know that this Weyerheauser concern, if we put it that way, does use Pinus ponderosa for sash and doors?

A. Yes, sir.

Q. Use some Idaho white pine for sash and doors?

1752 A. Yes.

Q. And does it use much of any strobus for sash and doors?

A. Not a great deal.

Q. Do any of the large mills use any great portion of strobus for sash and doors?

A. I think not.

Q. There is a very large demand, is there not, throughout the United States for cut cash and doors?

A. Yes, sir. The total footage is very large.

Q. The total business of those great manufacturing plants is a large business, is it not?

A. Indeed, yes.

Q. Millions of sash and doors are made each year by them, are they not?

A. Yes.

Q. Have you any idea what proportion of Pinus strobus?

A. No.

Q. Could you approximate it?

A. No.

Q. One percent, do you think?

A. I do not know.

Q. Do you think it might be as high as five percent?

A. Yes.

Q. You do?

A. But I have no definite enough knowledge to answer
1753 your question.

Q. Have you any definite knowledge, have you made in connection with your sales work for the Weyerheauser Sales Company any definite study of the proportion of Idaho white pine, for instance, which goes into the great manufacturing plants?

A. Not from that standpoint.

Q. Can you approximate, and perhaps you can before the close of this hearing, the number of sash or the amount of Pinus ponderosa which you sell in the four shop grades in a year, say, take last year at the end, for example. You did not have a price break until right at the end, did you; so I should say 1928, perhaps, would be better. Take 1928 and you can give me the figure on the footage of C select 1, 2, and 3 shop that you sell. Is there any other important shop grades?

A. No.

Q. Have you any idea what proportion of the shop lumber which you sell goes into replacements, as against present new construction?

A. No, sir.

Q. Have any of your salesmen ever reported to you on that point?

A. No, sir.

Q. Any of your salesmen ever said to you that a considerable amount of this Pinus ponderosa shop lumber was made into sash or doors for replacement?

1754 A. I do not remember it.

Q. Have any of your salesmen ever reported to you that a market had been developed for such replacement material?

A. No, sir.

Q. You do not know, then, do you, offhand, what proportion of shop lumber in general does go into the replacement of sash and doors?

A. I do not.

Q. Can you give me any specific instances of complaints which have come to you regarding the necessity of replacing Pinus ponderosa sash or doors?

A. No.

Q. Now, has the general relative price of ponderosa wood marketed now as pondosa show any great change in the market? I say, the general relative price of them during the last ten or fifteen years?

A. Yes.

Q. In some way other than your own dropping of your Idaho white-pine price?

A. You are talking about the general price level of pondosa pine, formerly western pine?

Q. Yes; as it relates in general to the pines that are marketed.

A. Fifteen years ago would be about 1915, you mean?

Q. That is right.

1755 A. There was a rapid increase in price of all pines during the war up to the peak in 1920.

Q. Yes.

A. There has been a recession ever since to the present level.

Q. Yes. Now, with the exception of your one example which you gave of your own drop in price of Idaho white pine for various business reasons, has the wood marketed now as pondosa, can you say in general its relative price level with other woods with which it competes has been maintained?

A. Yes; in general.

Q. Do you know in general whether, grade for grade, the wood sold as California white pine enjoys a preferential in price over the wood sold as pondosa?

A. I testified awhile ago that it has a constantly diminishing preferential.

Q. Some years ago it was a fairly large preferential, was it not?

A. It was.

Q. And at the present time it is rather small, is it not?

A. Well, it has run from five dollars and a half to eight dollars and a half, I testified, in the last two years.

Q. I am not talking about Idaho white pine, sir.

A. Oh, I beg pardon.

Q. I am talking about as between California white pine and

1756 pondosa, grade for grade.

A. I beg pardon, I do not understand.

Q. The California white pine, as your studies would show, over a period of years, with the exception of common grade, enjoyed a slight differential in prices over pondosa?

A. Yes.

Mr. BURR. What do you mean grade for grade? Throughout the territory?

Mr. WHEAT. Throughout the territory; yes.

A. I think that is true, particularly of the shop lumber.

Q. Take, for example, no. 1 shop. Why should California white pine, no. 1 shop, have any price preferential over pondosa no. 1 shop?

A. There are two reasons I know. One is the fact that it is sold under the white pine name, which is a sufficient reason.

Q. Now, what is the other?

A. The other is because in general it is cut from a little larger type of logs, and for some purposes it is desired for that reason.

Q. You get more clear cuttings between the knots, do you, slightly, from that lumber?

A. Well, the larger the log the larger the cuttings that can be secured, the larger the defects, and the larger the cuttings beteween the defects.

1757 Q. By the way, people who buy shop lumber are experienced lumbermen, are they not?

A. They are.

Q. They are people who know what the lumber is and know what they are getting?

A. We find it so.

Q. Did they buy pondosa just as well after you changed the name as they did before?

A. I think the sash and door manufacturers did. They certainly know the species before and after the change.

Q. You advertised, s'ent a great deal on advertising, have you?

A. Yes.

Q. Are you members of the Western Pine Association?

A. We are not at the present time.

Q. When did you resign from that membership?

A. In February 1927.

Q. And that was after the change in name, was it?

A. Yes.

Q. Well, now, a considerable sum has been spent on advertising that name?

A. Yes.

Q. Do you think that it is as well known in the trade in general today, that is, the wood, as it was under its former name?

1758 Mr. BURR. What do you mean by well? Widely?

Mr. WHEAT. Q. As widely known by the trade in general?

A. I doubt that, because the previous name was a name which everyone knew and had known for generations. This is a new trade name which it takes time to introduce and which covers the product only of a restricted portion of the district.

Q. And costs a great deal of money to introduce, does it not?

A. It costs a great deal of money to introduce.

Q. Have you any idea how much has been spent on that?

A. I have not.

Q. It runs up over a quarter of a million, does it not?

A. It is a large sum.

Q. Now, the large remanufacturers of sash and doors whom you testified continued to purchase pondosa, they are thoroughly familiar with the tree from which it comes, are they not?

A. I think so.

Q. They are equally familiar with—do you think they are as familiar with the trade name California white pine as they are with the new trade name pondosa?

A. I do.

Q. How long have you yourself been familiar with the trade name California white pine?

A. For a long time. I cannot answer it more specifically
1759 than that.

Q. When you first went into the lumber business was about what year?

A. Well, I started running a retail yard in 1922.

Q. Did you sell any California white pine?

A. No.

Q. That had not entered the Minneapolis market, had it?

A. No.

Q. It is carried, probably, is it not, in retail yards in Minneapolis today?

A. Yes, sir.

Q. It is carried generally throughout the Eastern States?

A. You are talking about shop now?

Q. About California white pine.

A. Yes; it is.

Q. Various grades of it?

A. It is.

Q. So far as you know, Mr. Tate, does the trade, the lumber trade in general, recognize and understand the term California white pine?

Mr. BURR. Referring to wholesalers, retailers, or both?

Mr. WHEAT. I am referring to the wholesalers and retailers that this gentl'man comes in contact with.

Q. Are they familiar with that term?

A. I think the remanufacturers of lumber and the retailers
1760 of lumber in general are very well advised as to all trade names.

Q. Including California white pine?

A. Including California white pine.

Q. And including to a certain extent at the present time the term pondosa?

A. Yes.

Q. Do you think that on the adoption of your new name pondosa you were prejudiced at all in the lumber market?

A. (Pause.) We had never used the white-pine name.

Q. I am not talking about that at all. I am talking about whether or not, Mr. Tate, you were prejudiced in the market when you adopted the new name?

A. I presumed that there was some lost motion in introducing the new name. I believe there was, but it was introduced more successfully than we had anticipated would be possible.

Q. You have fairly regained the lost ground, I take it?

A. Some of it.

Q. Are you about on the same level or on a higher level, so far as the marketing of that lumber?

A. We have some resistance from those who used the words white pine.

Q. You never used the word white pine, did you?

A. No.

Q. What kind of resistance have you from those who used
1761 the word white pine before?

A. We have less of our competitive wood offered as white pine than previously.

Q. You had resistance, did you not, according to your testimony, when the term western white pine was used?

A. Yes.

Q. You did not use that name, did you?

A. We did not.

Q. And do you find that under the name pondosa you have less sales resistance than you did when you called it western pine?

A. I do not think there was any change in that respect.

Q. Now, the trade generally understands, does it not, that pondosa pine, so called now, is what used to be marketed as western white pine in general and by yourself as western pine?

A. Most of our trade do.

Q. Is the trade generally familiar, you think, with the quality and utility of that lumber in the building and construction business?

A. Yes, of course, there are all kinds of lumbermen, as there are in every line.

Q. Precisely.

A. There are some that are not very well posted. We still do some missionary work.

Q. The lumber business in general, Mr. Tate, has got to
1762 do a lot of missionary work, hasn't it?

A. We hope it will do a lot.

Q. Don't you find, Mr. Tate, that the lumber business as much as any large business of that sort, perhaps, in this country, is subject to consumer and small dealer misunderstandings?

A. I am sure of it, because I think that lumber as a commodity is a more complex subject that any other that I know, because of the many varying species and grades involved.

Q. It can be said, can it not, that any small mill even producing any kind of lumber is in a sense in competition with another small mill producing some very different kind of lumber?

A. Yes.

Q. But in general competition in lumber business runs along certain large, broad views, does it not?

A. Yes.

Q. Now, let me ask you this question, whether or not from your experience with Pinus ponderosa you have found that in its uses, the uses to which it is put, it competes more largely with what you have termed the genuine white pines than it does with what you have been terming southern yellow pine?

A. Yes, that is true.

Q. Do you know how your pondosa that you sell to the trade is resold?

1763 A. I do not.

Q. To the consumer by the retailer to whom you sell?

A. We do not.

Q. By the remanufacturers to whom you sell?

A. We do not.

Q. Do you know whether or not any efforts have been made by your organization or by the Western Pine Manufacturers' Association to stop remanufacture' or retailers from using the word white in connection with the sale of this lumber?

A. I do not.

Q. It is the same lumber, is it not, as it was before?

A. It is the same lumber.

Q. There has been no change in the nature of the lumber, has there?

A. No.

Q. Have you noted any particular change in the uses to which it is put?

A. The uses are long established. I do not think there can be any large change in the uses.

Q. I see.

A. In fact, we have been working for a change in the uses to which it is put and we find a great deal of difficulty that arises because of the confusion in the similarity of names.

Q. Of course, any seller of pondosa pine is in competition with any other seller of pondosa pine, is he not?

1764 A. Yes.

Q. Suppose a big new mill should come in here, would that mean added competition to you?

A. Yes.

Q. Suppose ten large new mills should be put in in the Klamath Falls region, where your new mill is going in, would that mean increased competition to you?

A. Yes.

Q. By the way, does that affect relative prices of wood, increased competition, ordinarily?

A. In general the lumber industry is unprofitable today because of overproduction.

Q. Well, irrespective of that particular matter, on which we all agree, any general increased competition means——

A. Means lower prices and harder selling.

Q. Now, what would have been the effect, or what would be the effect on relative prices, in your estimation as a sales expert, if the name California white pine were changed to pondosa pine?

A. I think the use of the name California white pine is worth real money to the manufacturers of that commodity. When it comes to putting a dollar and cents value on it, that is hard to do. That is a matter of opinion.

Q. Of course, I am not trying to look at it from their point of view, Mr. Tate, but from your point of view as a seller of
1765 pondosa. You said a few moments ago that if one new mill should go in it would affect your competition, did you not?

A. Yes, sir.

Q. If ten new mills went in it would affect your competition, and that new competitive conditions always affected prices. Now, I say if all California white pine were suddenly placed on the market as pondosa, would you find it easier or harder to sell your pondosa pine?

A. I think it would be easier to sell our pondosa pine from this area, and it would be easier to sell our—you did not ask me about white pine, I will not answer. I will not volunteer that.

Q. Now, suppose that name were to be changed to yellow pine, what effect would it have?

Mr. BURR. I think we are getting into speculation here.

Mr. WHEAT. Mr. Burr, this is exactly what the witness testified to, as to the use of white pine.

Mr. BURR. But the suggestion of any one particular name as a substitute for this, it seems to me gets into the realm of speculation, because the Commission has no authority or power to prescribe any particular name as a substitute.

Mr. WHEAT. I anticipated that you would make that argument and therefore I jotted down a few notes along that line. You are attempting here to make a claim of the hindrance to the pondosa people because of the use of the word white pine.

1766 Examiner DE BRULER. Have you got a copy of the complaint there?

Mr. WHEAT. Yes. Now, there is a specific contention that these people are prejudiced in marketing their——

Examiner DE BRULER. Gentlemen——

Mr. WHEAT. I wan the record to show two sentences more.

Examiner DE BRULER. All right. Go ahead.

Mr. WHEAT. I think we are entitled to test the validity of that contention by reference to other names.

Examiner DE BRULER. Go ahead, then.

Mr. WHEAT. Not at all the same question which was asked in the eastern hearing, which was whether or not they would change their practices if another name was used.

Q. What do you think would be the effect on prices of California white pine and pondosa if California white pine were changed to yellow pine?

A. I do not think the manufacturers would realize as much money on their stock marketing it as yellow pine as marketing it as white pine.

Q. Do you think that that would be true if the manufacturers should change—in California, should change their name from California white pine to western yellow pine?

A. Yes.

Q. You think there would be an effect on relative prices then between California white pine and pondosa?

1767 A. Yes.

Q. You think that would be true of the name California pine?

A. I think that any name which did not include white pine would work to their detriment in the marketing price of their lumber.

Q. Well, now, in other words, you feel that there is no name that they could adopt replacing the term California white pine which would keep them on a parity, price considered, on a parity which they now enjoy with pondosa?

Mr. BURR. He did not say that.

A. I do.

Mr. WHEAT. Wait a minute. He just said he did. His answer was I do.

A. I do not think any name carries the weight in lumber that the name white pine does.

Q. That finishes my line of questioning along that line. Have you ever had a buyer come in to you, Mr. Tate, and ask for a piece of five needle pine?

A. I think not.

Q. Have you ever had anybody come in and say, I want to get some three needle pine?

A. I think not. We have asked a buyer who came in and asked for white pine whether he meant a five needle pine or a three needle pine.

1768 Q. And what has he said?

A. In general, I think certain of the shop buyers, the large buyers, know the difference.

Q. They do? They know how many needles there are?

A. Yes.

Q. Is that true generally in the lumber trade?

A. I presume it would not be true throughout the retail trade.

Q. The white pines are five needles pines, are they?

A. Yes.

Q. Are there any white pines that are not five needle pines?

A. Not that I know of. I am not qualifying as a botanist.

Q. We will get back to our question, whether you are familiar with Pinus monophylla. Do you know whether or not there is a Pinus monophylla with four needles?

A. I do not.

Q. Do you know whether the purchaser in general is ordinarily interested in botany?

Mr. BURR. We will stipulate that he is not.

Mr. WHEAT. Good. That is fine.

Mr. BURR. I tried to stipulate that in the East two or three times, and avoid a lot of these questions, and we will concede it.

Mr. WHEAT. Now, I am trying to avoid as much of this as I can.

Mr. BURR. That is fine. I shall try to be briefer than I

1769 have been, if I can, and I am sure I can.

Mr. WHEAT. Q. What are the ordinary uses of southern yellow pine, if you know?

A. Southern pine is used largely for timbers, plank, structural grades, for sheathing, floor lining, roof lining, for flooring, for ceiling—for almost all purposes. It is not extensively used, I believe, where it is exposed to the weather.

Q. Do you cut any two-needle pine and call it?

A. Not knowingly.

Q. Did you ever sell any lodgepole pine?

A. No.

Q. You did not?

A. No.

Q. Weyerheauser interests do not sell any lodgepole pine, do I understand that?

A. Not as that. If they have any occasional trees.

Q. How is it sold?

A. I do not know. I do not know that we have any. I do not know of any.

Mr. BURR. That belongs to the yellow-pine group, does it not?

The WITNESS. Yes.

1770 Mr. WHEAT. You know that is the two-needle pine, Pinus monophylla?

A. No, sir.

Q. By the way, do Idaho white pine and the ponderosa in this area grow in mixed stands?

A. Yes. There is nearly always ponderosa present in the white pine stands, but it does not work the other way around.

Q. Are those all segregated down to no. 5 common, or are some of them sold mixed?

A. The grades, you mean? No; they are segregated.

Q. You segregate them all out?

A. Yes, sir.

Q. Do you know whether or not sugar pine is ever sold mixed with ponderosa?

A. Only the low grade sugar pine, I would say.

Q. Or the low grade ponderosa?

A. I have heard of upper grades of sugar pine being included in California white pine shipments, but I cannot testify to the special and exact reference.

Mr. BURR. It would be a very special circumstance, would it?

The WITNESS. Yes.

Mr. WHEAT. Q. How do you quote your Pinus strobus to your customers?

A. As pondosa pine.

Q. Your Pinus strobus?

1771 A. Pinus strobus? As northern white pine or Minnesota white pine. I beg pardon.

Q. Do you ever mix any other wood with that?

A. Not when sold as white pine.

Q. What do you charge for the clear white pine alone, over the ordinary run then, of your mill?

A. For the green stock, you mean? One dollar in some cases, two dollars in some cases.

Q. What is there that you eliminate from the strobus that you sell otherwise as northern white pine?

A. Practically nothing but Norway.

Q. Then in the wood which you do sell as northern white pine there is some Norway pine?

A. Not as northern white pine, northern pine.

Q. You quote it then as northern pine?

A. Yes.

Q. And you charge a little more for what wood?

A. For the occasional piece that we lay out that is not white pine, that is sold as white pine.

Mr. WHEAT. If Your Honor please, that is the extent of what I am now preparing to cross-examine this witness on. It now being five o'clock, there are a few other matters——

Mr. BURR. I would like to go ahead with my re-direct while the matter is fresh in my mind.

1772 Re-direct examination by Mr. BURR:

Q. Now, are you familiar under what circumstances as a general matter your northern white pine and Minnesota is sold with the Norway pine?

A. In the lower grades it is not very important to the user whether the species be entirely separated or not.

Q. In other words, that is the ordinary common, lower common, is it?

A. That is the ordinary lower grade.

Q. And that is used for box purposes and rough mater[illegible]?

A. And for sheathing or anything of that kind.

Q. Of a temporary nature; is that true?

A. Yes.

Q. Temporary uses?

A. Yes. Well, they can be permanent uses but not exposed to the elements, or not used where it matters, so far as their durability or texture are concerned.

Q. Now, what do you do with your higher grades of Norway?

A. Sell them as Norway. We have practically no Norway left. Formerly we made a grade of Norway selects and sold them separately from the white pine select.

Q. That sometimes is termed red pine, is it not?

A. Yes.

1773 Q. Now, do you mean that the stand that you are working on in Minnesota in those days is very sparsely—very sparse on red pine?

A. It contains almost no red pine; very little comparitively.

Q. Did you ever sell any Norway pine of the higher grades intermingled with the northern white pine?

A. I do not think so.

Q. Either as Norway pine or as white pine; is that true?

A. We sell it as northern pine in that case.

Q. When you sell it intermingled you sell it as northern pine?

A. Yes.

Q. Now, going back to the beginning of your cross-examination or thereabouts, I think you spoke quite at length about the second growth of the strobus. Now, in New England the white-pine forests in the closer regions, outlying the earlier settlements, the strobus cuts were made some long period ago, were they not?

A. Yes.

Q. Now, as the time wore on and the closer white pine was exhausted and a radius of cutting from the settlements receded, did it, lengthened I would say?

A. Yes.

Q. And part of the land went into agriculture and part went back into forestation, did it?

1774 A. Yes.

Q. Now, are some of the reforested areas growing up in white pine; are they of considerable duration, the length of period back that they have been growing up?

A. Yes. But I do not understand that they permit the stock to fully mature. It is usually cut before it has reached a very large size.

Q. And have several crops been taken off the same area?

A. I understand so. I think I should say that I cannot qualify as an expert on the situation as regards either virgin or second-growth pine. It comes to us simply as lumber to sell. We make no distinction in our selling as between the virgin or the second growth.

Q. Now, some of the second growth is coming up pretty good sized, is it?

A. Yes.

Mr. WHEAT. May I ask what the answer was?

The WITNESS. I said "yes", but I have no specific information about it.

Mr. BURR. Q. Sometimes in the virgin forests the stand is in the nature of a comparative recent growth, is it not?

A. Yes.

Q. So that this question of second growth and virgin timber shades in together, so that there is no line of demarcation, is that true?

1775 A. Often.

Q. Often in the remote sections is it true, that under natural conditions, fires from lightning and otherwise might start and sweep over a large area of virgin forest?

A. We are cutting second-growth timber at the present time, which has never been logged before, where the original forest was destroyed from some cause.

Q. And how large does that run?

A. It is large timber.

Q. Now, there was some testimony given by you as to the original of the word "white" as attached to certain species. Is the white oak a paler tree in point of bark than the black oak or the red oak? Are you familiar with that?

A. I do not think it is. I do not know that it is.

Q. Now, some trees are named by a given color, some species of common names are in accordance with the color of the bark, and other are in accordance with the color of the wood. Is that true?

A. I am sure that is true.

Q. Now, you say in the case of white pine, it is not because the bark is any paler than the bark of other pines, that it is called white pine?

A. I think the bark is whiter, paler than most other pines, but it is not from that point at all, I am sure, that the tree is named.

1776 Q. Is the Idaho white pine a paler tree than the ponderosa tree?

A. As to the bark?

Q. Yes.

A. Yes.

Q. Is the Idahop pine rather paler than the western yellow pine in the same locality?

A. I do not know that I can testify to that.

Q. Now, there is a difference, then, in the appearance, a slight difference in the shade of the bark, is there?

A. Oh, yes.

Q. Now, with regard to the wood, would you say that the term "white pine" has come to mean certain characteristics in the wood as well as the color of the wood?

A. I would say that it means the certain characteristics rather than the color of the wood.

Q. And those characteristics are the ones that have been testified to today, in which the characteristics of the genuine white pines are more uniform as regards the comparative diversity of quality of the Pinus ponderosa; is that true?

A. Yes.

Q. Now, then, the Rock Island Sash and Door Company, I think you said were controlled by the Weyerheauser interests, did you?

A. I understand so.

1777 Q. Now, then, do the Weyerheauser interests have an organization which controls the production policies of the various companies that are supposed to be Weyerheauser companies?

A. No.

Q. Do the individual companies control themselves through board of directors, or does the sales corporation control them?

A. The individual companies control.

Q. Now, then, your sales company, of which you are the manager, does that control the sales of the product that is made by the Rock Island Company?

A. No, sir.

Q. They market that themselves rather than through you, do they?

A. Yes.

Q. Now, do you know what varieties of millwork, sash and door, the Rock Island Sash and Door Company markets? I mean, what species of lumber?

A. I do not.

Q. Do you know whether—I think you testified that they make ponderosa sash and doors?

A. Yes.

Q. Do they market that as California white pine sash and door?

1778 A. I am very sure they do not. I have no direct knowledge on the subject. I know the Weyerheauser policy.

Q. Well, the Weyerheauser policy is not a matter that they are forced to obey, is it?

A. Ultimately they would be.

Q. Now, when you sell lumber that is for cutting-up purposes, for remanufacture, in other words, the shop grades, part of that goes into new structures, new buildings and all that, and part of it goes into replacements, is that true?

A. That is true.

Q. Do you have any means of knowing whether a man is buying that for replacement of not?

A. We do not.

Q. When the retailer buys it, quite likely he does not know himself how he is going to sell it, does he?

A. I think that is true.

Q. In other words, you have no complaints brought to the attention of your concern as to whether or not this is a matter that is a replacement matter, or does that come to you?

A. The only time that we have any knowledge that it is a replacement job, I would say, is where we are asked to furnish some special size of mouldings or siding to match an old building, something of that kind, but that is very seldom and is negligible as to quantity.

1779 Q. Now, can you by reference to your files find anything which would be in answer to opposing counsel's question as to complaints as to the replacement of the—the necessity of replacement of ponderosa prematurely?

A. We have no knowledge of where our lumber is used and therefore we do not know anything about the replacements.

Q. And it is for the reason that complaints naturally would not come to you and do not come to you, is that true?

A. They do not come to us.

Q. Now, I think you testified that California white pine in some respects more closely approximated to genuine white pine in its characteristics than the pondosa in some respects, did you?

A. I did not intend to.

Q. Well, I thought that was your testimony, that California white pine was better in some respects and had a greater degree of softness or something or other than pondosa?

A. I think you will find what I said was that the average tree in so-called California white pine is perhaps larger than the tree that is cut in this district as pondosa. That being the case it yields a larger percentage of selects and of shop lumber, and in the shop lumber itself the larger the timber the more true cutting type it is possible to get, because of the large clear spaces between the knots.

Q. I see. I stand corrected. Now, the same thing is true
1780 with regard to the size of the tree. If you were to compare the California so-called white pine, it is a little larger generally than the Idaho white pine, is it not?

A. That is true.

Q. Let me ask you this, you testified so in a rather large and general way. Is it true or is it not true that there are certain sections of California where the average tree of ponderosa would not be larger than the inland empire ponderosa in certain sections?

Mr. WHEAT. He has not testified that he knows anything about the California forests, in general. Of course, if he knows——

A. I have no personal knowledge on that. It is my general understanding, that is true.

Mr. BURR. Q. In other words, the California white pine, so called, varies?

A. Yes.

Q. In size in different stands, and all that, does it?

A. Yes; and I have seen very small stands of California white pine, in California.

Q. Was that virgin timber?

A. I do not know.

Q. I think you testified that the retailer as well as the manufacturers were familiar with the term California white pine, did you not?

1781 A. Yes.

Q. And that they had been so for quite a long period?

A. There are exceptions to that, but in general the larger retailers, it seems to me, are as well posted as the manufacturers.

Q. Now, is it true that the retailers, in your judgment, are familiar with the fact that under that well-known term the lumber furnished is not a genuine white pine?

A. I think the large majority of them.

Q. You think the large majority of them know that?

A. The large majority of them know it.

Q. But you think there are exceptions, or what do you mean by the large majority?

A. I judge there are exceptions.

Q. Now, I think you used a phrase which you afterwards qualified to some extent; I think the question related to the change of the name in the inland empire on the part of your competitors making products from Pinus ponderosa, the change of name on their part from western white pine to pondosa, and I think you have testified that there have not been very much change in the utilities and uses which the pondosa pine is now employed for, as contrasted with what the western white pine had previously been used for?

A. That is true.

Q. Now, I think you used this phrase in that same con-

1782 nection, that there can be no change in the uses. Now let me ask you this: You testified under direct examination with regard to the possibility of an increased use of genuine white pine for special purposes under a careful nomenclature of wood and species of wood. Would there not, in your judgment, be a realignment and readjustment to some extent of the utility and actual uses?

A. Absolutely.

Q. Of the various pines?

A. Absolutely. I am quite sure that there are some places and some uses which western white pine served in the old days that it cannot serve under the name of pondosa pine.

Q. Now, is there a policy on the part of the Weyerheauser Company, interests I should say, of attempting to adopt the same policy in such wasy as to place the lumber products where their utility, where their use is such as to be adapted to their actual qualifications of utility?

A. That has been a policy of the Weyerheauser Company for a great many years, trying to find the right wood for the right place, trying to recommend no wood for a use to which it is not well adapted.

Does the term California white pine in the trade, as a term for Pinus ponderosa products, aid or hamper that effort on the part of your interests?

Mr. WHEAT. If Your Honor please, I object, the same ob-
1783 jection, and I want the record to show that.

Examiner DE BRULER. Let the record show the objections.

Mr. WHEAT. And my exception to your ruling.

A. It hampers.

Mr. BURR. Q. Do you think that with proper nomenclature there will be and can be a modification of the uses of those pine lumbers?

A. A correction of the uses?

Q. Yes.

A. I do not know just what you mean by modification.

Q. Yes; a correction of the uses to some extent in conformity with the change of the nomenclature?

A. I think an absolute nomenclature which would set up the right divisions between white pines and other woods would be materially helpful to white pine immediately, and would ultimately be helpful to the other woods, for the reason that it would tend to credit the use of lumber where sometimes now it is discredited, through misunderstanding or confusion or failure of lumber bought for what it is not.

Q. Is Pinus ponderosa an inferior wood for all purposes to white pine?

A. No, sir.

Q. For what purposes do you regard it on a parity?

A. For purposes which do not require as fine cutting, as soft
1784 or as—as soft, as little grain, the pondosa works admirably. For many kinds of mouldings machines practically as smoothly as the Idaho white pine, as the white pine. Our experience has been that it does not always give the same service where exposed to the elements that the white pine gives. It is—it has rather more strength and a little more weight than the true white pine, and, where strength is required, it would be a better wood than white pine. There are many uses for ponderosa pine under its own name.

Q. Are there uses for which, in your judgment, it is a better wood to buy at the price at which it generally sells than white pine would be at the price at which it generally sells?

A. In general, I believe that ponderosa is a better buy today than white pine because of the confusion that exists as to the white-pine name.

Q. You mean for reselling?

A. Yes.

Q. I was talking about the ultimate consumer now.

A. That depends ultimately on the use to which the wood is put.

Q. My question is, Are there uses for which Pinus ponderosa at its price is a better buy for the ultimate consumer than white pine at its price?

A. Yes.

Q. Now, to return to the subject of advertising, you have spent considerable money on advertising white pine as such,
1785 have you?

A. Yes, sir.

Q. And that was done to a large extent in order to establish white pine as a specialty wood, was it?

A. Yes, sir.

Q. Has that been successful to the extent that you expected?

Mr. WHEAT. Well, now if your honor please——

Examiner DE BRULER. That is somewhat speculative.

Mr. BURR. Q. Have you been able to establish white pine thoroughly as a specialty wood as the result of that advertising, or otherwise?

A. No.

Q. What was that? You were able to deliver what you advertised, or aren't you?

A. Yes, we are able to deliver what we advertise in white pine.

Q. Well, does the ultimate consumer get that, or does he get California white pine white pine when your advertising creates consumer demand?

Mr. WHEAT. Well, I suggest that that is infinitely more speculative than the other question.

Examiner DE BRULER. Unless you know that. Do you know that?

1785 A. I know it is entirely possible for the consumer who should use white pine to specify white pine and get a wood that is not white pine, which makes it very hard for us to qualify on our advertising, to realize on our advertising.

Q. Now, your advertising of white pine was directed to create consumer demand, or directed to the retailer, or both?

A. Both.

Q. Now, then, when you try to create consumer demand, and the consumer seeks genuine white pine as the result of your advertising, what is the effect of the retailer being able to sell a variety which is known as white pine in the trade but which is not genuine white pine?

Mr. WHEAT. Now, before the answer is made to that, if there ever was a speculative question, then there is a prime example. I feel I must object.

Examiner DE BRULER. Let me hear that question again.

Mr. BURR. It is rather involved. I do not know whether it is clear.

Mr. WHEAT. I will add that objection.

Examiner DE BRULER. Read the question.

(Question read.)

Examiner DE BRULER. You may state what your knowledge is of that.

Mr. BURR. I think this gentleman is an expert, if there is anybody knows about marketing it is this gentleman.

Examiner DE BRULER. State what your knowledge is.

1787 A. My answer is that we cannot control our commodity only to the first purchaser, which is the retail dealer. We have no control beyond that. We know that the retailer can pass on

to his customer a genuine white pine or a wood that is not a genuine white pine which has been bought under the white-pine name.

Q. You cannot, then, actually control and carry through to the man that is putting up the house or the architect who represents him your genuine white pine and know that it is being delivered to him?

A. We cannot.

Q. When he asks for white pine, he may get genuine white pine, or he may get something that is known as white pine?

A. Yes.

Q. I think you testified that no name carries the weight that the word white does, did you, in your cross-examination?

A. I think that is true in softwood.

Q. Now, if California white pine were given a name, what is now called California white pine were given a name which did not include the word white, I think you testified with regard to the market conditions that in your judgment would ensue. Now, I think your testimony left a doubt as to whether California white pine would not, if marketed without the word white, fall lower on the market than the inland empire pondosa. At any rate, I would ask you to qualify that testimony as to whether in your judgment the California white

1788 pine would be unable to maintain itself against pondosa?

A. I think it would realize per thousand feet a higher average than the present pondosa, from the character of the trees from which it is cut.

Q. On accounts of its being larger?

A. Yes, sir.

Q. And wider, for shop lumber?

A. Yes, sir.

Q. And other purposes?

A. And other purposes.

Q. And that is true today, isn't it?

A. That is true today.

Q. Now, with regard to the sales resistance that you testified to on your direct examination, that sales resistance which you testified would result and is resulting from the word white as competition experienced by the genuine white pines, and in inland empire pondosa, that in your judgment would be removed, would it?

A. Yes.

Q. Now, isn't there such a thing as a wood being able to maintain a higher price and yet decreasing in point of volume in sales?

A. Yes. It nearly always works that way. The less you have to sell of a commodity, the higher price you can get for it.

1789 Q. Well, now is it possible that the sales resistance would be lessened by the elimination of the word white, but the California white pine as thus renamed, in some fashion or other, might still maintain its slight advantage in the market over pondosa, more than under less favorable circumstances?

A. I think it is inevitable.

Mr. BURR. That is all.

(Witness temporarily excused.)

(Thereupon adjournment was taken until 10:00 o'clock a.m. of the following day, Tuesday, January 21, 1930, at which time the hearing was resumed and the following proceedings were had:)

1790 Before the Federal Trade Commission

In the matter of White Pine cases

Docket Nos. 1620–1669, inc.

SPOKANE, WASH., *January 21, 1930.*

Met pursuant to adjournment, 10:00 o'clock a.m.

Before Ellis De Bruler, examiner.

Appearances:

Eugene W. Burr, for the Federal Trade Commission.

Messrs. McCuthen, Oleny, Mannon & Greene (by Mr. Carl I. Wheat) for the respondents.

Examiner DE BRULER. We will now proceed with the hearing in keeping with the adjournment.

I. W. TATE resumed the stand and further testified as follows:

1791 Recross-examination by Mr. WHEAT:

Q. Mr. Tate, just for the purpose of refreshing your recollection with the fact that you were talking about it yesterday, in redirect examination, what is your definition of a virgin forest?

A. A virgin forest is one that still carries the original growth.

Q. In other words, it is one that has not been cut over?

A. It has not been cut.

Q. It may have been destroyed by nature before and regrown; is that true?

Examiner DE BRULER. I might ask how far back are you going?

Mr. WHEAT. I am talking of the forests with which the witness is familiar, of course.

A. I would say that a forest that has been destroyed within the last hundred years and possibly more, and by natural causes, and has grown up again, would be considered a second growth of forest.

Q. What is the average age of your Pinus strobus trees that you are now marketing?

A. I cannot tell you.

Q. If you know.

A. I cannot tell you that. I would guess that they are over a hundred years old.

1792 Q. Now, have you any idea how large a strobus tree in these average conditions grows in a hundred years?

A. I have heard.

Mr. BURR. If the examiner please, I do not believe this gentleman qualifies as an expert. We are going to have experts on the witness stand, I understand.

Mr. WHEAT. All right. I will withdraw that question.

Mr. BURR. We are going into the realms of conjecture.

Mr. WHEAT. No; I am not going into the realms of conjecture. I want to find out if he knows about things.

Mr. BURR. I won't object.

Mr. WHEAT. Q. If you do not know the answer to that question, will you just state so?

A. I do not absolutely know.

Q. Does that mean you have made some investigations of that matter?

A. Not personally.

Q. Well, now, I believe that you said that the word white was first given to certain trees of the pine genus because of the color of the wood?

A. I think I said that I assumed that to be the reason.

Q. Oh, yes.

A. That I thought that the natural reason.

Q. Well, now, that term was applied to some tree or trees of the genus Pinus, when northern white pine was the main
1793 species marketed under that title, was it?

A. Those were the first trees out and therefore they would be the first ones named.

Q. Did you know the name white pine when you first went into the lumber business?

A. Yes.

Q. And you had known that name prior to the time you went into the lumber business, did you?

A. I think not.

Q. You had not heard it before?

A. I do not know that I had.

Q. Have you any idea how long it has been used?

A. I have not.

Q. It has been used for a considerable period; has it not?

A. Yes.

Q. Now, when you went into the lumber business, what two main groups of pine lumber were marketed in the area where you were in business?

A. I was——

Examiner DE BRULER. State where that was.

A. I was in southern Minnesota and practically all of the lumber handled there at that time was either white pine or Norway pine, Minnesota white pine, northern white pine.

Mr. WHEAT. Q. Southern yellow pine had not arrived in that market as yet, had it?

1794 A. No; except on occassional item of vertical flooring.

Mr. BURR. Of what?

A. Edge grain flooring.

Mr. WHEAT. Q. At that time were you thoroughly familiar, or did you become familiar at that time with the general methods of marketing and selling pine species?

A. Well, I bought a great deal of it.

Q. Now, at the time you entered the lumber business, in general were there two main species, two main names used for the pines? Maybe I better reframe the question. Was the main distinction drawn in common terminology in selling pine lumber when you went into the business white pine and the yellow pine?

A. (Pause.) Well, as I said before, practically the only lumber—the two distinctions in our local retail yards were white pine and Norway pine.

Q. Norway pine is what kind of pine?

A. Red pine.

Q. Red pine?

A. Yes, sir.

Q. Do you know how that has been classified by botanists?

A. No.

Q. You do not know whether it has been classified as one of what you have termed white pines?

A. I know it has not.

1795 Q. Now, did Idaho white pine, so called, come on the market in Minnesota in any great quantities at the time you entered the lumber business there?

A. No.

Q. When did you first order or sell Idaho white pine, about what year?

A. (Pause.) I would guess about 1910 was the first time that we bought any quantity.

Q. It began to come on the market, did it?

A. Yes.

Q. In the middle western area?

A. It had been on the market before that.

Q. About when, if you know, did it go on the market in large quantities?

A. I cannot say, but I would guess ten years prior to that.

Q. About 1900?

A. Yes.

Q. And you marketed it under what name?

A. I knew it only as Idaho white pine.

Q. Can you tell us, or let me ask you this. Were you closely connected with the sale of Pinus ponderosa from this area at the time the change in name took place to pondosa?

A. Yes.

Q. Do you know why the manufacturers of the Pinus ponderosa in this area did not change the name when they did to

1796 yellow pine, or to any name containing the word yellow?

A. I do not.

Q. You do not know?

A. No.

Q. Now, I will ask you then as a marketer of that pine whether you have ever marketed that pine under any name which contained the word yellow?

A. No, sir.

Q. Do you believe that the term yellow in connection with the marketing of that wood would be in general a proper designation of it?

A. I think it would be a proper designation but I think it also should carry an additional qualifying name to differentiate it from southern yellow pine.

Q. Why do you not market your ponderosa lumber here under any name which contains the word yellow?

A. Because we have to follow trade practices in order to avoid more confusion.

Q. Did you do so prior to 1925?

A. Did we market any as yellow pine?

Q. No. Did you follow the general trade practice of this area prior to 1926?

A. We did so far as we could and still not use the name white pine.

Q. You did not, then, sell your wood prior to 1925, your
1797 Pinus ponderosa wood under the same name which was being used by the majority of the other producers of Pinus ponderosa in the inland empire?

A. It was being sold by—under a great many trade names. It was impossible to tell which name was the predominant name.

Q. What do you think was the predominant name, aside from your companies?

A. Western white pine.

Q. Now, in your re-direct examination my notes show that you said that the word white now as applied to pine species, in your opinion, refers more to wood characteristics than to mere wood color. That was your statement, was it not?

A. (Pause.) I think that the name white probably came originally from the color of the wood.

Q. Yes.

A. I think in our minds it has become associated through all the years that eastern white pine was sold as white pine, perhaps, with the characteristics of the wood, also. That is purely conjectural.

Q. Well, continuing your conjectures just for the moment, what are those characteristics that you have in mind when you use the word white pine?

A. Even color, a soft, fine texture, easy——

Q. What do you mean by texture, by the way?

A. The hardness or the softness of the wood.

1798 Mr. BURR. Please let him finish his answer. Read the answer before the last.

(Question and answer read:)

A. Easy working qualities is what I was going to say.

Mr. WHEAT. Q. Do you have in mind the uses to which that pine is put?

A. I think not; in that connection.

Q. Merely its mechanical characteristics?

A. Yes.

Q. Do you happen to know—please tell me if you do not, but I am trying to find out if you do, I will find it from another witness if you do not—whether or not the Rock Island Sash & Door Company markets its sash and doors that are made from ponderosa shop lumber bought from you as pondosa sash and doors?

A. I do not.

Q. Are you familiar with the operation of a large remanufacturing plant?

A. Only to a very limited degree.

Q. Now, in connection with the sale of shop lumber, have you visited and gone through large remanufacturing plants?

A. Yes.

Q. Do you know, in general, the processes which they use in cutting up the shop lumber into clear cuttings and then manufacturing them into other products?

1799 A. In an amateur way.

Q. Now, do you know whether or not in these remanufacturing plants it is the practice to mix the shop lumber bought as pondosa and that bought as California white pine, or any other designation, in manufacture?

A. I do not.

Q. I believe you said that if common wood names were to follow the plan which you discussed in your re-direct examination that then your uses of certain woods would change; and I have this statement, that some uses of western white pine it cannot serve under the term pondosa. Was that your statement?

Mr. BURR. Read that question.

(Question read.)

Mr. WHEAT. Q. Some uses of western white pine it cannot serve under the term pondosa. Do you agree with that statement?

A. (Pause.) I presume I was referring to the fact that I believe pondosa was sometimes used in exposed places under the supposition that because it is bought under the white-pine name it is white pine. What I tried——

Q. Is pondosa bought under the white-pine name?

A. It was up until 1925.

Q. Is it not?

1800 A. I think not. What I was trying to testify to in that connection, if I may say so——

Q. I wish you would, Mr. Tate. I want to get the record clear on it.

A. Yes. That I believe there are certain uses which are best served by white pine, certain uses that are best served by ponderosa pine.

Q. Now, let's get your explanation of what those uses are, so that we will be clear on the matter. Let me frame this question: What uses are there to which pondosa wood is now put to which, in your opinion, it should not be put, specific uses?

A. (Pause.) In general, I believe that a genuine white pine has been proven to give better service under severe service than pondosa pine, ponderosa pine.

Q. Let me interrupt you. I am trying to get the specific uses to which pondosa is now put to which you think it should not be put. Now just, first, specific facts.

A. I do not know that there are any uses which it will not serve acceptably, considering the price difference. If a person wants a little cheaper house, and perhaps less endurance, less durability in the exposed portions, they are certainly justified in using ponderosa pine.

Q. Now, have you in mind specific instances of lack of durability in ponderosa pine?

A. Not that I can give accurately.

1801 Q. No specific instances?

Mr. BURR. What do you mean by give accurately?

A. I have heard of cases of the failure of ponderosa pine.

Mr. WHEAT. Q. Of course, we do not want hearsay.

A. I cannot cite any cases that I have actually seen.

Q. Can you, of course, in all the testimony which you have just given, want the testimony considered on the basis of the statement that you have no precise instances which you can cite?

A. Not of my personal knowledge.

Q. I see.

A. I have not been in position where I could see them, or get evidence.

Q. Now, when the Weyerheauser interests—I think I am paraphrasing your statements; if I am not, please correct me—say they want the right wood in the right place, I suppose you mean, do you not, that they want wood put into the uses to which it is naturally and ordinarily adapted because of the nature of the wood?

A. Yes.

Q. Now, I believe you said that the Weyerheauser interests could control the commodity only to the first purchaser and not beyond that?

A. I think that is true of all lumber manufacturers. I should perhaps modify that to the extent of saying that we

1802 have on an experimental basis attempted at times to species mark genuine white pine, with the idea that the mark would carry through to the ultimate consumer and be a protection, if he has specified white pine.

Q. Yes.

A. We have a line of merchandise which we call our four-square line, a package line.

Q. You advertise that quite largely, do you not?

A. Which we advertise and which carries a definite guarantee as to species.

Q. The species is marked on the package, is it?

A. Yes.

Q. Now, those packages go directly through to the ultimate consumer, do they?

A. We cannot be sure of that always.

Q. It is your intention that they will?

A. It is our hope that they will.

Q. And what proportion of your business is the four-square package business?

A. A very small proportion thus far.

Examiner DE BRULER. I do not want to hurry counsel, but it seems like we are rehas'ing what we had yesterday.

Mr. WHEAT. If Your Honor please, we may ask some witnesses that seen similar, but this witness is, in my opinion, the most important witness the Government will have.

1803 Examiner DE BRULER. Well, proceed, but cut it as short as possible.

Mr. WHEAT. I have only a few questions.

Q. What proportion of your sales are the four-square package sales?

A. I do not know.

Q. Is it a large proportion or small part of them?

A. It is a small proportion. It is a constantly increasing proportion.

Q. You are attempting to increase that as much as you can?

A. Yes.

Q. Do you sell any pondosa in that way?

A. Yes, sir.

Q. Where do you market it in that manner?

A. From Seattle to Boston.

Q. And what proportion of your pondosa business is that business?

A. I cannot give you any figures on that.

Q. Is it a large or a small proportion?

A. Small proportion.

Q. Very well, considering your relative pondosa sales?

A. Very small. It is a large amount.

Q. Have you any instance in mind where a person to when you have sold pondosa pine has resold it as white pine?

A. A specific instance which has come under my knowledge?

1804 Q. Exactly.

A. I have not seen the stock or talked with a customer that admits it.

Q. Do you know whether pondosa is ever resold as yellow pine?

A. I do not.

Q. If you should call your—may I put it this way: Irrespective of any name under which you would sell your pondosa lumber in bulk, you could not control, could you, except by packaging and fastening it together, the resale of that wood by a retailer; that is, the name under which it is resold?

A. Not unless we mark the name on each individual piece.

Q. Now, when you sold Pinus ponderosa as western pine, or western soft pine, did you sell it in competition with the sellers of Pinus ponderosa as white pine, western white pine?

A. Yes.

Q. Was there any difference in price then in their favor over your Pinus ponderosa wood?

A. I cannot answer that.

Q. You were sales manager or assistant sales manager of the Weyerheauser interests at that time?

A. Yes.

Q. Do you recall any such differential?

A. We do not have access to the prices of our competitors.

1805 There were always variations. I do not think I could generalize on that so as to reach a conclusion.

Q. Let me ask you this, then: Was there to your knowledge any general differential in their favor at that time?

A. No large differential.

Q. Any differential?

A. I cannot answer that.

Q. Aside from the ordinary variations?

A. At times there was.

Q. At times the differential was in your favor, was it not?

A. Yes.

Q. Now, has there been any change in that relative condition since the change in the name to pondosa—varies up and down, does it?

A. I cannot answer that except to say there has been no large change.

Q. Can you specify any small change?

A. No.

Q. Do you know of any change in the general situation?

A. The whole price structure changes so fast and is based on so many items that it is almost impossible to answer that kind of a question. I cannot do it.

Q. But you have been, over this period of years, quite familiar with the general market conditions?

A. Very familiar.

1806 Q. So your next to the last answer, then, is based on that knowledge of the general market condition?

A. It is based on knowledge.

Q. I believe that you said—my notes show that you said there were instances where purchasers had said to your salesmen, who said to your district representative, who said to you, that they wanted to buy Pinus ponderosa at a price with the word "white" in it?

A. I do not think you have to make it quite that indirect.

Q. Let's make it as direct as you can?

A. I have talked to salesmen who have reported that to me. I have talked to customers who have reported that to me.

Q. Now, will you give, for the purpose of the record, a single instance of such a case?

A. I will not, because I cannot.

Q. I may say that in New York City one of the witnesses did give such an answer.

A. I am familiar with that. I have no personal knowledge.

Q. You have no personal knowledge of any exact instance?

A. Not that I could testify to.

Examiner DE BRULER. As I understood, he knew what the reports were to him. He stopped right there.

Mr. WHEAT. Now, I am asking him further whether he knows anything himself further?

Examiner DE BRULER. Yes; I understood.

1807 Mr. WHEAT. He testified yesterday on direct examination——

Examiner DE BRULER. I let that stand because the report was made to him and the rest of it is a matter for cross-examination.

Mr. WHEAT. Q. Now, I understand you have no instances to report of such reports?

A. I have not.

Q. What record has Idaho white pine for long durability when exposed to the weather?

A. I think you are trying to qualify me as a technical expert in durability, and I am a lumber salesman.

Q. You testified on direct examination that, in your opinion—correct me if I am wrong—Idaho white pine was a more durable wood when exposed to the weather than Pinus ponderosa. Is that correct or not?

A. I think it is correct, and I believe it to be true.

Q. Now, on what basis do you form your belief?

A. On the experience as reported to all of us in the lumber business as to the durability of white pine.

Q. Idaho white pine?

A. Of the white pine.

Q. I am talking now about only the Idaho white pine.

A. Idaho white pine?

Q. Yes.

A. I have no specific instance to report, again.

1808 Q. No instance of long use of Idaho white pine?

A. There has not been the opportunity to accumulate as much evidence on that species.

Q. By the way, how long has it been used in general in a large commercial way?

A. I cannot tell you that. Something like thirty years.

Examiner DE BRULER. Is your answer based on the reputation that the wood has in the lumber trade?

A. Yes; and not elsewhere.

Mr. WHEAT. Q. And not based on your personal knowledge as an instance that you have in mind?

A. No.

Q. What result was there, what result did the drop in price which you made in Idaho white pine in September 1927 have on the quantity of your Idaho white-pine sales?

A. It increased them.

Q. It increased them?

A. Yes.

Q. How long have you had access to the Western Pine Manufacturers' Association price quotations?

A. We had access during the time that we were members of the association.

Q. And that was up until what year?

A. Until February 1928.

Q. So you did have access to these price quotations during
1809 the period when Pinus ponderosa from this area was sold as western white pine?

A. Yes.

Mr. WHEAT. I think that is all.

Redirect examination by Mr. BURR:

Q. Mr. Tate, has the word "white" as used in connection with Pinus strobus acquired a meaning in addition to the meaning of color?

A. I think so.

Q. And those are the characteristics for which Pinus strobus has long been noted, are they?

A. Yes.

Q. Added to the pale texture, the pale color of the wood?

A. Yes.

Q. Has white as part of the term for Pinus strobus an association in the mind of the public with uniformity as well as the characteristics that you have referred to?

Mr. WHEAT. Mr. Examiner——

Examiner DE BRULER. How does that question read?

(Question read.)

Mr. WHEAT. Mr. Examiner——

Examiner DE BRULER. Now, wait a minute. Can you answer that question from any knowledge that you may have in the
1810 trade?

The WITNESS. I can answer it only from the basis of my personal opinion.

Mr. WHEAT. Mr. Examiner, Mr. Burr has objected constantly in these hearings to any witness trying to put words in the mouth of the public and I think I am entitled to the same objection.

Mr. BURR. I think that is merely the question opposing counsel has used. I might just as well have used the word "reputation" in there, and I will if it is better.

Examiner DE BRULER. I was going to say if you use the word "reputation"—ask him about reputation.

Mr. BURR. Strike the question, or the record can show just as it is, if you like. I will substitute this question.

Q. Is uniformity of texture, as well as the qualities that you named in your recross-examination, associated in the public mind as a matter of reputation with the word "white" when used as applicable to Pinus strobus?

Mr. WHEAT. If the witness knows.

Examiner DE BRULER. If you know, you can answer that question.

A. I believe it is, but in a smaller circle of users. I do not think the idea of uniformity would be as universal as the idea of color or durability.

Mr. BURR. Q. That would be more true of the reputation
1811 of the wood among the trade than it would be in the ultimate consumer?

A. Yes.

Q. In your judgment?

A. Yes.

Q. Would that be true as to the reputation of the wood with regard to those who are proposing to use it for remanufacturing purposes and buy it for that purpose?

A. Particularly those.

Q. The reputation of Pinus strobus in that field, then, would include strictly the idea of uniformity, would it?

A. I think so.

Q. Now let me ask you this, is the ponderosa lumber still associated with the word "white" in public reputation more than it would be if the same tree when manufactured and sold as California white pine were not so manufactured and sold?

A. Yes.

Mr. WHEAT. Mr. Examiner, if that is not a matter of reputation and speculation, I have never heard such a question.

Examiner DE BRULER. It seems to me like this matter has been gone into sufficiently.

Mr. BURR. Well, I will drop it then.

Examiner DE BRULER. I think you have gone into it very thoroughly.

By Mr. BURR. Just a moment; I will be through.

1812 Q. Mr. Tate, do you check up personally any criticisms of lumber of your competitors or of your own sales that might come to your company, so that you would have the ultimate facts with regard to the basis for those criticisms?

A. We check complaints.

Q. You personally?

A. I personally at times check complaints on our own shipments.

Q. Well, do you go back to the consumer personally and ascertain what the basis for the complaint was?

A. I have done it.

Q. You have?

A. Yes; many times.

Q. Has that been with regard to the durability of pondosa lumber, have you gone back and checked those complaints, to the ultimate consumer I am referring to now?

A. No; I cannot cite any cases of that kind.

Q. You have these done by subordinates, if they come, do you?

A. I do not—I do not think we as a sales agency would receive complaints of that nature, because our complaints would be on the immediate basis of tally or grade or species, the correct filling of the order.

Q. In other words, those complaints would not come to your company at all, consequently, is that true?

1813 A. I do not think so.

Q. Now, may there be sales resistance through increased volume without there resulting a price differential, a drop in price?

A. I think not.

Q. You think not?

A. No.

Examiner De Bruler. I think that has been gone into fully.

Mr. Burr. Has that been gone into?

Examiner De Bruler. I think so. Carefully.

Mr. Burr. Q. Do you think when there is a customer who goes to another producer, to another dealer, and buys a different variety of wood, that that necessarily means that there will be a drop in the price of the wood that has been discriminated against?

Mr. Wheat. Just a moment before the witness answers that question. I object to that question on the ground that it is speculative, that the quesion as to what some purchaser might do is clearly out of the field.

Examiner De Bruler. Let me ask you, Can you answer that question from anything that you have in mind?

The Witness. I cannot answer it from the standpoint of any one customer. Any general move of that kind would certainly affect the price.

Q. Any general move?

1814 A. Yes.

Mr. Burr. That is all.

Recross-examination by Mr. Wheat:

Q. I will ask one further question on this. We will get through after a while. Mr. Tate, Pinus strobus that is produced in the New England States is a fairly small tree, is it not?

A. I do not know what it was originally.

Q. Well, I mean now?

A. The tree that is cut there now, I presume, is reasonably small.

Q. Does that compete very definitely in the strobus market with your Pinus strobus that you are now selling?

A. Not in the upper grade.

Q. Not in the upper grade. They do not produce many upper grades, do they?

A. I judge the proportion would be small.

Q. And that is because the tree is small, isn't it?

A. I presume so.

Q. What proportion of the upper grade do you produce from the Pinus strobus that you are now cutting?

A. Ten percent or more.

Q. And what proportion of shop lumber?

1815 A. In the strobus?

Q. Yes.

A. Less than five percent.

Q. And the rest is what is known as common grades, is it?

A. Yes.

Mr. WHEAT. I think that is all.

Examiner DE BRULER. This witness may be definitely excused now.

(Witness excused.)

E. G. CHEYNEY was thereupon called as a witness and, having been duly sworn, testified as follows:

Examiner DE BRULER. Let me have your name, please?

A. E. G. Cheyney.

Examiner DE BRULER. Your address?

A. Saint Paul, Minnesota.

1816 Direct examination by Mr. BURR:

Q. Professor Cheyney, what is your profession, sir?

A. I am a forester.

Q. And in what capacity are you now engaged?

A. Professor of forestry at the University of Minnesota.

Q. How long have you been in that position?

A. I have been at the University of Minnesota for twenty-four years.

Q. And will you narrate your various capacities during that period?

A. I was an assistant from 1905 to 1907 and assistant professor from 1907 to 1909 and a professor from 1909 to 1930, the present time.

Q. Now, prior to that time did you have any experience in connection with forestry matters? That is quite a long while back, but did you have anything prior to that?

A. I was with the Government as student assistant for a year and a half, in 1903 and 1904.

Q. And as student assistant, were you in the woods?
A. All the time, practically.
Q. Whereabouts?
A. North Carolina, West Virginia and Texas, South Dakota and Colorado.
Q. What were your duties?
1817 A. We were doing what they call running timber surveys and doing stem analysis work.
Q. I take it that was your first work in forestry lines?
A. That was my first work.
Q. Now, then, since then, at the University of Minnesota, what, if any, occasion have you had to observe the condition of forest trees and also conditions with regard to timber and lumber?
A. Well, of course, the faculty there are also on the experiment-station staff, and we have made various studies of the different species in Minnesota. Among them was a survey of the standing timber in Minnesota; that is, in the coniferous portion of Minnesota.
Q. And did you conduct that, supervise that yourself, personally?
A. Yes.
Q. How much of the time were you in the forest would you estimate?
A. You mean how long a period?
Q. Yes.
A. At that time or on an average?
Q. Well, at that time.
A. At that time I spent six weeks straight on that survey.
Q. And as an average how long have you spent in the forest?
1818 A. I have been in the forest practically from three to four months every year.
Q. Now, how much opportunity do you have to observe the down timber and the lumber?
A. We have very good opportunity to observe the down timber, because I am located for about six to eight weeks of the time in a patch of virgin forest, Nataska Park, where the lumber has never been touched over portions of it.
Q. Now, is your experience largely—referring to the Pinus genus—is it largely in the strobus and the Norway or red pine?
A. Yes.
Q. Those two varieties?
A. Practically all of them.
Q. Are you a technical botanist?
A. In a way; yes.
Q. Have you brought with you that Statistical Bulletin No. 21 of the Department of Agriculture?
A. Yes. I have it here.
Q. Will you be kind enough to produce it, Professor?
A. Yes. [Producing book.]

Q. Will you state whether or not in your judgment as a forester the statistics of the Forestry Service are as comprehensive and as reliable as there are available?

A. I think so.

Q. In your consideration?

1819 A. They have had more experience and have a larger force in the field than anybody else that I know of, and their figures are usually taken as standard by the forester.

Q. They are estimates, of course, rather than actualities, are they not?

A. Any figures on standing timber covering a large area are obliged to be estimates.

Mr. BURR. Now, if the examiner please, I would like to offer the Statistical Bulletin No. 21, and have the entire bulletin marked for identification, and then I would like to have table 9, on page 9, being the estimates of timber stand in the United States by species and regions——

Mr. WHEAT. I will not interpose any objection to the introduction of this whole bulletin, but I will ask that the whole bulletin rather than particular portions be introduced in testimony. I had in mind introducing the same bulletin in San Francisco, and I have no objection to the entire bulletin going in, but I will seriously interpose objection to breaking it up into little parts.

Mr. BURR. If the examiner please, the instructions that we have are to the effect that where documents are offered those portions only be offered instead of the whole document. Now, I have no objection whatever to opposing counsel coming right back and offering any parts that he wants to.

Mr. WHEAT. Under that stipulation I will be glad to stipu-

1820 late that.

Mr. BURR. Now, I want to offer only such parts as I expect the examiner to read. You see, if we offer the whole thing he has to wade through the whole book to see whether there is anything of interest to him.

Mr. WHEAT. Will you stipulate that respondents may offer any portion of Bulletin No. 21 in addition to those portions you offer?

Mr. BURR. Absolutely. I think that is only fair.

Examiner DE BRULER. You will be allowed to do that, certainly. It shortens it up to let it be done that way.

Mr. BURR. I would like to mention for the record those portions I am proposing to read.

Examiner DE BRULER. Go right on.

Mr. BURR. Table 9, page 9, being statistics as to the timber stand. Table 10, pages 10 and 11, being figures as to the timber growth, annual quantity, and so forth, as more fully described. Table 12, page 12, being timber growth present and possible average rate of growth. Table 57, pages 66 and 67, being the lumber production, with particular reference to the column having to do with growth yellow pines (eastern), "western yellow pine", and "sugar pine."

Also table 85, pages 130 and 131, being the lumber production in California.

Mr. WHEAT. Will that show what years it refers to?

Mr. BURR. Oh, yes. Yes, indeed, very fully.

1821 Table 112, pages 184 and 185, being the same for Oregon.

Also table 128, pages 221–223, inclusive, being the production figures for western yellow pine.

And lastly, table 133, being the same data for white pine, on pages 239 to 241, inclusive.

And I may say that the reason for the selection of California and Oregon among the entire roll of States throughout the country, was for the reason that only by reference to these tables as contradistinguished from the production of western yellow pine, so called, by the bulletin, are we able to divide the figures between ponderosa and California sugar pine in that State.

Q. Professor Cheyney, the figures for white pine in this bulletin and the tables that I have mentioned where white pine comes in on a national scale, are Idaho and strobus, Idaho white pine and strobus combined?

A. Yes.

Q. Where is the line of demarcation between Idaho white pine and strobus, or do their habitats overlap?

A. They do not overlap; no.

Q. Are the Dakotas the dividing line?

A. There is neither one of them in the Dakotas.

Q. And the Idahos are further west than the Dakotas?

A. Yes.

Q. And strobus is further east, is that true?

1822 A. True.

Q. Therefore by reference to the States where the production of white pines are given State by State, you can find out what the production of Idaho white pine is byb consulting the States west of the Dakotas, and strobus the States to the east, is that true?

A. Yes.

Q. This sugar pine, do you know or are you not advised of that, occur north of Oregon?

A. It does not.

Mr. BURR. If the examiner please, then, I desire to offer Statistical Bulletin No. 21 as marked for identification, with the tables that I have just mentioned, as Commission's exhibit for the record no. 34, with each page marked as A, B, C, and as far as the letters are needed in order to mention each of these pages.

Examiner DE BRULER. Commission's exhibit no. 34 will be admitted.

(Thereupon said Statistical Bulletin No. 21 was received in evidence as Commission's exhibit no. 34, A to E, admitted.)

Q. Professor Cheyney, have you had prepared under your supervision certain charts based upon any of the statistical material that has been offered as Commission's exhibit for the record no. 34?

1823 A. I had some charts made; yes.

Q. Will you be kind enough to produce a chart with regard to lumber production, if you have any?

Mr. WHEAT. You have copies for us, of course?

Mr. BURR. I have not, but I shall have.

Mr. WHEAT. You will let me have copies?

Mr. BURR. Yes, sir. I will let you have copies.

Mr. WHEAT. About when? I may want to study them.

Mr. BURR. There is no reason why you should not file a receipt for them and take the originals.

A. (Producing chart.) That is the one showing lumber production for the last five years by species.

Mr. BURR. Now, if the examiner please, I would like to have this marked as "Commission's Exhibit No. 35" for identification, if it is not received as I think it will be in a few moments.

(Thereupon said chart was handed to the reporter and marked "Commission's Exhibit No. 35" for identification.)

Mr. WHEAT. What is the full title?

Mr. BURR. The full title of Commission's exhibit for identification, no. 35, is what?

A. Five years of softwood production. Years 1921, '22, '23, '24, '25. Percentage relationship of species, major geographic distance, based on United States Department of Agriculture's Statistical Bulletin No. 21.

1824 Q. Now, that is an average of the five years, isn't it?

A. Yes. It is the aggregate of the five years.

Q. It is the aggregate of the five years giving the proportion to each type of lumber?

A. Yes.

Q. And that is based upon which tables of Bulletin No. 21, Commission's Exhibit 34, if you will be kind enough to state.

A. (Examining exhibit.) On tables 82 to 125, inclusive.

Mr. WHEAT. Are those tables, Mr. Burr, which have been offered by you? May I ask whether the tables mentioned by the witness are among those listed by you as your exhibit no. 34?

The WITNESS. No, they are not; all of them.

Mr. WHEAT. Beg pardon?

The WITNESS. You selected two of them out of it—California and Oregon—those are the only two?

Mr. WHEAT. Then I take it, Mr. Burr, this exhibit is based on material which is not offered for the record?

Mr. BURR. What was your last answer here?

A. That this was based on tables 82 to 125, inclusive.

Mr. BURR. Now, if the examiner please, I am not averse for a moment to offering the rest of the tables. It seems to me, I want to say right here that I think it is unnecessary to offer them, because this graph shows everything that the table would show in a

1825 manner that is easy to carry away, whereas the added statistical matters of the other tables with regard to those other

woods are not of primary interest. This merely shows the importance of each of those pines in the total lumber consumption of the country. Now, then, if opposing counsel wants to have those other tables in the record, I shall not object. It seems to me it is unnecessary encumbering the record.

Mr. WHEAT. I do not think it is, Mr. Burr, unnecessarily encumbering the record to have this little book go in as an exhibit, because if you are taking material out to base your chart on from tables you have not offered, it is going to confuse the examiner, I am confident of that. I think the thing to do is to put the whole thing in and let the witness tell what tables he used to make up his chart.

Mr. BURR. I shall not offer the whole bulletin. I will compromise by offering in addition the other material, if the witness will be kind enough to state what it is, which was used in the compilation of this chart.

Mr. WHEAT. May I suggest, why don't we have him describe all his charts and tell all the tables he used and then stipulate they go in?

Mr. BURR. That is satisfactory.

Examiner DE BRULER. I suggest that the chart be first offered in regular sequence here and then question him about them afterwards.

1826 Mr. BURR. All right.

Q. Now, Professor Cheyney, you have also charts, have you not, which present the present growth of white pine, the growth of white pine and pondosa pine, and the ultimate growth of both of these varieties, as based upon statistical material contained in the bulletin of the Agricultural Department, No. 21, have you?

A. Yes, sir.

Mr. BURR. If the examiner please, I request that those three last-named charts be marked for identification "Commission's Exhibits Nos. 36, 37, and 38", respectively.

Examiner DE BRULER. They may be so marked.

(Thereupon said charts were handed to the reporter and marked "Commission's Exhibits Nos. 36, 37, and 38", respectively.)

(At this time a short recess was taken.)

Mr. BURR. Q. Professor, will you be kind enough to read into the record the titles of exhibits 36, 37, and 38, being Commission's exhibits for the record, respectively?

A. The title of no. 36 in the present annual growth by regions, saw timber material, in millions of feet, board measure.

Q. And that is taken from what tables?

A. Taken from table 10, United States Department of Agriculture, Statistical Bulletin No. 21.

1827 The next one, no. 37, has the title, "Predicted annual growth in 1950, under a crude form of forest management, by regions, saw-timber material, in millions of feet, board measure." Taken also from table 10, Statistical Bulletin No. 21.

No. 38 is titled "Predicted ultimate growth under an intensive form of forest management, by regions, saw-timber material, in mil-

lions of feet, board measure." Taken from table 10, Statistical Bulletin No. 21.

Mr. WHEAT. Now, Mr. Burr, may I have the record show that while we have not objected——

Mr. BURR. Wait until I offer them.

Mr. WHEAT. All right.

Mr. BURR. If the examiner please, I desire to offer for the record the three charts thus identified by the witness as Commission's exhibits, respectively, nos. 36, 37, and 38.

Mr. WHEAT. Before those are received, I would like to have the records show this statement and whatever reply Mr. Burr has to it. We have no objection, Your Honor, to the introduction of statistical figures on actualities obtained from or by the Forest Service, but unless counsel for the Trade Commission intends to produce the witnesses who have made prognostications, we desire to object to the introduction, either in these tables or by means of these charts, of any prophesies which have not been made by the witness on
1828 the stand. We are entitled to examine the man who made those prognostications and ascertain what his bases have been. Now, unless this witness participated in the production of those prognostications, we will object to the introduction of any such purported figures.

Mr. BURR. Q. Professor, you did not participate, did you?

A. I did not.

Mr. BURR. Well, I am inclined to think counsel's objection is well taken. I was prepared to take it at Madison, with regard to the figures there, and I insisted at that time that if we were going to put in Madison figures, we ought to go to Madison and find out how the statistical matter was procured.

Mr. WHEAT. Mr. Examiner, I want it understood that I am not objecting to any statistics as to what the present growth has been, or cut, because I think that the record ought to show these, and I know that the Forest Service figures on these are as good as any that now exist, but as to prognostications I must interpose this objection.

Mr. BURR. Well, I think your objection is well taken, and under these circumstances I am inclined to withdraw——

Mr. WHEAT. That would be 37 and 38.

Mr. BURR. 37 and 38, and rescind my motion to have those received. I will say, however, that as counsel has not objected
1829 to the receipt of the statistical bulletin in its entirety, in fact, urged it, I think his position is quite inconsistent.

Q. Professor Cheyney, there is absolutely no new material in here that is not in the statistical bulletin to which you refer?

A. Not at all.

Mr. BURR. Now, it seems to me that counsel is——

Examiner DE BRULER. Are those charts based upon the statistics that are contained in this bulletin?

The WITNESS. Yes, sir.

Mr. WHEAT. Perhaps I ought to add this; I was unaware from the title of the bulletin or from a brief glance at it that it contained prognostications as to such matters. I now interpose definite objection to the introduction, unless the man who prepared those prognostications or some of them is offered as a witness, in which case I should wish to cross-examine.

Mr. BURR. Yes; certainly. I think counsel is a little overzealous on that matter, for the reason that on their face they are prognostications and estimates, and therefore they are not entitled to anything like the w'ight which anything which is a fact rather than a prognostication is entitled to.

Examiner DE BRULER. I understand that these drawing that you made there simply are based upon the statistics that have
1830 been introduced in evidence?

The WITNESS. They are merely a graph showing the tables in the bulletin there.

Mr. BURR. Q. It is merely a graph?

A. It is merely a graph, an explanation of the table in graph form.

Examiner DE BRULER. Is merely an explanation?

The WITNESS. That is true.

Mr. WHEAT. Your Honor, then, if that is true, it is merely an explanation, then my objection to the charct, which as Mr. Burr has stated in his opinion is good, then, certainly, they cannot get into this record. May I ask the witness, did you have anything to do with the preparation of the statistical table in Bulletin No. 21?

The WITNESS. No; I have not.

Mr. WHEAT. Then I shall object to them. On study of the matter, I may at San Francisco agree with you that it would be perfectly all right to put them in, but I cannot at the present time fail to offer this objection, which I believe is good.

Mr. BURR. I think counsel's objection is good, as a matter of law; I think as a matter of actual principle and damage done him it is not sound, but that is his business and not mine. I think he has a right to press that objection, and I shall not ask the examiner to rule. I will withdraw the offer. I wish, however, the record to show
1831 that I offered them.

Mr. WHEAT. And also the tables upon which they are based?

Mr. BURR. The tables upon which they are based have not yet been offered.

Mr. WHEAT. All right.

Mr. BURR. I will, however, say at this time that in view of the position that has been taken by counsel, that in case he wants to use other portions of the statistical bulletin, I reserve the right to object to prognostications.

Mr. WHEAT. I will stipulate that you may. I will state this, that I will not put anything in the record in the way of prognostications unless I have a witness on the stand who has participated in them.

Mr. BURR. All right. Or unless you have a change of heart in the meantime, which you said you might have.

(Thereupon the graphs heretofore marked "Commission's Exhibits Nos. 37 and 38," for identification, were withdrawn.)

Q. Professor Cheyney, limiting your statement to Commission's exhibits with exception of 37 and 38, will you be kind enough to state for the record what additional tables not already received in evidence have been used in the preparation of Commission's exhibits 35 and 36?

A. Exhibit No. 35 is based upon tables Nos. 82 to 125, inclusive, Statistical Bulletin No. 21.

1832 Mr. BURR. Now, if the examiner please, I would like to have the reporter instructed when he marks the page numbers in Commission's exhibit 34, those pages which the professor just names as also having been used in connection with these two exhibits.

Examiner DE BRULER. They may be noted.

A. Exhibit no. 36 is based on table 10 of Statistical Bulletin No. 21.

Mr. BURR. Q. That has already been offered, has it not?

A. I think so.

Mr. WHEAT. Now, Professor Cheyney, you listed a number of tables when we first offered Statistical Bulletin No. 21, Commission's exhibit no. 34 for identification. Some of those are the tables on which this prognostication is based. I take it that that table is one of those. I will ask that that be withdrawn, that offer, in so far as it contains prognostications. Perhaps I will put it this way, maybe it will be easier if you will state that you do not offer any of these pages for any purpose, the statistics, of prognostication?

Mr. BURR. I think that would be easier, but not very clear.

Mr. WHEAT. That is all too true.

Mr. BURR. Q. Referring to table no. 10 of the same Bulletin No. 21, will you kindly state which parts are in the nature of prognostications?

1833 A. I would say all except the first line.

Q. Marked present in each case?

A. Marked present in each case.

Mr. BURR. I stipulate that it may be ruled that in table no. 10, being part of Commission's exhibit no. 34 for the record, on pages 10 and 11, the material other than present growth be eliminated, under the understanding that prophesy is not to become part of the exhibit. Is that satisfactory?

Mr. WHEAT. Under the understanding, Mr. Burr, that figure in the exhibit which purports to be prophesy are objected to, because prophesies of the witnesses themselves may be perfectly admissible.

Mr. BURR. I am referring to the table only.

Examiner DE BRULER. I think that is clear now, clears up the record.

Mr. BURR. I think so.

Examiner DE BRULER. Let us proceed.

Mr. BURR. Q. Now, Professor, have you any Canadian figures with regard to white pine and Norway pine?

A. Beg pardon; any what kind of figures?

Q. Canadian?

A. Canadian.

Q. Yes?

A. There are some figures given on Canadian production and stumpage in this report of the Department of the Interior of
1834 the Canadian Government.

Q. Did you assist in the preparation of that? You did not, did you?

A. I did not.

Q. Now, will be be kind enough to turn to table 1B with regard to white and red pine?

Examiner DE BRULER. I have had no chance to inspect this document. Inspect it and see if it is regular. If it is regular, it will be received.

Mr. WHEAT. I have not had a chance to inspect it yet. I just want to see it.

Examiner DE BRULER. Let me ask you, where did you get that?

The WITNESS. I got it out of our library. That is published by the Canadian Government Forest Service.

Mr. BURR. What is the last question?

(Question read.)

Now will you be kind enough to turn to table 1B with regard to white and red pine and inform the examiner what figures there are with regard to standing timber of those two species embodied in the table mentioned?

Examiner DE BRULER. Is that a long or short table?

Mr. BURR. Just three or four figures.

Examiner DE BRULER. Just read it into the record.

Mr. BURR. That is what I want him to do.

A. Table 1B is titled "An estimate of the total stand of timber of merchantable size in Canada, by species. In this
1835 table the white-pine saw material is listed as 15 183,300,000 feet. In addition to that, there is small material amounting to 37,883,000 cords.

Mr. WHEAT. By white pine what do they refer to, Pinus strobus?

The WITNESS. Pinus strobus entirely. I think these are the only figures that you are interested in, unless you want red pine.

Mr. BURR. Q. Yes; I would like to have the red pine in, please.

A. The saw material of red pine is listed as 3,690,000,000 board feet. The small material as 13,742,000 cords.

Mr. WHEAT. What is the botanical name for red pine?

The WITNESS. Pinus resinosa.

Mr. WHEAT. Known as Norway?

The WITNESS. Known as Norway, also.

Mr. BURR. Q. Now, are you familiar with the relative stands of Norway and white pine in the Lake States, in a general way?

A. I am, in a general way. I would have no definite figures except those of the surveyor general of logs of the State.

Q. Well, is the Norway pine more or less of a proportion of the total pines in Canada or in the Lake States of the United States?

A. I would say it is practically the same.

Q. Practically the same?

1836 A. Yes.

Q. In other words, the percentage would not vary through that entire forest, do you think, roughly speaking, or very little?

A. It would vary some, but not very much. I' would vary in New England, but not in the Lake States.

Q. How much opportunity have you had to observe the coming growth and the new growth of Pinus strobus in the New England States?

A. I made a very extensive trip through New England in 1917 and had first-hand information or first-hand knowledge of the growth there at that time.

Q. Well, will you describe what you found to be the case there?

A. Practically all of the old fields in New England that have been abandoned have come into a growth of white pine. In addition, there is some that has come in on logged-over areas, but a very large percent of the old field have come in and gives you more white pine in southern New Hampshire and Massachusetts especially, than any place that I know of.

Q. Now, were the forests of white pine cut off in the neighborhood of early settlements at a very early day?

A. Yes. A great many of them were out before 1700, between 1700 and 1800.

Mr. WHEAT. That is in New England you are talking about?

The WITNESS. New England.

1837 Mr. BURR. Q. New England I am talking about. All of those questions may be considered New England for the moment, if you wish, Professor. Now, are there areas in New England that were formerly in agriculture that are now in second growth of white pine?

A. Many of them.

Q. Have you had occasion to observe any of those?

A. Yes.

Q. Will be kind enough to describe what you observed to be the case?

A. You mean a specific instance of it?

Q. Yes; if you can.

A. Well, there was one county in northwestern Connecticut which produced, according to the statistics there, 100,000 pounds of butter, 150,000 pounds of butter a year, a few years ago, or a hundred years ago, and in 1917 there were two milkmen running a route there supplying the country, when I was there. There are no records that I know of to show exactly how much of Connecticut was ever cleared up, but there was a very much larger percentage of it than there is

now. Connecticut after some three hundred years of settlement is still over fifty percent forest, largely through this reversion of farm lands.

Q. And this county in northwestern Connecticut, what county was it, do you recall?

1838 A. It is the county in which Norfolk is located, but I am not sure which it is.

Q. And instead of farm lands, that was forest, was it?

A. Forest; yes.

Q. Was it largely white pine?

A. I could not state just what percentage of white pine, but there is considerable white pine.

Q. Have you any other specific instance in New England?

A. Well, I could cite you a stand of timber near Watertown, New York, in the Adirondack Mountains.

Q. All right. That is not New England, but you might cite that. Do it, please.

A. That was a stand of sixty acres of pure white pine. I measured some of the trees that had been cut there which were twenty-two inches in diameter. It ran four and a half and five log timber. Two of the acres had been measured, one of them running 87,000, the other one 78,000, to the acre. They estimated the stand for the sixty acres at 50,000 feet to the acre, and that had been a wheat field in 1865.

Q. Now, is there any white pine forest growing up—was that white pine, did you say?

A. That was white pine; yes.

Q. Pretty straight stand?

A. Beautiful stuff.

Q. I mean that was pretty straight white pine, was it?

1839 A. Pure white pine.

Q. How about the Lake Champlain district, is there any white pine growing up in that section at the present time?

A. Quite a good deal of it.

Q. Now, going further west, what is the situation with regard to second growth of strobus in the Lake States, if you are familiar with it?

A. There is a great deal of it in Minnesota. I am not familiar with the exact status of it in Wisconsin and Michigan. I know there is some there, but I do not know how much.

Q. Now, inviting your attention once more to Commission's exhibit no. 36, will you state what the reason is for the larger proportion of strobus and northern white pine—Norway pine, I mean—*por*portion of strobus and Norway pine, as compared with the ponderosa pine, taking into consideration the circumstance that is in Commission's exhibit no. 35 the production of the Norway and strobus pines as compared with the ponderosa are relatively much smaller than as shown with regard to the second growth? Can you explain that situation, sir?

A. I think that is due to the fact that in the stands of monticola and the sugar pine, that there is a very large percentage of that is virgin timber, mature timber. In such stands as that there is very little not growth. I mean by not growth that the decay and
1840 deterioration in the forests about equals the growth, so that the not growth is very little there.

Q. It is offset by the——

A. It is offset by the decay and the fires, and so on in the forest. Whereas the strobus area is largely cut-over area with second growth growing on it, growing very much faster than that on the monticola and lambertiana areas.

Q. The growth in such cases is all gain, is it?

A. Practically all. Another point would be that the—in the case of the white pine, of the strobus, it grows in a climate where reproduction is almost sure to come within two or three years after the cutting, whereas in a very large portion of the area of the ponderosa it requires a much longer period, on account of the drier climate, to get a satisfactory reproduction of your species.

Q. Now, is the time coming when strobus will be a more important factor in the market, in your judgment, than it is at the present time, or will it maintain its present purity, or will it depreciate, in your judgment?

Mr. WHEAT. Mr. Examiner, I object that this witness has not been qualified yet on prognostication of such wide character as this.

Examiner DE BRULER. Let's hear the question.

Mr. WHEAT. It is purely a speculative question, even with a witness of this type.

1841 Mr. BURR. I think the objection to the charts was valid because I did not produce the witness. I now think this objection is not valid for I have the witness here to be cross-examined, and I do think that the objection indicates matter that goes to the weight rather than the competency of the evidence.

Examiner DE BRULER. Read the question. I have forgotten just what it is.

(Question read.)

Examiner DE BRULER. You may answer the question, with exception noted.

A. May I refer to some statistics in here, in one of the tables that you have cited?

Examiner DE BRULER. Answer the question in your own way.

Mr. WHEAT. May I ask if those are statistics with reference to any future prognostications, Professor Cheyney?

The WITNESS. No; they are statistics of present growth.

Mr. WHEAT. Well, state what they are.

A. In table 11, which was submitted, I think—or table 12, gives the present growth per acre by different timber types. You will note that under pine in the Northeast the growth there is given as forty cubic feet per acre per year.

Mr. WHEAT. May I ask the witness one question here?

Examiner DE BRULER. Certainly.

Mr. WHEAT. Did you have anything to do with making that
1842 estimate?

The WITNESS. No, sir.

Mr. WHEAT. Well, I think he is basing his answer on hearsay.

Examiner DE BRULER. Go right on.

Mr. WHEAT. May I have an exception noted?

Examiner DE BRULER. Always note an exception to any adverse ruling.

Mr. WHEAT. I understand that is not the practice, and an exception must be noted.

Mr. BURR. It is not our practice. I will be willing to stipulate, if it will do any good, that an exception may be noted to any adverse ruling.

Mr. WHEAT. I should like to do that, but I am afraid in view of my experience in other cases I shall have to ask it.

Examiner DE BRULER. Anyway, the exception will be noted. Go right ahead and answer.

A. Anyway, the growth in the Lake States is eighty-three cubic feet per acre, strobus and resinosa. The western white pine or monticola makes a growth of thirty cubic feet per acre. The western yellow and sugar pine in California make an annual growth of fifteen cubic feet per acre.

Mr. WHEAT. These are mixed, are they?

The WITNESS. These are mixed.

Mr. BURR. Q. The figures are mixed, you mean?

A. The species are mixed in the figures. That is half of
1843 the growth, you will notice, per acre, or less than half the growth per acre of strobus in the Northeast. The growth of western yellow pine, in Oregon, Washington, Idaho, is seventeen cubic feet per acre, less than half that of New England. The growth in the southern Rockies area, including New Mexico, Arizona, Utah, Colorado, and all that region is five cubic feet per acre, or one eighth that of New England, practically. The areas covered by these different woods, you will note that strobus and resinosa cover a very large area, and that combined with this more rapid growth per acre per year is what gives you your high growth per region.

Q. Now, returning to the question that I asked you, from the facts that you have narrated, do you regard strobus as a diminishing or increasing factor in the American lumber market?

Mr. WHEAT. May I ask that this question—that you state the facts that you have narrated, define as to what facts it is based on?

Examiner DE BRULER. Well, that is understood, of course.

Mr. WHEAT. If he has narrated any facts, I have not heard them, and I ask that they be defined.

Examiner DE BRULER. Answer the question, with exception noted.

A. I would say that it is almost inevitable that the amount of white pine should increase as these immature stands come
1844 into maturity.

Mr. BURR. Q. Now, this second growth of Pinus strobus, does that supply any shop lumber?

A. I do not know definitely. I see no reason why it should not.

Mr. WHEAT. Well, I ask that the last end of that answer be stricken out as not responsive. The question called for a statement of fact.

Examiner DE BRULER. He said he did not know definitely.

Mr. WHEAT. Yes; and that he qualified his statement, and I ask that it be stricken from the record.

Examiner DE BRULER. Let the record stand as it is, with exception noted.

Mr. BURR. Q. Have you observed the relative amounts of heart and sap wood in the new growth, second growth of Pinus strobus?

A. Yes.

Q. About how does it run?

A. Of course, the sapwood of almost any wood is variable. Relative it is narrower.

Q. Relative to what? Do you mean to the heart?

A. Relative to some other species it is narrower.

Q. Have you ever been up through New Hampshire at all; with regard to observing the growth of strobus there?

A. You mean a study of the rate of growth?

1845 Q. No. A study of the amount of second-growth strobus that is coming back?

A. I have never made a detailed study of it; no. I have observed it generally.

Q. Is there considerable of it up there that is coming back?

A. There is a great deal of it, in southern New Hampshire especially.

Q. Now, is the firewood and cordwood contained in the tables that we have offered from Statistical Bulletin No. 21?

A. No.

Q. It is lumber entirely, is it?

A. Saw material.

Q. Now, have you had any opportunity to observe the durability of Pinus strobus?

A. Yes, sir. I have seen the New England houses and sheds that have been built out of it.

Q. Do you regard it as an exceptionally durable wood?

A. Yes.

Mr. WHEAT. We offered at the outset of this hearing that it had been in use there for two hundred years, and there are some of those old buildings standing.

Examiner DE BRULER. I think there is no question about that.

Mr. BURR. All right, we have no question about it.

Examiner DE BRULER. It seems to be admitted.

1846 Mr. BURR. Q. Now, in the preservation of wood by painting, is painting of wood an entire practical cure for lack of durability in a species of lumber?

A. It would be if the lumber were dry when the paint was put on and the paint coating first applied; yes, sir.

Q. Well, as a matter of fact, the everyday home owners, do they keep their coat of paint intact so that moisture does not percolate through?

A. Not all of them.

Q. Well, in the question of whether a dwelling shall be repainted, doesn't the question of looks, rather than—appearance rather than the question of the necessity for maintaining—for keeping moisture out, prevail very often?

Mr. WHEAT. That question is very speculative, Mr. Examiner. If the witness is a walking Encyclopedia Brittannica, he could answer it.

Mr. BURR. If the examiner please, there is no greater folly than that. Everybody knows as a matter of common knowledge, and I just want to get it in the record. Everybody knows that paint is not maintained one hundred percent over any building.

Mr. WHEAT. Why don't you argue that?

Mr. BURR. I do not have to argue it. The Commission could take judicial knowledge of a thing which occurs. Also I am asking

1847 the witness to testify to a matter of knowledge. It is not every matter of common knowledge that the court will take into consideration.

Examiner DE BRULER. Read that question that is objected to.

(Question read.)

Mr. WHEAT. This witness is not put on here as an expert on painting or any of these things. He is put on here as a wood technologist. I can see no basis for that question, Mr. Examiner.

Examiner DE BRULER. Can you answer that question?

The WITNESS. Only so far as my own house is concerned.

Examiner DE BRULER. Go ahead and answer.

Mr. BURR. I did not ask it as regards his own house.

Examiner DE BRULER. He says that is the only way he can answer it.

Mr. BURR. Well, I will withdraw the question then.

Q. Have you brought with you, Professor, any maps with regard to the distribution of the various varieties of pine here in interest over the parts of the country?

A. I have an atlas here which shows the distribution of the different species.

Q. Will you be kind enough to produce it?

A. (Producing atlas.)

Q. Which part?

A. The whole thing.

1848 Examiner DE BRULER. Let the opposing counsel see it.

Mr. WHEAT. 1913. It seems to me this is old material. I am perfectly willing to have some maps in. I will have some made, if you want me to?

Mr. BURR. These are offered in evidence.

Mr. WHEAT. They are very old.

The WITNESS. I think this gives only the botanical range.

Mr. WHEAT. I have not any objection then.

Mr. BURR. If the examiner please, I desire to offer in evidence as Commission's exhibit 39-A, 39-B, 39-C, 39-D, and 39-E, respectively, being maps no. 1 of white pine, no. 2 of western white pine, no. 3 of sugar pine, no. 13 of red or Norway pine, and no. 16 of western yellow pine, so-called, in each case, and ask that they be thus marked and received in evidence, with the permission of having the same photostated and the atlas returned to the parties from whom it is borrowed.

Examiner DE BRULER. It may be received with that understanding.

(Thereupon said maps were received in evidence as Commission's exhibits nos. 39-A, 39-B, 39-C, 39-D, and 39-E, admitted.)

(Witness temporarily excused.)

(Thereupon adjournment was taken until 1:30 o'clock p.m. of the same day, Tuesday, January 21, 1930, at which time the hearing was resumed and the following proceedings were had:)

1849 Before the Federal Trade Commission

In the matter of White Pine cases

Docket Nos. 1620-1669, inc.

SPOKANE, WASH., *January 21, 1930.*

Nor pursuant to adjournment, 1:30 o'clock p.m.

Before Ellis De Bruler, examiner.

Appearances:

Eugene W. Burr for the Federal Trade Commission.

Messrs. McCutchen, Olney, Mannon & Greene (By Mr. Carl I. Wheat) for the respondents.

Examiner DE BRULER. You may proceed with the hearing in keeping with the adjournment.

E. C. CHEYNEY resumed the stand and further testified as follows:

1850 Direct examination resumed by Mr. BURR:

Q. Basing your answer on your observation of frame houses, are they painted frequently enough to keep out the moisture?

Mr. WHEAT. Again I want my objection to go to this. This witness has not qualified as an expert on whether houses are painted or not.

Mr. BURR. It seems to me that the question of paint would have the same bearing on one kind of wood as the other. That is the general understanding, that wood is preserved by paint. I presume that the lasting qualities of these woods without paint is really what is in issue here.

Mr. WHEAT. No; I do not think so. I think what is in issue here are the lasting qualities of various varieties of wood in view of their probable use by the public as regards what will normally happen. Very few buildings will remain unpainted in this day and generation entirely, but it seems to me the practical situation is that there might be degrees of protection against the weather which would result in different results in different kinds of woods.

Examiner DE BRULER. If you can, answer the question, with objection noted. Go ahead and answer it.

Mr. WHEAT. I would like to have an opportunity, Mr. Examiner, of stating what my objection is.

Examiner DE BRULER. Yes.

1851 Mr. WHEAT. My objection is that this witness has not qualified as an expert. He has never said he has gone around and counted a hundred houses personally and counted the percentage of those painted, and that is the only competent way to establish this.

Examiner DE BRULER. Read the question, please.

(Question read.)

Mr. WHEAT. My objection, of course, will be noted.

Examiner DE BRULER. Yes. You can answer that, if you can answer it. Exception noted.

A. I have seen many houses which were not painted sufficiently.

Mr. WHEAT. I ask that that answer be stricken as not responsive.

Mr. BURR. Oh, yes; that is responsive.

Examiner DE BRULER. Let the record stand for what it is worth.

Mr. WHEAT. Exception.

Mr. BURR. Q. Is the painting of a house against the entrance of moisture into the wood—is the painting of a house a complete protection against moisture entering the wood?

A. Not always.

Q. Well, under what circumstances would it not be?

A. Where the joints ends are nor perfectly tight, or the pieces of wood coming together do not make a perfectly tight connection,

1852 and where the wearing of the wood, shrinking and swelling up of it will open up the joints.

Q. Well, now, if wood is properly kiln dried, will it shrink?

A. It could not shrink any more if it is kiln dried below the moisture of the air, but it can swell and then shrink.

Q. And does that happen with some of these pine woods to some extent?

A. It happens with practically all of them, unless they are perfectly painted.

Q. Well, are painting jobs under your observation generally jobs of perfect painting?

A. No. I think you would say there are very few of them would be perfect.

Q. Now, where does the moisture enter, if it does enter, into buildings that are painted; is it at the joints, or ends, or sides, or where?

A. It would be at the joints, where the ends of the wood would be exposed to moisture. There is comparitively little moisture would get into the wood from the side.

Q. Now, as a matter of observation, are houses painted enough to make an impervious surface against the elements?

Examiner DE BRULER. Are you qualified to answer that?

Mr. BURR. I asked him for his observations?

A. Not as a general—I can answer one or two specific instances, but I could not say generally.

1853 Examiner DE BRULER. One of two general instances, then; go ahead.

A. I have seen several houses which were not sufficiently painted.

Mr. BURR. Q. Now, as regards the likelihood to shrinkage, is the density of the fibre of the wood, or the wood, or what is the characteristic that results in shrinkage?

A. The general rule is that the heavier a wood is the more it will shrink.

Q. Will you explain that, please?

A. Well, wood is made up of fibres, and it is the shrinking of the fibre which causes the shrinking of the piece. There is water in the wood in three different places. There is water between the cells. There is water inside of the cells and there is water in the cell walls. It is the water in the cell walls which controls the shrinkage. You can take the water out of the inside of the cell, and out of the openings between the walls, without affecting the size; but just as soon as you take the water out of the cell wall it is then you get shrinkage, and the more fibres there are in the wall, the more shrinkage you will get.

Q. How do the fibres of Pinus pondarosa differ from the genuine white pine?

A. I am not qualified to say exactly how they differ.

Q. What relation is there, if any, between fibrous character

1854 and the weight in avoirdupois, if any?

A. Well, the bigger the walls of cells are and the more fibres there are there, the more weight there will b. You take a thin-walled cell and you will have a light wood and the shrinkage will be comparatively slight. You get a heavy-wall cell, the shrinkage is greater.

Q. And the heavier the wood, the greater the shrinkage, is that a set rule?

A. That is the general rule.

Q. Would you say that the hard, heavy woods, then, always shrink more than the light woods?

A. Yes, sir; in general. There may be exceptions, but that is the general rule.

Q. That is the general principle?

A. Yes.

Q. Which are the commercial genuine white pine?

A. There is the strobus, monticola, lambertiana, flexilis, and albicaulis.

Q. It is a correct name of wood to designate a Pinus Ponderosa as a genuine white pine?

Mr. WHEAT. Now, if Your Honor please, we have admitted the botany of Pinus ponderosa. It has been generally classified by botanists as very closely akin to the southern yellow pines, but to ask this witness the question whether it is a proper name comenclature, I think is the very question this Commission has got to determine. Botanically, I will admit for the purposes of the record——

1855

Examiner DE BRULER. He, I think, is an expert, and he may give his opinion of it.

A. To my opinion, it is usually classified as a yellow pine.

Mr. BURR. Q. Do you so classify it?

A. Yes.

Q. Now, the suggestion has been made in the record several times that the so-called "Douglar fir", also known as "Oregon pine", is not a genuine fir. Is that true?

A. That is true.

Q. What is the effect commercially of this misnomer?

Mr. WHEAT. Now, may I ask that I have an opportunity to object to this question? This witness is not qualified, has not qualified, to state any effects commercially of any names. The fact that Douglas fir is not botanically a true fir, of course, this witness is qualified to state; I admit that; but for him to state whether commercially there is a misnomer or there is an effect of that misnomer, or what that is, this witness certainly is not qualified to state.

Examiner DE BRULER. I think that objection is well taken.

Mr. BURR. I shall not press that. I have no doubt it is.

Q. Are all pines botanically divided into a yellow-pine group, a white-pine group, or are there other pines that belong to neither of those?

1856

A. I think there are classes that I think do not belong strictly to those. There are the pinon pine and the foxtail pine.

Q. Professor Cheyney, in your opinion will the heartwood of second-growth strobus endure as long in use as the heartwood of virgin forests of strobus?

Mr. WHEAT. Now, I ask again that this witness be—the witness has stated whether or nor strobus wood has endured, and we have admitted it has. I think there is no foundation laid for the question that is now being asked.

Mr. BURR. I want his views, and I think I am entitled to it, as to the durability comparitively of second growth as contracted with first growth.

Examiner DE BRULER. If he knows, he can answer.

Mr. BURR. I am asking for his opinion as an expert.

Examiner DE BRULER. You may answer.

Mr. WHEAT. Exception.

A. I do not see how there could be any difference between the heart of the second growth or the first growth, because heartwood is dead. When the sapwood changes to heartwood it is no longer live wood, and therefore cannot change very much.

Mr. BURR. That is all.

1857 Cross-examination by Mr. WHEAT:

Q. Professor Cheyney, have you ever been in the woods in the West?

A. No; that is, not beyond Colorado or the Black Hills.

Q. To what extent are you familiar with the wood which is marketed as California white pine?

A. I am not familiar with it.

Q. On what characteristics of a tree do botanists base their classification of trees?

A. Most of them are based on characteristics of the flowers of the tree.

Q. The reproductive organs of the wood?

A. The reproductive organs of the wood.

Q. Of the plant?

A. Yes.

Q. Now, I take it that the bark is also considered at times?

A. They are secondary characteristics; yes.

Q. Needles are considered, are they?

A. Yes.

Q. And what other secondary characteristics are ordinarily considered by botanists?

A. It depends somewhat on how difficult it is to separate these things. They may run it down and use some very small.

1858 I can give you an example, if you want me to, of the very fine distinctions. The genus Crataesus, hawthorn, is one of those. That has been broken up into about one hundred and fifty species, or thereabouts, and they have been forced to take some very minor characteristics as distinguishing them, and one of them is identified by the color of the inner bark of the roots.

Q. Now, in general, the classification is based fundamentally, is it not, on the flowers?

A. On the flower.

Q. How many needles does the Pinus strobus have?

A. Five.

Q. And the Pinus lambertiana?

A. Five.

Q. And the Pinus monticola?

A. Five.

Q. And what is the common name of Pinus flexilis?

A. Flexilis, the limber pine.

Q. And Pinus albicaulis?
A. White bark pine.
Q. How many needles do they have?
A. Five.
Q. That, you say, is a general characteristic of what you term white pine, to have five needles in bundles?
A. Yes; I so considered.
1859 Q. Do you know of any five-needle pines that are not white pines?
A. No.
Q. Do you know what botanists have called Pinus arizonica?
A. That I am not sure. I think it belongs to the foxtail group, but I am not sure.
Q. Do you know how they have classified Pinus toneyana?
A. No.
Q. You do not know whether they are white pines or whether they are five-needle pines?
A. I do not 'hink they are five-needles pines, but I do not know about the classification of them.
Q. How many needles has what is known as "southern yellow pine"?
A. It has three needles, I think.
Q. Some of the yellow pines have two, don't they?
A. Yes.
Q. Do you know any that has one?
A. Monophylla.
Q. Now, do the botanists in making these broad classifications that you have mentioned consider the qualities or characteristics of the wood in classifying the trees?
A. It might come in as secondary, away down the line, like this inner bark of the roots, but it would not be of primary consideration.
1860 Q. Do you know of any instance of the pines where that is true?
A. No.
Q. Now, what are the factors which have been considered in—first, may I ask do all botanists classify Pinus ponderosa as a yellow pine?
A. I could not say whether they all do or not.
Q. What do they mean by yellow pine in that consideration? Is that a technical term or not?
A. I do not know where they got the name. I would say that it was a term that was generally applied to the group for some reason, but I do not know why.
Q. Is the same true as to white and white pine?
A. Yes.
Q. Do you know what the factors are which botanists have considered in classifying Pinus ponderosa, that is, many of them, as you say, in classifying Pinus ponderosa with this general broad group you have mentioned as yellow pine?

A. No; I do not know what the similarity of characteristics are, but I presume that they are similar.

Q. You have not made any particular study of Pinus ponderosa?

A. No, sir.

Q. You are not definitely familiar with it as a tree?

A. Yes; I am familiar with it as a tree, because we made a
1861 good many stem analysis and a study of the ponderosa is the Black Hills and Colorado.

Q. Did you make any study of it in the States west of those?

A. No.

Q. Do you know whether the production of Pinus ponderosa in the States you have mentioned compares in any great extent to the production in the States west of there?

A. It is much less than it is west of there.

Q. Quite small, is it not?

A. Yes.

Q. Now, could it be said, in view of your answers to what yellow pine was, that is what the word was, that the only true technical description of a plant is its Latin botanical name?

A. That is the ultimate.

Q. Now, why are common names adopted by botanists?

A. I do not think they are.

Q. They are not?

A. They are adopted by other people.

Q. Oh, I see. Then, they are really not, technically not correct at all, are they?

A. No.

Q. And when you talked about Douglas fir, that is not a true fir, is it?

1862 A. No, sir.

Q. So the tree that is ordinarily called the Douglas fir, what is its botanical name?

A. It is Pseudotsuga taxifolia.

Q. Will you translate that for the record?

A. Pseudo is false, suga is hemlock, folia is leaves, and taxus is yew.

Q. What is a yew, not a female sheep, is it?

A. Well, it is one of them. This one is a coniferous tree of another genus than pine. The coniferous trees in this country are divided into two generi. One of them is Pinus and the other is Taxus, and the yew is one of the Taxus group.

Q. Is it a commercial tree?

A. No. I do not know about the Pacific coast yew. There is one out there maybe of commercial size, I do not know, but the one in the East is a shrub.

Q. What is the botanical name of the fir?

A. Abies.

Q. Do you know whether or not there are woods commercially purchased and sold in the United States that are true Abies?

A. Yes.
Q. What are those?
A. The white fir of the West.
Q. What is that botanically?
A. Fir, concolor.
1863 Q. What is the other one?
A. The other one—it is not sold as a fir, but it is sold in commercial quantities, is the balsam.
Q. And what is the botanical name of that?
A. Abies falsa noa.
Q. What other firs are there grown in the United States?
A. Oh, that——
Q. I do not want to go to far in this. I am interested in this botanical end, though.
A. There are five or six true firs, one of them is magnifica.
Q. Is that in commercial quantities?
A. It is in commercial quantities, yes; but it is mostly inaccessible at present.
Q. Counsel for the Federal Trade Commission mentioned some wood called Oregon pine. Do you know what that is?
A. That was a name that used to be, I do not know whether it is now or not, commonly applied to the western hemlock.
Q. And what is western hemlock?
A. Tsuga heterophylla.
Q. Would you be surprised, Professor Cheyney, if you were told that in the State of California Pseudotsuga taxifolia is commonly marketed as Oregon pine, and has been for years?
A. I do not know anything about that.
Q. You never heard that?
1864 A. No.
Q. The only Oregon pine with which you were familiar, is a hemlock, is that true?
A. Yes.
Q. Not a false hemlock, but a true hemlock?
A. A true hemlock.
Q. Let me ask you this, what true cedars grow in the United States?
Examiner De Bruler. I think that is outside of the cross-examination.
Mr. Wheat. I admit that is. We went into this matter of Douglas fir. I want to ask about the wood that is marketed from this very State, or Oregon, as Port Oxford cedar. I am testing the gentleman's botanical knowledge.
Examiner De Bruler. Go a little further.
A. If you call the true cedar the genus Cedarus, I do not know of any in the United States.
Mr. Wheat. Q. Do you know of any woods that are marketed as cedar in the United States?

A. Yes, sir. The arbor vitae, both eastern and western, and the Port Oxford cedar which you have mentioned.

Q. What is that botanically, by the way?

A. That is Cupressus, or Chamaceyparis.

Q. It would not be Cedarus, if it were?

A. It might be Cedarus, and it might be Cupressus, or Chaceyparis.

1865 Q. It is not Cedarus, is it?

A. It is not Cedarus.

Q. Where does Cedarus grow?

A. Well, they are reputed to grow in Lebanon, and there are some in the West Indies.

Q. Woods commonly called cedar Lebanon are not cedar at all, are they?

A. I do not know that.

Q. Can it be said, Professor Cheyney, that the value of these technical terms that we have been discussing is that they discuss something known everywhere, a man in Sweden, or Germany or the United States, or South America would understand these technical terms, if he were a trained botanist?

A. Yes.

Q. And these so-called common names which you have mentioned, they are largely confined, are they, to particular countries and districts in comenclature?

A. Most of them.

Q. Even in the technical names, is there not confusion?

A. Yes; there is confusion even in the technical names.

Q. What you *you* call tanbark oak, for instance?

A. Well, I learned it as an oak, but it has since been changed. I do not know what the name of it is, at present. I learned it under the botanical name of quircus, and it is now something else.

1866 Q. Do you know whether any botanists have classified it as a lithocarpus?

A. I am not sure.

Q. Or a pasania?

A. I do not know what the name is.

Q. You know there has been some discussion?

A. I know there has been a change in it.

Q. Some of these common names that are applied by the people to various woods may apply to several different species of woods, may they not, sir, common names?

A. That is in different localities?

Q. Yes.

A. Yes.

Q. Can you think of any woods grown in this country that have common names covering two or three different botanical species?

A. Well, I was down in North Carolina making a study of what is called red oak in the country as a whole. I went to a fellow in the mill, asked him if they were cutting any red oak. They said they were not cutting any. I asked him what this was. It was a turkey

oak. I went over to the next mill and asked if they were cutting any turkey oak. He said they were not cutting any; he said they were cutting gypsy oak. I found five or ten names in ten miles.

Q. These names are not very definite, so that men like
1867 yourself can follow them?

A. Not unless they have long been established by custom.

Q. Can you give me the nature and characteristics of southern yellow pine, for instance?

A. You mean of the tree or the wood?

Q. Oh, of the wood. We are not interested now in the flowers.

A. Well, the wood of the——

Q. Talustris?

A. Of the talustris——

Mr. BURR. I think we have gone far enough testing his knowledge.

Mr. WHEAT. I am now going beyond testing his knowledge. I am now going into whether this wood should simply be called a yellow pine, and this witness has said he would call it yellow pine. I think I am entitled to ask him whether or not it is like the southern yellow pine.

Examiner DE BRULER. Go ahead. Let's hurry it up.

A. Southern yellow pine, or longleaf pine, or talustris is characterized, being very heavy summer or autumn wood, with rather a narrow ring of spring wood, and is very hard, dense, a very large percentage of rosin.

Q. It is a heavy wood, is it not?

A. Very heavy wood.

Q. What is it used for?

1868 A. Used for all heavy construction purposes especially, and also for practically everything else. Used for interior finish and flooring.

Examiner DE BRULER. I know that is cumulative. It has been gone into with the other witnesses.

Mr. WHEAT. It will, if Your Honor please, be gone into by every witness in the case. It is the important question in the case.

Examiner DE BRULER. There seems to be no dispute.

Mr. BURR. If it will shorten this matter I will stipulate that the pines, that the yellow pine in general, characteristics more closely approximates the so-called white pine than does the commercial pines of the South.

Mr. WHEAT. Well, I will join in such a stipulation.

Mr. BURR. I think I have already stated that before in the record.

Mr. WHEAT. I believe you did.

Mr. BURR. And it seems to me it ought to obviate some of this work.

Examiner DE BRULER. Yes; I think that is admitted.

Mr. BURR. And furthermore, I will say to you right now, and you can use it in your brief if you want to, that I personally would not definitely, if I should be called upon to do so, require the ponderosa interests to name their wood yellow in the trade term.

1869 Mr. WHEAT. You stated that before.

Mr. BURR. I think I did. I stated it for the record or in the record, and the Commission, or course, has no jurisdiction to tell them what to name it affirmatively, and therefore it seems to me we ought to be able to eliminate some of this.

Mr. WHEAT. Of course, there is one thing, that you as attorney for the Commmission cannot bind the Commission.

Examiner DE BRULER. This has been gone over so much, it seems to me it ought to be cut short.

Mr. WHEAT. Q. I will ask you whether in your opinion, in view of what counsel has stated and your own experience, you would consider the term yellow pine as a proper term commercially for Pinus ponderosa wood?

A. It seems to me that it has some characteristics anyway which bind it rather closely to the yellow pine. For instance, the western yellow pine is quite a heavy producer of turpentine.

Q. Where is this produced?

A. In the Rocky Mountains. They have experimented with that and found they could get a very good grade of turpentine from this western yellow pine, very much like the turpentine that they got from the yellow pine of the South, and gotten in the same way, and you cannot get it, as far as I know, from the white pines in that same way.

Q. We are going into the selling of wood as lumber?

A. Yes.

1870 Q. I have asked you whether or not yellow pine would be a proper term to apply to this wood in the market?

A. As a wood?

Q. As a wood?

A. Well, I would agree with Mr. Burr, that it is nearer a white pine in appearance and characteristics, probably, than it is to a yellow, but it has this one thing that binds it, in my opinion, to the yellow-pine group.

Q. That is a chemical matter?

A. No; not so much a chemical as the physical location of the rosin and the production of the turpentine.

Q. Do you know how Pinus joffrey is marketed?

A. I do not think very much of it is marketed as lumber. It comes in as mine props and railroad ties on the market, in that way, in small quantities.

Q. You do not know what the common name is?

A. I do not know what the common name is.

Q. You do not know how it is sold?

A. No.

Q. Are you familiar with Bulletin 556 of the United States Department of Agriculture, entitled "Mechanical Properties of Woods Grown in the United States"?

A. Only in a general way. I am not familiar with the details of it at all now.

Q. That bulletin was produced, was it not, by the Madison
1871 Laboratory Service?

A. I do not know that. I do not know what section of the service.

Q. Let me ask you this, whether you know of any scientific tests that have been made to determine or which have determined the relative durability of the various white pines?

A. No. I only know that they have been carrying on a series of tests at Madison, but I do not know what the results are, or anything about them.

Q. You have not made any such tests yourself?

A. No.

Q. Any other tests from a technical point of view?

A. No.

Q. When they cut up a log of Pinus strobus, what do they cut first?

A. You mean off of the log?

Q. What grade of lumber do they cut first?

A. Well, they take off the slab and then they would get a grade of clear lumber; if the tree were large enough and there were no knots and no defects there, they might get clear lumber. It would be wholly sapwood on one side of the board, anyway.

Q. And what is that clear lumber used for very largely?

A. Clear lumber is used mostly for interior finish.

Q. Now, what is this wood they call shop lumber?

1872 A. Shop lumber is the lumber that is used for cutting-up purposes. It has the defects more or less grouped so that clear pieces can be cut between the defects.

Q. Do they obtain clear lumber from small pine trees?

A. No many long boards of clear lumber, but they cut good shop pieces, short pieces.

Q. Would that be any large percentage of so-called shop in the young trees?

A. It would be under—depending somewhat on the conditions of growth that the tree was produced, and it is conceivable that there would be a large percentage in some and small in others.

Q. That type of lumber is all obtained in the part of the logs where there are knots, isn't it?

A. Yes.

Q. And the common lumber comes from inside of that, doesn't it?

A. Yes. It may come from the same place in the trees, where the whorls of the branches are closer together.

Q. What trees do you have in mind of this type?

A. It would be all in the same species. Sometimes these trees grow a certain distance in height, and then there would be a whorl where the branches grew from that point. In case the length of height growth has been short, it will bear those whorls of branches
1873 so close together there would be no possibility of getting shop out of it. If the growth has been under—I saw one batch

of white pine in Connecticut, for instance, where the average annual growth for ten years had been about three feet a year. There you would have a good chance to get shop lumber out of that, of that length.

Q. What kind of shop lumber would that be, sash lumber?

A. I do not know the technical names.

Q. It would not be over three feet?

A. Well, I saw one tree where I could stand one one whorl of branches, and the next one was over my head.

Q. Was that unusual?

A. That was very unusual.

Q. Do you know whether Pinus ponderosa from Southern California has ever been sold commercially?

A. I do not know anything about it.

Q. Under the same name as Pinus ponderosa lumber from the inland empire?

A. No; I am not familiar with the western classification.

Q. Pinus strobus is comparatively high-priced wood, isn't it?

A. Higher grades; yes.

Q. And what about the lower grades?

A. I am not familiar with the comparitive prices, with different things.

Q. Are you very definitely familiar with Pinus monticola
1874. and its nature and growth?

A. No.

Q. Never been in the woods?

A. No.

Q. You have never made a study, have you, of its lumber in particular?

A. No.

Q. And the same is true of Pinus lambertiana?

A. Yes.

Q. I can pass those then. Does the bulletin which you placed in evidence this morning and the tables mentioned in it, do they give the production and stand of all those species?

A. They give the production of all the species by States and species; yes. The stand too, I think.

Q. What subject do you teach at the University of Minnesota?

A. Silviculture.

Q. Does that include, or not, the botany of trees?

A. No.

Q. Do you teach wood technology?

A. No.

Q. You have always been connected with the university, I take it, since about 1905 or so?

A. Yes.

Q. I take it from your direct testimony that you believe that production of white pine in this country will increase?

1875 A. Yes.

Q. Now, let me ask you whether, in connection with your study of silviculture, you have ever seen any of the effects of what is known as the white pine blister rust in the New England States?

A. Yes.

Q. Has that been a serious difficulty?

A. It has been a serious difficulty; yes; in places.

Q. And has that affected any of the Pinus strobus in the Lake States?

A. Yes.

Q. Does that affect any of the other pines?

A. Yes.

Q. What ones?

A. Monticola. I do not know if it has reached lambertiana any yet, but it is found in Idaho.

Q. Is that rather a serious problem?

A. A serious problem unless properly combatted.

Q. Just tell us briefly how serious it is.

A. Well, it is an imported disease, brought into this country. I do not think the date is definitely known. It is a thing which grows in alternate hosts. It grows for part of the year in the currant and gooseberry bushes and part of the year on the white pines.

So that wherever your pine is of sufficient value, they can take
1876 out the currant and gooseberry bushes, and the disease can be eradicated.

Q. How about in this Idaho white pine?

A. I do not know anything about that.

Q. You do not know how it operates there?

A. I do not think it has been there long enough for anybody to know how it operates.

Q. That is a recent development, is it?

A. Yes.

Q. And where it does do harm, what does it do to the tree?

A. It makes—it goes in through the needles and works back down the limbs, and, if it reaches the main stem, it girdles the main stem and you have the tree dying from that point up, sometimes the whole tree killed.

Q. Are there any insects that attack white pine?

A. Yes.

Q. Are they subject to decay in the forests?

A. The insects?

Q. No; the tree.

A. Do you mean, is the white pine subject to decay?

Q. Yes. Are there factors of decay which enter into growing white pine trees?

A. Yes. Red heart.

Q. In other words, there are possible facts, are there not, that enter into any idea of future production?

A. Yes.

1877 Q. And anyone must have those in mind in considering that problem, must they?

A. Yes.

Q. Have you ever seen any second growth of Pinus strobus out?

A. Yes.

Q. How large trees were those?

A. All the way from four inches to twenty-four inches.

Q. Now, how old were the twenty-four inch trees, about?

A. Fifty-seven years old.

Q. Have you ever seen any third growth strobus out?

A. No; I have seen some just ready to cut.

Q. About how big were those trees?

A. Right to fourteen inches.

Q. Would they cut those, cut those small trees?

A. Well, that depends on who owns them. The large percentage of small stuff that is cut now goes into box lumber. They can cut their knots from them. I do not know the percentage, though, that are gotten out.

Q. You do not know that they do, do you?

A. I know that they do, but I do not know the percentage.

Q. What do they cut out of them?

A. They cut shop out of them and they cut common lumber out of them. Except in the larger size they would not get any clears.

1878 Q. Now, would you consider that that cutting of Pinus strobus of those second and third growth small trees is a serious competitor of the large, old, virgin Pinus strobus that you talked about?

A. I do not know that I know enough about the lumber business to say. I could see how it could compete in certain grades, but I do not know how serious that competition would be.

Q. Would it compete in the clears?

A. No; I would not think so.

Q. Nor it would not compete to any great extent with the shop?

A. I am not so sure about that.

Q. It might compete in the common, might it?

A. Yes.

Q. And it would compete in the box trade?

A. Yes.

Q. Now, the stands of strobus you talked about in New England, are they large or small stands?

A. You mean in extent?

Q. In extent.

A. Individually they are rather small, but there are a great many of them.

Q. Now, is it not true from what you have said about the size of those trees that are being cut, that you have seen being cut,

1879 that the owners of this type of lumber cut it off about as fast as they can cash in on it?

A. I think that is probably true in general.

Examiner DE BRULER. That is leading a long ways in this matter, it seems to me.

Mr. WHEAT. I think that is one of the most important questions in the whole outfit, Mr. Examiner.

Examiner DE BRULER. If you will get right down to the point it may be, but it seems to me that you go too far around to catch the point.

Mr. WHEAT. Q. The well manufactured sash, properly protected at the joints from the moisture, ought to last the life of the building, hadn't it, a wooden building?

A. I couldn't say first hand; I should think it ought.

Q. Do I understand, perhaps I did not get this right in my notes, that most of your direct experience in Pinus strobus forests was at Mataska Park?

A. In northern Minnesota. Not all of it at Mataska Park.

Q. How large a stand is that?

A. It is a tract seven miles square. There has part of it been cut over, I do not know just how much timber. I would say there is probably about twenty-five million feet of timber left in it.

Q. Have you had any direct sawmill experience?

A. No.

1880 Q. You have been visting sawmills, have you?

A. Yes.

Q. In the strobus country?

A. Yes.

Q. Do you know whether in sawing and marketing strobus the Pinus resinosa is also out and marketed?

A. It is in certain grades.

Q. What grades?

A. I am not altogether sure. I think it is only the common lumber.

Q. They are mixed, are they?

A. I think so. That is, in your common grades. The northern pine, too.

Q. Are they any leading lumber companies now buying up large tracts of cut-over lands in your State?

A. Not that I know of.

Q. What about the northern peninsula—the southern peninsula of Michigan? Do you know whether there is any large tract of virgin strobus left?

A. I do not know first hand. It is reported that there is only one tract of virgin pine left in Michigan, the crayling pine. That is a small one.

Q. You have given the figures which were contained in this Bulletin No. 21 about average growth?

A. Yes.

1881 Q. Or about the growth per acre of certain particular districts in various pines. What do you think is the average growth per acre of Pinus strobus in the Lake States where you are familiar with it?

Mr. BURR. In board feet?

Mr. WHEAT. Cubic feet per acre; that is what he gave before?

A. Cubic feet?

Q. That is what you gave those other figures in, isn't it?

A. That is what those other figures were; yes (pause). It would be in the neighborhood of forty to sixty cubic feet, I would say, varying very much.

Q. It varies a great deal, does it?

A. Yes.

Q. And the younger tree, would that grow more cubic feet than an older tree?

A. No.

Q. Per year?

A. It grows less.

Q. Does the old tree grow less than the young tree per year?

A. They do up to a certain age. The growth would be represented by a curve something like that, where it would be slow at first, reach a maximum point, and then fall off.

Q. About what age?

A. It starts much more rapid growth around ten years, I
1882 would say, and from there to—it depends on your species. You mean strobus now?

Q. Yes.

A. Strobus would make its most rapid growth probably up to about eighty years and will continue a fairly rapid growth up to a couple of hundred years.

Q. You do not know whether the figures which you gave out of some one of those bulletins as to growth in cubic feet have been attacked in some forestry journals by experts?

A. Not that I know of.

Q. You do not know whether there has been any dispute on the accuracy of those figures?

A. No; I do not.

Q. Or whether all the foresters agree on the production of those various areas?

A. I do not know whether they do or not.

Q. Who prepared Bulletin No. 21 that you put in this morning?

A. The Forest Service, as far as I could trace. I do not know who prepared it.

Q. You did not have anything to do with it yourself?

A. I had nothing to do with it.

Q. You merely accepted the figures in it as correct?

A. That is true.

Q. Do you know of any other figures more accurate than those?

1883 A. No.

Q. Do you think that those figures are fairly accurate?

A. In general, yes.

Q. Have you any particular comments to make on that matter?

A. No; except that estimates of large areas of any kind are nearly always more or less of a guess.

Q. How long does it take for the Pinus strobus in Massachusetts to grow that size of the present average cut that you were speaking about a few minutes ago?

A. What do you mean by the present average cut?

Q. Well, you were talking about the size that it is cut there in Massachusetts?

A. You mean until it would get to that diamotor?

Q. Yes.

A. Well, to cite a specific instance, there was a stand at Lake George, New York, that they were intending to cut in the winter of 1917–18, that was on land which had been clear cut in 1885.

Q. Around thirty years?

A. Yes.

Q. How do you know that sugar pine does not grow north of Oregon? Have you ever been in the woods in Oregon?

A. No. I am stating from general knowledge of botanical range of species.

Q. Usually taken from such documents as those atlases,

1884 and so forth?

A. That, and from Sargeant & Sudworth.

Q. Do you know how the Klamath Falls mill market their cut of Pinus ponderosa?

A. I don't know anything about them.

Q. Now, the figures you have used on the cut of Pinus ponderosa as pondosa, do they include any cut of Pinus ponderosa in the State of Oregon?

A. Let me see. Yes; I think that includes all of the cut of pondersa in Oregon.

Q. Oh, yes.

A. Including the stuff cut at Klamath Falls.

Q. If you are sure of that, I won't ask any further.

A. Yes; that was included in there, I am pretty sure.

Q. All right.

A. I think there is a note on one of those charts to that effect.

Q. Would you say, sir, that you are an expert in the identification of woods?

A. No, sir.

Q. Who prepared this exhibit no. 30, this atlas? I want the record to show just what it is?

A. That is the Forest Service, and I think it is under the direction of Mr. Sudworth.

Q. That was prepared some time ago?

1885 A. 1913 that was published.

Q. Do you know whether turpentine was attempted to be produced in other parts of the Pinus ponderosa range and was a failure?

A. No; I do not know.

Q. You are familiar with the general results of that?

A. No.

Q. You are not familiar with the general results of attempts to produce it?

A. No; only that one instance that I cited. It has been stated several times that would produce a certain quantity of turpentine, which is quite a material quantity.

Q. That is not your own personal knowledge?

A. Not from any personal knowledge.

Q. You did not personally follow that up?

A. The result of Forest Service experiments.

Q. Do you know whether that was a commercial matter?

A. It was not.

Q. Do you know whether turpentine is produced in Pinus jeffroyi?

A. I do not know; no.

Q. Do you know where botanists have classified Pinus joffroyi?

A. No.

1886 Q. You do not know whether it is a white or red or yellow or blue pine?

A. I think it is a yellow pine that was for a long time considered a part of ponderosa and has been split off as a separate species.

Q. But you are not at all familiar with that special species, or whatever it may be?

A. I have never seen it to my knowledge.

Mr. WHEAT. I think that is all.

Redirect examination by Mr. BURR:

Q. You said wood could be protected by painting. That protection will have to be continued by timely repainting, will it not?

A. I could not say.

Q. Beg pardon?

A. I could not say definitely whether it does or not.

Q. In other words, it might last a lifetime even though painted the once, you mean?

A. As far as I know; yes.

Q. I believe you testified they are not buying cutover land that has been growing up in Pinus strobus in Minnesota, very little; is that true?

A. I said I do not know of any instances where they were.

1887 Q. Is there any legislation in your State for the alleviation of tax burden in the case of reforested areas?

A. Yes.

Q. The burden has been alleviated so as to make up the leaving of land in reforested areas, isn't it?

A. That was the purpose of the legislation.

Mr. BURR. That is all.

Recross examination by Mr. WHEAT:

Q. May I ask whether that has proven successful?

A. Not so far.

Mr. BURR. What has not proven successful?

Mr. WHEAT. This taxation system.

Redirect examination by Mr. BURR:

A. That no lands have been put in under that rule as yet that I know of.

Q. Do lands that are naturally reforested have any protection against excessive taxation in your State by legislation?

A. Not unless they are by the owner put under this special tax ruling; that is, only at the option of the county commissioners.

Q. Can the owner avail himself of the law by the procedure you refer to, even though he does not reforest artificially?

1888 A. Yes.

Q. In other words, natural reforestation would come under the law, would it?

A. Yes.

Q. Has that had an effect on promoting the leaving of land for reforestation purposes which might otherwise come under agriculture, has that encouraged it to any extent?

A. I think not, because so far——

Examiner DE BRULER. I think he has fully answered. I think that has gone far enough.

Mr. BURR. All right. That is all.

Examiner DE BRULER. You are excused definitely.

Mr. BURR. As long as these answers are competent, I think I will insist upon their being fully answered.

(Witness excused.)

1889 GUS CARLSON was thereupon called as a witness and, having been first duly sworn, testified as follows:

Direct examination by Mr. BURR:

Q. Will you state your name?

A. Gus Carlson.

Q. I see you have brought a sample of lumber with you. Will you kindly say what your instructions were in connection with that piece of lumber, if any?

A. Well, they come with the instruction to pick out a piece of Idaho white pine, very soft texture, B select, and better.

Q. And you are working for what company, sir?

A. Rutledge Timber Company.

Q. And where is that located?

A. Coeur d'Alone.

Q. And is that one of the Weyerheaser companies?
A. Yes.
Q. That is a lumber production company, is it?
A. Yes.
Q. Now you were asked to pick out a particularly soft piece of Idaho white pine, were you?
A. Yes; B.
Q. What is your line of work in connection with the company that you work for?
1980 A. Well, I am a lumber grader, and lumber inspector also for the company.
Q. And how long you have held that position?
A. Well, I have been in the lumber business for fifteen years.
Q. And to whom do you report in connection with your lumber grading; who is your chief?
A. Mr. Peterson at the Old National Bank Building, Spokane, Washington.
Q. How many graders are there out here?
A. At the Rutledge?
Q. Yes.
A. Oh, there must be twenty-five.
Q. I see.
A. In that neighborhood. I could not say correct figures, but then in that neighborhood.
Q. You are one of these graders, are you?
A. Yes.
Q. Are you one of the chief graders out there?
A. Yes.
Q. How many men do you have under you in connection with the grading work?
A. Well, I am supposed to look after every one of them.
Q. Now, will you state again what your instructions were in regard to the selection of the piece of lumber which you brought?
1891 A. Bring down a soft piece, soft texture of the Idaho white pine, B select.
Q. About as soft a piece as you can find?
A. Yes.
Q. Would you say that was an average, or softer than the average?
A. Well, it is a little softer than the average.
Q. B select and better is the grade, is it?
A. Yes.
Q. That is the highest type of B select and better that you could find, was it?
A. Yes, sir; it is the highest type.
Q. How long did you have those instructions before you picked out that board?
A. Well, I got it at four o'clock and I picked it up between four and four-thirty and we sent it in to Spokane next morning, and I think it was here before nine.

Q. What day was that?

A. I think it was Monday—let's see. This is Tuesday. No; it was—I cannot recollect exactly the day.

Q. Never mind. It don't make any difference.

Mr. WHEAT. I wondered whether it was yesterday or two years ago.

A. I think it was Friday evening.

Mr. WHEAT. All I wanted to know was whether it was last year.

1892 Examiner DE BRULER. He has the board here. That does not make any difference.

A. I think it was Friday evening.

Mr. BURR. If the examiner please, I ask to offer that in evidence and ask that it be marked "Commission's Exhibit 40."

Mr. WHEAT. No objection.

Examiner DE BRULER. It will be admitted.

(Thereupon said board was received in evidence as Commission's Exhibit No. 40 admitted.)

Mr. BURR. Cross-examine.

Cross-examination by Mr. WHEAT:

Q. By the way, Mr. Carlson, you are quite familiar, are you, with the Idaho white pine which the Rutledge Timber Company produce?

A. Yes. I am.

Q. You have been familiar with that for a good many years?

A. Well, I have been with the Rutledge for practically the last ten years.

Q. Do you ever get Idaho white pine that is harder than this piece?

A. Oh, yes; very much harder.

Q. Does that come generally out of the forest?

Mr. BURR. If the examiner please, this is not proper cross-examination.

1893 A. Yes, sir. It comes——

Mr. BURR. Wait a minute. This is not proper cross-examination. I am not going into those matters of variability and all those things with the witness.

Mr. WHEAT. I will withdraw that last question.

Examiner DE BRULER. What is the last question?

Mr. BURR. If he wants to make the witness his own witness, that is different.

Mr. WHEAT. Q. How do you know that is Idaho white pine?

A. I know it because I have been handling that kind of lumber for years.

Q. You are familiar with that kind of pine, are you?

A. Yes.

Q. You can identify that in the wood; I mean after it is cut out?

A. In the lumber.

Q. Yes; in the lumber?

A. Yes.

Q. And what is there in that piece that makes you think it is Idaho white pine? Hoc do you know it is not Pinus ponderosa?

A. Well, some of the Pinus ponderosa is very much like the white pine, but it has a little different color, and different grain, and there is harder texture in the pondosa.

Q. Can you tell me, Mr. Carlson, what you call this piece
1894 of wood that I now hand you?

A. It looks like white pine on that side. It is soft.

Q. What was the answer?

(Answer read.)

Mr. BURR. I would like to ask the purpose of this question. Is the purpose of the question in order later on to impeach the ability of this witness to detect different types of wood?

Mr. WHEAT. Oh, I think this is a piece of Idaho white pine, without any doubt.

Mr. BURR. Well, then, I am going to object to the question. I would like to ask what the purpose is of questioning the witness with regard to those other samples.

Mr. WHEAT. With your permission, if you want to object to it, of course I would have to hand this gentleman a subpoena, but with your permission I will call him as my own witness. He is one of the best men that has been on the stand for that. I have been waiting for somebody who knew something about those, out of the woods.

Mr. BURR. You can address yourself to the examiner.

Examiner DE BRULER. This witness was called for the purpose of identifying this as white pine, wasn't he?

Mr. BURR. Yes, sir.

Examiner DE BRULER. Then your cross-examination goes to his knowledge of where he got this, and so forth, and that it is
1895 Idaho white pine.

Mr. WHEAT. I have now concluded my cross-examination. I have asked and Mr. Burr has stated he would not object to my making him my witness for the purpose of a few questions.

Mr. BURR. As a defense witness, to have him examined.

Examiner DE BRULER. All right, if you have no objection.

GUS CARLSON, called as a witness, heretofore sworn, testified as follows:

Direct examination by Mr. WHEAT:

Mr. WHEAT. I will ask that this piece of wood be marked for identification as "Respondent's Exhibit No. 23."

(Thereupon a piece of wood was handed to the reporter and marked "Respondents' Exhibit 25" for identification.)

Q. May I ask you, then, Mr. Carlson, on what you base your recognition that this is probably Idaho white pine, what characteristics come to your mind when you look at it?

Mr. BURR. Does he say Idaho white pine or pondosa pine?

The WITNESS. That board is Idaho white pine we cut from Idaho—this board.

1896 Mr. WHEAT. Q. And you said this was Idaho white pine?

A. I do not know whether it is Idaho white pine or not, because I do not know exactly where it comes from. They have other pines very similar to Idaho white pine.

Q. What are they?

A. Well, they have some white pine in the East that is much like the Idaho.

Q. Then, Mr. Carlson, when you said white pine, you meant that as distinguished from pondosa, did you not?

A. Yes.

Q. Now, I hand you another piece of wood.

Mr. WHEAT. I will ask that this piece of wood be marked for identification also.

(Thereupon said piece of wood was handed to the reporter marked "Respondent's Exhibit No. 26" for identification.)

Q. What would you say this wood is in exhibit 26 for identification?

A. It looks very much like pondosa.

Q. Like pondosa?

A. To me; yes.

Q. Now, I show you another piece of wood, and ask that this be marked for identification no. 27.

(Thereupon said piece of wod was handed to the reporter and marked "Respondent's Exhibit No. 27" for identification.)

1897 Mr. WHEAT. Q. And ask you to examine it and tell us what you think that is; whether it is Idaho white pine or pondosa?

A. The best I can say it is Idaho white pine or white pine. I do not know whether it comes from Idaho or not. It looks very like white pine to me.

Q. But it is not pondosa?

A. No; not pondosa to me.

Mr. WHEAT. I ask that this piece of wood be marked "Respondents' Exhibit No. 28."

(Thereupon said piece of wood was handed to the reporter and marked "Respondents' Exhibit No. 28" for identification.)

Q. Just examine that carefully and see what kind of wood you think that is; whether pondosa or Idaho white pine.

A. The nearest I can see it is the hard texture of the white pine.

Q. Hard texture of white pine?

A. Yes.

Q. By white pine what do you mean; Idaho white pine?

A. Well, there is a different texture; not too hard, but soft.

Q. Does Idaho white pine vary in texture between soft and hard?

A. A whole lot.

Q. You get some pieces that are harder than this no. 28?

1898 A. Just about that hard.

A. This is a clear cutting of it, without any knots, is it?

A. Yes.

Mr. WHEAT. I will have these identified as to sources later.

Q. I have one more piece I would like to show you, Mr. Carlson. I will ask to have this marked.

(Thereupon said piece of board was handed to the reporter and marked "Respondents' Exhibit No. 29" for identification.)

Q. First look at this side of this piece of wood and give us an idea of what you think that wood to be.

A. (Examining exhibit.) Well, I don't know for sure, but it seems to me it is very close to Idaho white pine.

Mr. WHEAT. All right. You may take the witness.

Cross-examinaion by Mr. BURR:

Q. When you have said white pine two or three times, do you mean that you would be able to tell the sample which you call white pine from northern white pine, if it should happen to be northern white pine?

A. I do not know. I never been North, so I don't know anything about it.

1899 Mr. BURR. Do I understand correctly that you contend those are all local to this inland empire region?

Mr. WHEAT. I understand so. They came from here.

Mr. BURR. In other words, this strobus matter is not complicated here?

Mr. WHEAT. Not at all.

Mr. BURR. All right. That is all.

(Witness excused.)

Mr. BURR. Now, with regard to commission's exhibit for identification no 40, and also with regard to the sample that I shall next ask to be marked as Commission's Exhibit No. 4, I would say that I am merely asking that they be marked for identification. I am of the opinion that either side can prove almost anything in this case by the introduction of samples, and I rather deplore the idea of introducing large samples of these types of lumber into the records. If, however, as seemed to appear at New York, that opposing counsel desire to offer the samples that they have there offered for identification, I do desire to have such identification made so that those at a later date can be introduced in the record, if I choose.

Mr. WHEAT. I would then ask that they be present physically at the San Francisco hearing.

1900 Mr. BURR. That is entirely satisfactory.

ED BISSON was thereupon called as a witness and, having been first duly sworn, testified as follows:

Direct examination by Mr. BURR:

Q. State your name.

A. Ed Bisson.

Q. What is your address?

A. Cloquet, Minnesota.

Q. Mr. Bisson, what is your occupation, sir?

A. Lumber grader.

Q. And for what company?
A. Cloquet Paper Company, lumber division.
Q. Is that a Weyerheauser company?
A. Yes, sir.
Q. And their timber is located where?
A. Cloquet. In Minnesota, most of it.
Q. And how long have you been in that work?
A. About twenty-five years.
Q. And you are a grader there for the company?
A. Yes, sir.
Q. How many graders has the company at that point?
1901 A. Oh, about ten, I guess.
Q. Who is in charge of those graders?
A. Mr. Johnson.
Q. Now, have you brought a piece of lumber with you?
A. Yes, sir.
Q. And did you select that piece?
A. Yes, sir.
Q. What were your instructions at the time of selecting this?
A. To select a piece of B and better, soft texture.
Q. The highest type of B and better?
A. Yes, sir.
Q. And the sample that you have brought is such a piece of board?
A. Yes, sir.
Q. In your judgment?
A. Yes, sir.

Mr. BURR. I ask that the board that the witness has produced be marked for identification "Commission's Exhibit No. 41."

Examiner DE BRULER. It may be so marked.

Mr. WHEAT. You have not suggested what variety of wood it is yet.

Mr. BURR. Q. This is a strobus piece, is it, a piece of white pine?
A. It is a piece of white pine.
1902 Q. Is there any other variety of white pine grows up in those woods?
A. No, sir.

Mr. BURR. I am offering Commission's Exhibit No. 41 for identification. Would you receive it?

Examiner DE BRULER. Oh, yes. It has been received.

(Thereupon said board was handed to the reporter and marked "Commission's Exhibit No. 41" for identification.)

Mr. BURR. Your witness, sir.

Cross-examination by Mr. WHEAT:

Q. You stated that that is a selected piece of B and better, highest type soft texture, Pinus strobus?
A. Yes, sir.

Mr. WHEAT. That is all.
Mr. BURR. That is all.
(Witness excused.)

1903 DON LAWRENCE was thereupon called as a witness, and having been duly sworn, testified as follows:

Direct examination by Mr. BURR:

Q. Mr. Lawrence, has the reporter got your full name?
A. Don Lawrence.
Q. Your business is what, Mr. Lawrence?
A. I am in the employ of the Weyerheauser Sales Company.
Q. And you have been in the employ how long?
A. Since 1916.
Q. And in what capacity since that time?
A. Part of that period as a district manager, and more recently as assistant general manager.
Q. Of sales in both cases; is that true?
A. Yes, sir.
Q. Where, as district manager, were you located when you served in that capacity?
A. In Spokane most of the time.
Q. Now, in connection with your present work, do you have occasion to spend part of your time away from headquarters in the promotion of sales?
A. Yes; part of the time.
Q. What is the nature of your duties during those times that you are away from headquarters?

1904 A. Usually interviewing and consulting with our district managers, and in some instances with the individual salesmen.
Q. Do you ever wait upon any members of the trade that buy or are prospective buyers from you?
A. Yes; at times.
Q. Now, as a result of your experience, does the use of white in connection with the trade term "California white pine" have an influence upon your sale?
A. Mr. WHEAT. Now, Mr. Examiner, I want the record to show that I here object to that question unless it be limited to specific instances, which I think is a reasonable request.
Examiner DE BRULER. Read that question again.
(Question read.)
Examiner DE BRULER. You may answer that, with an exception noted.
A. Yes. It does.
Mr. BURR. Q. Will you describe what that influence is, please.
A. It is an adverse influence in the sale of both genuine white pine; also what we market as pondosa pine.
Q. Now, referring to genuine white pine, will you describe that more in detail?

A. The species which our companies market as genuine white pine are the so-called northern white pine or Minnesota white pine, and the Idaho white pine, those two.

1905 Q. Yes. And just how does that adverse influence operate?

Mr. WHEAT. My objection, of course, will be noted to this whole line of testimony?

Examiner DE BRULER. Yes; the objection noted, but he may answer that. He is asking just how that operates.

Mr. WHEAT. I understand the examiner's ruling and I want the record to show my objection.

Examiner DE BRULER. The record may show your objection.

Mr. WHEAT. And exception noted.

Examiner DE BRULER. Yes.

A. Well, in the minds of most people familiar with softwood lumber, the term "white" when used with pine, I think—I believe has always signified something that was rather prominent, and when that term is used of a species which is not a true white pine, it is rather difficult, or at least it takes a great deal of time and effort for us to sometimes convince our customers that the true white pine is the true white pine. They have perhaps received shipments of stock billed to them as white pine and have been confused, and it is largely from that contact that we have our trouble.

Q. Now, as regards the difficulty that you encountered as the result of the word white in California white pine, what effect does that have more in detail as regards your sales of pondosa pine? Will you describe that?

1906 A. That is a probem that frequently comes up. We find it necessary to very frequently assure our customers that our so-called pondosa pine is exactly the same species as that marketed as California white pine. The term "white" used in that connection carries to my mind a great amount of prestige, and it is almost, I was going to say daily, at least weekly, a weekly occurrence that we write letters or are in direct contact with our customers, have to go into infinite detail in explaining that point to them.

Q. But you do explain to them that pondosa is from the same species, of tree, do you?

A. Yes; we do.

Q. Have you brought any charts with you, Mr. Lawrence, in connection with the heart and sap constituents of the two varieties of trees?

A. Yes, sir; I have some charts.

Q. Have you those with you now?

A. No, sir. They are in the room, however.

Q. Will you be kind enough to produce them?

A. (Witness leaves stand and produces charts.).

Mr. BURR. Before we proceed, I will ask the examiner to instruct the reporter to mark these two graphs which have been produced numbers 42 and 43 for identification merely, for the time being.

(Thereupon said charts 42 and 43 were handed to the reporter and marked "Commission's———.")

1907 Q. Now handing you Commission's exhibit for identification 42, will be kind enough to state the situation of which this is aimed to be an illustration.

Mr. WHEAT. If Your Honor please, this witness has not qualified as an expert on wood technology. If he desires to produce a chart, from some Government publication or something of that sort, or if he is an expert wood technologist, we have no objection to his explaining these matters, but I must certainly object to a man qualifying as a salesman making any statement regarding any such charts.

Mr. BURR. Well, suppose we proceed a little further.

Examiner DE BRULER. Ask him——

Mr. BURR. Q. Mr. Lawrence, in connection with your work what, if any, opportunity have you had to observe the heart and sapwood content of Pinus ponderosa and Idaho white pine?

A. Well, I have been in the woods in this district, in the district where these two species are produced.

Q. Whereabouts, and during what period?

A. You are speaking now of Pinus ponderosa?

Q. Well, you may speak of Pinus strobus, if you like.

A. I have been in the woods of Minnesota for a period of about six or seven years, perhaps, during which time I scaled a good many million feet of logs.

Q. A good many million feet of logs, did you say?

A. Yes, sir.

1908 Q. Yes.

A. I have scaled logs in the sawmills of Minnesota during that period. I am quite familiar with that species.

Q. Now, handing you Commission's exhibit for identification no. 42, will you be kind enough to state the method of sawing lumber as related to the heart and sapwood content, with particular reference to strobus, which that chart illustrates?

Mr. WHEAT. Now, if Your Honor please, I do not think this witness has qualified as yet as a wood technologist.

Mr. BURR. This is not technology of wood, brother?

Examiner DE BRULER. Objection overruled. Exception noted.

Mr. WHEAT. I have a right, Mr. Examiner, to state my objection.

Examiner DE BRULER. I understand that. There is no doubt about it. I say the objection is overruled, with exception noted.

A. This chart is designed to illustrate the comparative width of the sap, of the proportions of sap and heartwood in Pinus strobus. The chart specifies an average, as I understand it, of an inch and three quarters for the sapwood in strobus. They are based on my knowledge and my recollection of that species as I have seen the logs in the woods and in the mills. It is my judgment that that is perhaps a little heavy. I would say that an inch and a half would be nearer to it, and perhaps that would be a little strong, but a

1909 great many——

Q. You are referring to virgin strobus in that connection, are you, rather than second growth, is that true?

A. I know very little distinction between virgin strobus and second growth. That is, very little.

Q. As regards the width of the sap, you mean?

A. Yes.

Q. I see.

A. Would you care to define just what you mean by virgin?

Q. Well, for the purpose of that question, I mean timber that was growing in a stand which had never been logged off previously.

A. There is very little difference, I believe, in the two.

Q. In the width of the sap ring?

A. In the width of the sap ring.

Q. Yes.

A. Very little, in my experience.

Q. Of course, a narrower sap ring would constitute a greater proportion in a small tree, would it?

A. Sure.

Q. All right. Proceed. I think I interposed there.

Mr. WHEAT. You will let me have copies?

Mr. BURR. I will have them photstated, and furnish you copy.

1910 A. The chart further shows the method of sawing of a log, take, of course, the first out will take off a very small slab. The second will be almost entirely in the sapwood, and very naturally will be clear lumber from this size of log or larger, where there is very likelihood of limb knots. The second cut in a log of this size would carry largely sap, with a percentage of heartwood in the center of the piece. In the next cut, or third cut in a log of this size, the sawyer would be very apt to run into a type of timber from which he can get shop lumber. He would be cutting a few knots, so he would be cutting shop lumber, and there would be a possibility in that log of that size that he would get a second cut. Then he would very quickly run into the heart toward the center of the log, so he would develop a type of common, with a good many knots. That, the radius of that, the diamotor varies. Generally speaking, the defects which produce the common grade comes from the center of the log in varying diamotors. In a log of this diamot'r varies from eight to ten inches. It is very difficult to establish anything like a comparative diamotor there, because the logs like—well, there are no two logs alike, any more than there are any two boards like. There are millions of them but any two are different. That is just a general statement.

1911 Q. Now, how about the point that is marked there edging? There is a piece of waste there that is somewhat at the end of each board, at the end of each cutting, where it protrudes toward the bark and leaves the sap, that is cut off, is there?

A. Yes. There are some edges used for commercial purposes.

Q. How, when you begin to enter the interior part of the heart where the knots are, there is still part of one of those cuttings which is largely shop, is there, or do you turn the log after having taken several cuts from one side and then the log is turned, is it, in order to get the benefit of the clear and shop grades?

A. Well, this is the usual custom; yes. In logs—well, such as white pine and to a very large extent yellow pine——

Q. Pondosa, you mean?

A. Pondosa. The logs are turned so as to get the largest piece of clear lumber.

Q. Yes.

A. And of shop. So that after the sawyer get into the leg to a point where he believed the next cut would run him into common, he would very naturally turn the log, repeat this same process on the other side, and quite likely turn it again and again, so that he would eventually have a square amount, which would be very principally common, and in the center of the log.

Mr. BURR. I offer that in the record.

Mr. WHEAT. Does the chart show the method of cutting Pinus strobus.

Mr. BURR. I offer it for that purpose, and also for the
1912 purpose of showing the relative places of the heart and sap lumber, and the way in which the matter works out. The question of heart and sap, of course, has been very frequently in the record and I think the examiner and Commission will want this chart and an explanation of it, really for the purpose of explaining the record.

Mr. WHEAT. I object that the witness has not been qualified to express the latter statement.

Examiner DE BRULER. Note the objection. And it will be received.

Mr. WHEAT. Exception.

(Thereupon said chart was received in evidence as Commission's exhibit no. 43, admitted.)

Mr. BURR. Q. Handing you Commission's exhibit no. 43, will you kindly explain what that graph represents in the same fashion that you did the other.

Mr. WHEAT. This is subject to the same objection?

Examiner DE BRULER. Yes. Note the objection and exception.

Mr. WHEAT. May I have the further objection, Mr. Examiner, that he has not shown any qualifications whatever for discussing Pinus ponderosa?

Mr. BURR. I think he did.

Examiner DE BRULER. The objection is overruled. Exception noted.

Mr. BURR. Q. Did you not testify that you were familiar
1913 with Pinus ponderosa?

A. I believe I said I was; yes.

Q. I think so.

Examiner DE BRULER. I understood it that way.

Mr. BURR. Q. All right. Will you proceed with your explanation, sir? How wide is the sap ring in that character of tree?

A. This graph, representing the sapwood in Pinus ponderosa, designates an average of three and a half inches for the sapwood in a log of this diameter.

Q. Is that about normal, do you think?

A. Well, in my experience in this district I would say that the normal would be greater than that, considerably greater, perhaps.

Q. It varies a great deal, does it not?

A. Varies a great deal; yes, sir.

Q. Does it vary more as regards the proportion of heart and sap content than the Idaho white pine varies?

A. Yes. Very much more.

Q. All right. Will you proceed?

A. The graph illustrates the method of cutting and sawing the log, exactly as the other graph did, but what would be very evident, what is very evident from the graph, is the fact that a much higher percentage of the lumber, or the cuts carrying clear lumber
1914 upper grades or shop, will be sapwood than heartwood, because of the very much wider sap ring.

Q. Than heart or sap, did you say?

A. Sapwood would carry a very much higher percentage than heartwood.

Q. At the extreme upper end of the graph I see a very small skin, apparently four inches long; is that correct?

A. Yes.

Q. What is this skin; is that a slab?

A. That is a slab.

Q. That is sold for firewood purposes, or something like that, if sold at all; is that true?

A. Well, there is sometimes a little salvage from it. It is immaterial.

Mr. BURR. I will offer that and ask that it be received as commission's exhibit no. 43.

Mr. WHEAT. Subject to the objection.

Examiner DE BRULER. It may be received subject to the objection.

Mr. WHEAT. Exception.

(Thereupon said graph was received in evidence as commission's exhibit no. 43, admitted.)

Mr. WHEAT. My objection goes to the qualification of the witness on this matter, rather than to any particular chart.

Mr. BURR. Q. Now, the little part in both of these graphs, marked "edging", what is done with those?

1915 A. That is usually refuse, sold as wood. It is possible at times to salvage a small amount of that for mouldings and things of that sort.

Q. In other words, it is slab wood, is it?

A. Yes.

Mr. WHEAT. Q. May I ask one question for clarity? What is the size of those trees shown on those charts? You said a tree of this size but the record does not show what size it is, and the copies I will get of these charts will be pho'static copies and reduced in size?

The WITNESS. I believe it is a twenty-two-inch log. Let's confirm that. Will you confirm that, please?

Mr. BURR. I would like to ask a question or two more, if I may.

Q. The graph no. 42, does that relate approximately the same way; would that be applicable to Pinus monticola?

A. In my judgment; yes.

Q. Have you had any experience in the forests in Idaho?

A. Yes, sir.

Q. How much?

A. Several years.

Q. Did you have any of the same grading experience?

A. Yes.

Q. Now, would you say that the width of sap that you testified to as probably too great, would be about applicable
1916 or would it be too great or too little, in your judgment, as regards monticola? Is your testimony the same with regards to strobus, or how would it vary?

A. My testimony would be the same as with regard to strobus.

Q. In other words, that an inch and a half would be—an inch and thre' quarters would be rather high than small, would it?

A. That is my judgment.

Mr. WHEAT. That is for the twenty-one-inch log?

The WITNESS. Is it twenty one? The size of the log does not matter materially.

Mr. BURR. Q. In other words, the sap is about the same size throughout the life of the tree, you think?

A. 5. It is in a white pine; yes.

Mr. BURR. All right. Your witness.

(At this time a short recess was taken.)

Cross-examination by Mr. WHEAT:

Q. How long did you say you had been assistant sales manager of the Weyerheauser companies?

A. About two and a half years.

Q. And prior to that time and from 1916 on, you were one of the district managers, were you?

1917 A. Yes, sir.

Q. And you said you were most of the time at Spokane. Where else were you?

A. I was located in Saint Paul very early in our organization.

Q. About when was this?

A. 1916.

Q. And were you district manager there then?

A. Yes.

Q. And then prior to 1916, what was your lumber experience?

A. Well, immediately prior?

Q. Any time prior to that? I want to know what your experience was. What did you do prior to 1916?

A. Just previous to that I was in the employ of a sales organization.

Q. Of the Weyerheauser group?

A. Weyerheauser group and some other groups in this district, located in Minneapolis. Prior to that I was the sales manager of the Bonners Ferry Lumber Company.

Q. Where is that?

A. In Idaho. Northern Idaho.

Q. Most of your experience, then, has been in the inland empire region?

A. Well, in recent years. Prior to that in Minnesota and Michigan.

Q. Now, I believe in your direct testimony you stated, those
1918 are my notes of what you stated and if I am wrong, please correct me—that the use of the word "white" in the term "California white pine" influences your sales adversely in the sale of both genuine white pine, by which you mean northern white pine and Idaho white pine, and also your pondosa. That statement was made, you will recall, under my objection that you were not being asked for instances of such claimed adverse influence. Now, will you state, please, for this record, any instances which you may have of such adverse influence?

A. I am not in position to give you specific instances.

Q. Why not? I mean let me ask you this: In your work as sales manager, do you or do you not come in contact with the sales in a sufficient manner to know whether there are specific instances?

A. I do. By correspondence largely at the present time.

Q. With whom?

A. With customers, with our own representatives.

Q. Now, there are such instances, are there, of adverse influence?

A. There have been.

Q. When were they?

A. I am not in position to give you specific dates.

Q. Do you know any specific instances?

A. I know that there have been specific instances.

1919 Q. Does your recollection lead you to any specific instance?

A. They are not sufficiently definite so that I can give you dates or names.

Q. Now, you stated on your direct examination, I believe, that some of your customers had received shipments billed as white pine and had been confused. Now, just what did you mean by that, and give me specific instances of that?

A. As I have told you, I cannot give you specific instances. I can tell you, however, what I meant by that, shipments of stock billed as California white pine.

Q. From whom, please?

A. I cannot tell you that. Shipments of stock billed as western white pine.

Q. When was this?

A. In the years past, in the case of western white pine.

Q. And where were these shipments sent to and where from?

A. They were sent from this district, and I assume the California district from the fact of the name, to various eastern destinations.

Q. Specify those destinations, please?

A. I am not in position to give you those specifically.

Q. Does your recollection not run to any specific instance?

A. No; it does not.

Q. Now, you stated in your direct testimony that the use of the word white in reference to ponderosa wood was a problem

1920 which frequently comes up, I believe you said. You stated, I believe, that you have to assume that—you have to assure your customers that pondosa is the same as California white pine. Do you do that?

A. I do.

Q. And how do you do that, by letter or by conversation?

A. Both.

Q. Now you do it by letter, do you?

A. I do.

Q. Have you such letters which you can produce at t[illegible]earing?

A. I have not.

Q. Does your recollection not go to any specific instance of this also?

A. Not at the moment.

Q. Do you think it would if you would refresh it over the evening's intermission?

A. I fear not.

Q. Let me ask you whether your company at one time sold Pinus ponderosa as western pine?

A. Never marketed—oh, as western pine?

Q. Yes, sir; as western pine.

A. Pardon me. I wish to change that answer. Yes.

Q. Did it also sell this wood as western soft pine?

A. Yes, sir.

1921 Q. And at the same time that it was selling this ponderosa wood as western pine or western soft pine, did manufacturers of Pinus ponderosa in the inland empire region, any of them sell their wood as western white pine?

A. I believe that some of them did.

Q. Do you not know that this wood of Pinus ponderosa from the inland empire was for a considerable period of time generally marketed as western white pine?

A. I know that it was to some extent at least marketed under that name.

Q. You do not know whether that was a general practice in this area?

A. No; I could not say that. I think it was.

Q. But in your opinion and from your experience there was a large amount of Pinus ponderosa sold from the inland empire region under the name western white pine, was there not?

A. Yes, sir.

Q. You are familiar with the prices which you obtained for your lumber, are you?

A. Fairly.

Q. Have been over this period of years from 1916 on?

A. Yes.

Q. Do you make a fairly close study of that matter?

A. Fairly close.

Q. It is one of your duties as assistant sales manager of
1922 the Weyerheauser Sales Company to consider a matter of relative price for your lumber and for other competing lumbers?

A. Yes.

Q. Will you state whether or not you have any recollection of any general price differentiation, not specific instances here—I will take those up later—but any general price differential which has ever existed between your ponderosa wood sold as western pine or western soft pine and ponderosa wood from the same inland empire area when it was sold as western white pine?

A. No. I cannot say that I have.

Q. Has your company or the producers for which it acts as a sales agency now, enjoyed any differential in price over the—in the sale of its pondosa lumber, so called, over the producers of so called pondosa lumber who are not connected with your sales agency?

A. I am not sufficiently familiar with the realization of other companies to answer that question intelligently.

Q. Well, from the study of prices that you have made, is it your opinion that your company obtains in general any greatly—any particular differential over or under the other producers of pondosa in this area?

A. No, sir.

Q. And that goes back to your whole experience with Pinus ponderosa in this area, does it?

1923 A. Yes.

Q. May I ask you for what purposes the Pinus ponderosa that you sell as pondosa is used?

A. It is used for most purposes for which soft woods are used, in general terms.

Q. Is it in general to be considered as a shop-type lumber, as compared with other soft woods? May I reframe the question. That is perhaps misleading. Does Pinus ponderosa, as you know it and as you sell it, produce a large quantity of so-called "shop-type" lumber?

Mr. BURR. As compared with what?

Mr. WHEAT. Not at all. A large percentage of it.

A. It produces a considerable percentage.

Q. About what percentage, do you know? If you know, if you do not——

A. No; I could not give you that percentage accurately.

Q. Now, has there been any changes in the uses to which pondosa is put since the name was changed from western white pine, western pine, or western soft pine?

A. Not to my knowledge.

Q. Can you control the manner or the term under which your pondosa will be resold by a retailer?

A. Only to a very limited extent, if at all.

Q. How is it resold?

A. Well, I do not know how the retailers resell it.

1924 Q. Don't you make a study of that?

A. Well, our people have made various attempts at doing that, and to some extent we do it by marketing our lumber with species marked lumber.

Q. I understand that is a small proportion of your lumber, however, isn't it?

A. Yes.

Q. So that would not get into the larger trade, would it?

A. No.

Q. You would not mark a species name on every piece of ten carloads of lumber that you sold to some great Mississippi mill, would you?

A. We might.

Q. Or do you?

A. We do not make a practice of it now.

Q. Well, now, are you not interested in the name under which your pondosa lumber is resold in the trade?

A. Yes.

Q. Will you then state for the purpose of the record how it is resold in the trade, and under what name or names.

A. Well, really the greater percentage of the pondosa pine which we sell to the retailers is resold by them as pondosa pine.

Q. How long has that been the practice.

A. Since the adoption of that name, pondosa pine.

1925 Q. And has that practice grown up gradually, or did it suddenly jump into being when you changed the name?

A. It has been a very gradual process.

Q. And what other names are used by the retailers in reselling your pondosa?

A. Prior to that I believe most of it was sold as western pine or western soft pine, just as we sold it to them.

Q. Well, now, let's take from 1925 on. You say the use of the term pondosa in the retail business has been a gradual increase until now a considerable portion is sold as pondosa in the retail trade?

A. Yes.
Q. Now, how else is it sold in the retail trade?
A. I cannot answer that question.
Q. Don't your studies go to that point?
A. No. I cannot answer that question.
Q. Have you or any of the people under you ever made a study of that matter?
A. Yes, to some extent.
Q. Well, now, what was the extent of that study?
A. We found that most of it was sold as pondosa pine.
Q. And how was the rest of it, what did you find?
A. We have not a hundred percent investigation.
Q. Well, now, in this investigation that you had—let's be frank with each other, Mr. Witness. In the investigation that
1926 you had, what did you find that the other portion of your pondosa was sold at?
A. Well, you asked me to be very frank.
Q. Yes.
A. And I will tell you that we have been careful that some of it was sold as white pine.
Q. Do you know that some of it is sold as white pine.
A. I have no specific instance.
Q. I am not asking for that now, but do you know as a matter of fact by your experience that there is 'ome of it sold as white pine?
A. In my judg'ment, some of it is sold as white pine.
Q. What method have you besides trademarking it, of forcing the cessation of that action?
A. None; excepting by refusing to sell to dealers who misrepresent our product.
Q. By the way, for what uses is it resold as white pine?
A. For any of the many uses for which the wood is used, sold.
Q. You mean the uses for which white pine in general is adapted?
A. All species. Yes.
Q. And when did you first hear the word white in connection with white pine?
A. In connection with white pine?
1927 Q. Yes; in connection with coniferous trees?
A. When I was about five years old.
Q. Where was this?
A. In Michigan.
Q. And what did—did they call the pine there white pine?
A. Yes, sir.
Q. Did they call some of it creek pine?
A. Yes, sir.
Q. Did they call some of it northern white pine?
A. Not to my knowledge.
Q. Where did you first hear the word northern white pine?
A. Minnesota.

Q. Did they call any of it eastern white pine?
A. Not that I recall.
Q. Did you ever hear that term?
A. I have heard that term many times.
Q. All of those names refer to Pinus strobus, do you think?
A. In that connection; yes, sir.
Q. And there were other names under which Pinus strobus is now or has been marketed, are there?
A. Well, there might have been. I am not familiar with them.
Q. Now, when did you first become familiar with the term yellow pine?
A. When I was a boy.
1928 Q. In Michigan?
A. Yes.
Q. What did yellow pine come from; what did they use it for?
A. They used it to designate the southern yellow pine, so called.
Q. And what did they use that for?
A. They used very little of it there then. A small amount for flooring.
Q. What else did they use it for?
A. For nothing that I recall at that time.
Q. Now, have you since that time come in contact at all with what you term southern yellow pine?
A. To a limited extent.
Q. Are you familiar with the so-called southern yellow pine?
A. Only as I have seen it in the general markets, in yards in the East, largely.
Q. Well, that is the extent of your familiarity with it?
A. Yes.
Q. Well, I won't press you with that at all. Have you any idea why the Western White Pine Manufacturers of this area, when they changed their name to pondosa, did not change it to yellow pine or western yellow pine?
A. I am not familiar with that; no, sir.
Q. Well, now, would you, just considering your experience
1929 with those woods, would you say that western yellow pine or yellow pine would be a proper or a good trade name for that wood?
A. I would prefer to answer those two questions separately. You have given me two questions.
Q. Well, all right; answer them separately, sir.
A. It, I believe, would perhaps be a proper name, but it would not be a good trade name.
Q. Why not?
A. Because in the minds of many people the term "yellow", as associated with pine, means a rather hard-textured species.
Q. Heavy, pitchy wood, does it?
A. Yes, sir.

Q. Structural wood, largely; is that the thought, then?

A. That seems to be the thought that many people might have.

Q. Do you come in contact with the large Weyerheauser concerns to whom some of your lumber is sold, such as the Reek Island Sash and Door?

A. I do not come in contact with the lumber; no, sir.

Q. Do you come in contact with the manager of that corporation, or with his purchasing agent?

A. To some extent.

Q. Let's see, the manager of that is Mr. Estlund, as stated in this record?

A. I believe so.

1930 Q. What are his initials? I shall perhaps want to call him in the East.

A. I cannot tell you.

Q. What is the other, Mr. Hanson?

A. Hanson.

Q. Is the purchasing agent. What are his initials?

A. C. A., I believe.

Q. Do they buy much pondosa from you?

A. They buy considerable.

Q. Have you any idea of how much Idaho white-pine shop lumber they buy from you in a year?

A. Not without checking the record; no.

Q. Well, is it a large quantity or a small quantity?

A. Well, comparatively, it is a rather small quantity.

Q. They buy more pondosa, do they not?

A. Yes.

Mr. WHEAT. I am picking this out, may I say, Mr. Examiner, because it is owned by the same group that owns the company for which the witness is assistant sales manager.

Q. May I ask you this: Do you know more about the actual operation of any other sash and door company than the Reek Island Sash and Door Company?

Mr. BURR. Do you know anything about any of them?

Mr. WHEAT. Q. Yes, sir. Do you know anything about any of them?

1931 A. I know very little about the operation of any sash and door factory.

Mr. BURR. Then I object to the question.

Mr. WHEAT. Q. All right. Then I won't go any further than to ask you if you do know that the pondosa which you sell to the Ock Island Sash and Door Company is resold as pondosa sash or pondosa doors?

A. I do not.

Q. You do not know?

A. No, sir.

Q. You would be surprised if it were so sold?

A. What?

Q. You would be surprised if it were sold as pondosa sash or doors?

A. I do not know.

Mr. BURR. I object to that.

Examiner DE BRULER. That is a little far-fetched.

Mr. WHEAT. Q. Did you ever know of any sash and doors being resold by a remanufacturing plant as pondosa sash or pondosa doors?

A. Yes, sir.

Q. Whereabouts?

A. In Spokane.

Q. Let's take the Mississippi Valley plants. Did you ever hear of that?

1932 A. I am not familiar with Mississippi Valley plants.

Q. From what part of the tree do you get the nicest, softest wood?

A. The—that is two questions.

Q. The nicest wood, then, and then I will ask the softest.

Mr. BURR. What do you mean by the nicest?

Mr. WHEAT. Q. Well, the best-textured wood.

A. For what purpose, please?

Q. Well, what is the highest-priced wood that you get out of the tree?

A. The clear.

Q. If you know, where do you get that, what part of the log?

A. What kind of a log, please?

Q. Pinus strobus.

A. A good part of that will come from the heart of Pinus strobus.

Q. Clear lumber?

A. Yes, sir; the heartwood.

Q. Pardon me?

A. From the heartwood.

Q. Will you take a look at plaintiff's exhibit 41 and tell me if that is a piece, in your opinion, of Pinus strobus; is it sap or heartwood?

A. I would not care to express an opinion as to that.

Q. Well, is it sap or heartwood?

1933 A. You are speaking of——

Q. This one over there. Don't mix it up with Idaho.

A. You cannot tell them apart. That is a piece of heartwood.

Mr. BURR. A piece of heartwood, did you say?

The WITNESS. A piece of heart; some sap in it.

Mr. WHEAT. Q. Where is the sap at?

A. It runs out here.

Q. Looking at it from the side on which the reporter's stamp is located, looking at it in that direction, where is the sapwood and where is the heartwood on this piece?

A. Examining that closely, you cannot see. It is impossible to see any distinction there between heart and sap.

Q. Is there heart and sap both on that?

A. No; I think not.

Q. What is it?

Mr. BURR. You think it is what?

Mr. WHEAT. Q. Can you state definitely whether it is heart or sap wood?

Mr. BURR. Let him answer.

A. I would say that it is a piece of heartwood.

Mr. WHEAT. Q. And you wish to withdraw, do you, your statement that there is sapwood in that piece?

A. I see nothing now—I noticed on the edge there—I see nothing there now; no.

1934 Q. You stated on your examination——

Mr. BURR. Did you get the number of that exhibit in?

Mr. WHEAT. Yes. I asked about that first; Commission's exhibit no. 41.

Q. I now ask you, do you wish to state that that is, in your opinion, all heartwood?

A. Yes.

Mr. BURR. Wait a minute. You say you do? You say yes, do you?

A. Whether I wish to state that this piece was all heartwood? That was your question, wasn't it?

Mr. WHEAT. Q. In your opinion?

A. Yes, yes. I would say that is all heartwood.

Q. Now, take Commission's exhibit 40, which purports to be a piece of Idaho white pine, soft texture; tell me whether in your opinion that is heartwood or sapwood?

A. Yes; I would say that is heartwood.

Q. That is all heartwood, in your opinion, is it?

A. Yes.

Q. It is possible then, is it, to get nice, clear pieces out of the heart of both of these trees?

A. Yes.

Q. Is it not possible to get nice clear pieces out of the heart of Pinus ponderosa?

A. It is possible.

1935 Q. Don't you ever sell those little strips that are marked here as edging, that are cut after you cut your edge? Don't you ever cut mouldings out of them of fairly good lengths?

A. Very infrequently.

Q. What are those mouldings used for when you do cut them?

A. Any of the purposes for which mouldings are used.

Q. Is the sapwood of Pinus strobus any softer in texture than the heartwood of Pinus strobus?

A. Very little difference, in my opinion.

Q. Would that same answer apply to Idaho white pine?

A. It, I think, as a rule sapwood, it is softer than hardwood.

Mr. BURR. In both of those species, you mean?

The WITNESS. Yes, sir. In all species.

Mr. WHEAT. Q. Is it all species of the Pinus, Pinus that you are familiar with?

A. A trifle.

Q. Now, who made those charts which been introduced as Commission's exhibits 42 and 43?

A. I cannot tell you.

Q. You did not make them?

A. I did not.

Q. When did you first see them?

A. A few days ago.

Q. Where did they come from? Are they taken from some book?

1936 A. I cannot answer that question.

Q. May I ask whether they grew out of nothing; that is, where did you get them? You have presented them as charts, and I notice that you have stated, as you have understood it, they purport to show certain things. I want to know who make them.

Mr. BURR. If the examiner please, I do not think that is a fair question, for the reason he stated there is nothing in here that is based on any information except the information that he got as a manufacturer of lumber—that is, as a man who is familiar with the manufacture of lumber—and he did state this, that in the sap cutting, the width of one was probably a little greater than average, and the width of the other was less than average.

Mr. WHEAT. Q. Let me ask you, you do not know where you got them, except that they were handed to you?

A. I do not know.

Mr. WHEAT. That is the only reason for which you are offering them?

Mr. BURR. I am offering them, together with his testimony, to show the manner in which the heart and sap contents of these two species of lumber vary in the way in which it actually comes out in the commercial manner.

Examiner DE BRULER. That was my understanding.

Mr. WHEAT. Q. By the way, do you get clear lumber out of

1937 sapwood?

A. Yes.

Q. What proportion of your sapwood is clear lumber?

A. Depending entirely on the size of the log and what part of the tree it came from. A good part of the sapwood is clear lumber.

Q. Do you get any clears out of the hearts; that is, I am talking about your good, long, wide beards?

A. Yes.

Q. What proportion in the Pinus strobus of B and better come from the heartwood?

A. I cannot give you a definite percentage on that.

Q. Small, is it?

A. Fairly good percentage.

Q. What proportion of B and better are all sap?

A. A small percentage of it that was all sap, in white pine.

Q. That is, one side of it would have some heartwood in it; is that true?

A. Yes; usually.

Mr. WHEAT. I think that is all.

Redirect examination by Mr. BURR:

Q. Now, is the inner core of the heartwood, which you refer
1938 to as knotty and as being used for box purposes and low-grade purposes, is that greater in percentage in the genuine white pines or in the ponderosa? Is my question clear?

A. Yes. In my opinion, the percentage of that type of heartwood is greater in the pondosa pine than in the genuine white pine.

Q. Now, do you ever stop the solicitation of dealers who you find call the pondosa pine which you sell them white pine when they resell it?

Mr. WHEAT. Now, may I ask, in view of the witness' statement that he can recall no instance of any such thing——

Mr. BURR. I think you asked him if he was able to tell.

Examiner DE BRULER. I think that is a proper question. He can answer that, if he can, certainly.

Mr. WHEAT. Exception.

A. I believe I testified that we were fearful that that was the case, but with no specific instance to offer.

Examiner DE BRULER. That is my recollection.

Mr. BURR. Q. Well, now, while you do not remember the specific instance, have there been occasions where you have stopped soliciting their custom in the case of dealers who are found to be reselling as white pine your pondosa material?

Mr. WHEAT. Now, if Your Honor please, there again counsel for the Federal Trade Commission is going far beyond even the question to which I objected before. He says even though
1939 you do not remember any specific instances, do you or do you not do this. This man either does or does not do it, and this man says he cannot remember any specific instance. I say we are entitled to have the specific instances in order to know whether this man's testimony is true or not.

Examiner DE BRULER. Do you recall whether that is the fact or not?

The WITNESS. Yes, sir; I believe it is. Mr. Examiner, I understand you are asking me whether I am certain in my mind?

Examiner DE BRULER. Yes.

The WITNESS. Yes. Whether some of the pondosa might have been marketed as white pine?

Mr. BURR. Q. That was the question on cross-examination you were asked.

A. Yes. I believe that is true.

Q. And you said you were fearful on some occasions that was true?

A. Yes.

Q. Now, on occasions of that kind that have taken place, has there been a dropping off of your solicitation of that trade, or do you go right on soliciting that as though they were selling pondosa pine that material which you would to them as pondosa?

1940 A. Well, our representatives use their best efforts to discourage that practice.

Q. Now, is the variation between the softness of the sapwood and the heartwood of white pine greater or less than the variation between the softness of sapwood and heartwood of pondosa?

A. Much less.

Mr. BURR. That is all.

Recross-examination by Mr. WHEAT:

Q. There is one thing we have not gotten from any of those witnesses on Idaho white pine, and I think that the record ought to show. What is the nature of the knot defects of Idaho white pine, are they usually small, tight knots?

A. Well, the percentage of that kind of knots in white pine is much greater than in pondosa. They are a different kind of knot, a different type.

Q. What is the type of knot defect in the Idaho white pine?

A. Well, the predominating type is a small, round knot.

Q. Tight and sound?

A. Not necessarily tight.

Q. Usually sound knots, are they?

A. Yes; a good part of them.

Q. Are *are* they fairly well scattered through the tree?

A. Yes.

1941 Q. And what about the knot defect in a pondosa pine?

A. It is coarser, larger knots.

Q. And are they more widely separated?

A. [Pause.]

Q. Let me put my question this way: Do you get a better percentage of large shop cuttings out of, say, your no. 2 shop pondosa than you do out of your no. 2 shop Idaho?

A. They are graded on the same rule. A no. 2 shop plank is a no. 2 shop plank, whether it is mahogany or white pine.

Q. That means you get that amount of clear cuttings out of it?

A. Yes.

Q. In general, in shop lumber, do you get more clear cuttings out of pondosa than you do out of Idaho?

A. Not grade for grade.

Q. Not grade for grade; I am not talking about that, but in general, in shop grade?

Mr. BURR. Can that be answered that way?

Mr. WHEAT. He told me that way.

Q. Just answer the best you can, if you answer it. If you cannot——

A. I do not understand the question, Mr. Wheat.

Mr. WHEAT. I will bring it out in some other way, by some other witness. That is all.

(Witness excused.)

1942 C. A. ROGERS was thereupon called as a witness, and having been duly sworn, testified as follows:

Direct examination by Mr. BURR:

Q. Has the reporter got your full name?

A. C. A. Rogers.

Q. Mr. Rogers, you are in the lumber business, are you?

A. Yes, sir.

Q. What company?

A. Here in Spokane, the Idaho White Pine Company. In Saint Maries, Idaho, the Rogers Lumber Company.

Q. What is your capacity with each of these companies?

A. We handle about ten or twelve million a year with the Idaho White Pine Company, and around twenty, twenty-five million a year, Saint Maries.

Q. Is most of your product Idaho white?

A. A very large percentage.

Q. What is your relation to the company, to these companies?

A. I am the principal owner and president of both companies.

Q. And how long have you been in that business?

A. Well, more or less ever since I was a small boy. Started in about twelve years old.

Q. Now, have you ever been in the wholesale business?

A. Yes, sir.

1943 Q. Where was that?

A. In Spokane.

Q. Have you ever been a manufacturer of ponderosa?

A. Well, only to a small extent.

Q. Now, are you familiar with the Idaho white and the ponderosa trees?

A. Yes.

Q. Are you familiar with the northern pine of the Minnesota and Lake States?

A. Well, I was as a boy but that is quite a while ago.

Q. Now, referring to the amount of heart and sap in the Idaho white and the pondosa, which has the greater sap and which the greater heart?

A. Ponderosa has the greater sap?

Q. Has the greater sap?

A. Yes.

Q. Now, then, is there a wide variation between different ponderosa trees as regards a proportion of heart and sap?

A. Very great properties; yes, sir.

Q. Is there more variation than there is between the heart and sap of the Idaho white?

A. Very much.

Q. Now, is there a greater variation between heart and sap in the two woods; in other words, is one wood more nearly uniform
1944 as regards the difference between heart and sap than the other?

A. The Idaho is very much more uniform.

Q. Now, have you called upon customers, come in contact with customers of yours in your selling of the lumber in these two companies, or either of them?

A. Yes.

Q. How often did that take place?

A. Oh, I usually get back East once or twice a year, and a great many eastern customers get out here from time to time, quite a number of them during the year.

Q. Do you travel salesmen?

A. No.

Q. How do you get your orders, through wholesalers and jobbers?

A. Through wholesalers, yes.

Q. And it is these wholesalers that you call upon when you go East, is it?

A. Yes.

Q. Do you deal with brokers?

A. Just what do you mean by brokers?

Q. By broker, I do not know whether I am correct in business parlance in the lumber business, but I would describe a broker as different from a wholesaler in that a wholesaler takes title to it, whereas a broker is the manufacturer's representative.

1945 A. No. We call those commission men.

Q. Do you deal with commission men as well as wholesalers?

A. To a small extent, we do.

Q. Your great bulk of your business is with wholesalers?

A. Yes, sir.

Q. Selling to them outright?

A. Yes, sir.

Q. And do you call upon commission men?

A. No; but they call on me here.

Q. Now, in connection with the experience which you just outlined, do you find that there is a sales resistance to your product as the result of the use of the word white pine by manufacturers of so-called California and Arizona and New Mexico white pine?

Mr. WHEAT. Now, Mr. Examiner, my objection, of course.

Examiner DE BRULER. Same objection. Same ruling, exception noted.

Mr. BURR. Q. I assume that you come in competition with California white pine, do you?

A. We do.

Q. Now, then, will you kindly answer the former question, if you have it in mind, as to sales resistance?

A. Why, my experience is that there is a sales resistance because of the fact that that name is used, California white pine.

1946 Q. Can you describe in detail, or can you give any actual instances?

A. Only in a general way. These matters usually come up for discussion when you are talking with a man.

Q. Yes.

A. That sells your lumber, and it is a matter of accumulative experience over a long period of years.

Q. You could not describe any specific instances now, the individual man, or could you? We would be glad to have you, if you can describe any individual case, with the time?

A. Why, if I were just stating a general conversation, I would say yes, I could, but to actually prove such a case, swear to it on the witness stand, I cannot name a specific instance, no.

Q. Well, now, just how does that operate when you try to market your Idaho white pine?

Mr. WHEAT. Well, now Mr. Examiner, the gentleman has just now said——

Examiner DE BRULER. Just state the facts.

Mr. WHEAT. May I finish, sir?

Examiner DE BRULER. Yes.

Mr. WHEAT. He has stated that he cannot on the witness stand swear what he has stated.

Mr. BURR. He did not state that.

Mr. WHEAT. I would like to have the answer read and see

1947 what he did say.

Mr. BURR. All right.

Examiner DE BRULER. Read the answer.

Mr. BURR. All he said is that he cannot name a specific instance.

Examiner DE BRULER. I understand that.

Mr. BURR. All right. What is my last question?

(Question read.)

Mr. BURR. I will withdraw the question a moment.

Q. Have you constantly since you have been marketing Idaho white pine held a price differential as regards the ponderosa? In other words, it is at a higher price, is it?

A. Usually it is a higher price; yes. There have been instances when——

Q. There have been some sporadic instances?

A. When certain sizes and grades sold for even less in Idaho.

Q. Would that be the common grades? Is that what you refer to?

A. No. That has happened in select grades, too, but that is unusual.

Q. Now, then, taking into consideration the normal price differential between the two types of lumber, will you state how the sales resistance that you say you encounter, how it operates?

1948 Mr. WHEAT. Of course my objection goes to this whole line of testimony.

Mr. BURR. The whole line; yes, sir.

Examiner DE BRULER. Objection overruled. Exception allowed.

A. It leads to confusion on the part of buyers, especially the buyers in the eastern territory, where the bulk of the Idaho white pine is sold. They are not sure just what they are buying. We claim ours is a genuine white pine, and here is some other article that is also sold as a white pine at a considerably less price. It naturally is a hindrance to our sale.

Mr. BURR. You may cross-examine.

Cross-examination by Mr. WHEAT:

Q. What is a genuine white pine?

A. You mean botanically or commercially?

Q. No. I asked what is a genuine white pine? That is the term you used.

A. Why, commercially, there are three genuine white pines—Pinus strobus, Pinus monticola, and the sugar pine. I guess that is lambertiana.

Q. By genuine white pine do you mean botanically white pine?

1949 A. I mean botanically a white pine, and largely commercially a white pine, too.

Q. What do you mean, commercially a white pine?

A. Sold as a white pine.

Q. Oh.

A. Pinus strobus, Idaho white pine, are sold as white pines.

Q. And they are classified by some botanists as white pine, are they?

A. So I take it.

Q. I take it you are not a botanist?

A. I am not a botanist; no.

Q. Now, then, commercially what is a genuine white pine?

A. Pinus strobus, pinus monticola——

Q. No. I want to know what it is, its characteristics. What is a genuine white pine in your mind? I am getting away from botany.

A. I see. Well, it is a soft wood, having the characteristics of either strobus or monticola; that is, it is soft, light, not very strong, easily worked, takes paint well, straight grained.

Q. Used for what purposes ordinarily?

A. Used for building purposes.

Q. What parts of the building?

A. I did not get that.

Q. What parts of the building is it used for, the timbers?

1950 A. Well, white pine is not used for timbers, now; no.

Q. All right. What is it used for?

A. Well, it is used for sheathing, shiplap, roofing. The better grades are used for interior and exterior finish.

Q. Is any of it cut up in what is known as shop lumber?
A. Yes; a small proportion.
Q. A small proportion?
A. Not so much as pondosa.
Q. What properties of Idaho white pine that you sell from your mill is shop grade, so-called?
A. Well, I should say not over four or five percent.
Q. What properties is what is known as clear lumber; what you specify as clear lumber? Tell me what grades those are. Is it B and better?
A. Our select grade would be B and better—A, B, C, D.
Q. What properties is that of your white pine?
A. Ten percent, sometimes fifteen percent, according to the locality.
Q. Sometimes lower than ten?
A. Yes, sir.
Q. Averages around twelve?
A. I should say so.
Q. Is there a grade called C select?
A. Yes.
Q. That is a shop grade?
1951 A. Not in this territory. It is in California.
Q. C grade is a clear grade?
A. Yes. That is a finish.
Q. It does not contain any defects?
A. It has defects to a limited extent.
Q. Shop lumber contains knot defects?
A. Yes, sir.
Q. But there are clear cuttings between the knots?
A. Yes.
Q. Is there more of that type of lumber where there are clear cuttings between the knots to be obtained from the average ponderosa tree than from the average Idaho white pine tree?
A. Do you mean we get a greater percentage of shop lumber?
Q. Yes.
A. From the pondosa you get a greater percent.
Q. When you talk about sales resistance, just what do you mean by that term? That is a term that has been used generally?
A. Why, we simply mean that it makes it harder to sell a certain item.
Q. Well, give us an example of what you mean by that?
A. Well, if I tried to sell you a certain item of Idaho white pine and asked $60.00 for it delivered at your yard, if you had a
1952 yard, and the customer would come back and say, "I can buy white pine from California at $50.00", then you would——
Q. Does he say white pine from California, or does he say California white pine?
A. He might say either, although I believe California white pine is the term it is sold under.

Q. You have known that term for a long time, have you?
A. Yes.
Q. How long have you been familiar with that term?
A. Oh, I should say twenty, twenty-five years.
Q. That is not anything new in the lumber business, is it?
A. No.
Q. Did not suddenly come into being some few years ago, did it?
A. No.
Q. It has grown up for years, has it not, and been used in the lumber trade as you knew it?
A. Yes, sir.
Q. I think we were discussing what you meant by sales resistance?
A. Yes.
Q. And then we had come to the point where you said you had known the term "California white pine" for a good many years?
A. Yes.

1953 Q. I do not think I asked you when it was you first heard that term, if you remember?
A. I could not say exactly.
Q. About when?
A. I believe I said I had heard of it for around twenty years, to the best of my knowledge.
Q. Is it a well-known name in the lumber trade?
A. Yes.
Mr. BURR. We concede it has been used for about thirty years.
Mr. WHEAT. I want to know whether this witness, who has been marketing other woods, concedes it is a well-known name in the lumber trade?
A. I do.
Mr. BURR. We concede it.
Mr. WHEAT. Q. Let me ask you whether or not ponderosa produces a good and useful lumber for the uses to which it is generally put?
A. Certainly it does.
Q. Does ponderosa lumber appear different in any manner from the California white pine?
A. You mean as to the characteristics of the wood?
Q. Yes; texture, any other way.
Mr. BURR. You mean as an average?
Mr. WHEAT. Yes.

1954 A. Well, I am not qualified to testify on that because my knowledge of the California white pine is very limited, but my understanding is that the average of the California white pine is as good as the best we have here.
Mr. BURR. The average is as good as your best?
The WITNESS. I should say so, although I say I am not qualified to testify there.
Mr. WHEAT. Q. Well, but that is your understanding from your experience as a lumberman over many years, is it?

A. Yes; that it is a good type of pondosa, or ponderosa rather.

Q. Yes; and that the average of that wood is equal to the best of the pondosa you have here?

A. Did I say the average there is as good as the best here?

Q. Yes.

Mr. BURR. That is the way you testified.

A. I would like to change that. I cannot say as to the average, but what I have come in contact with was as good as we have here.

Mr. WHEAT. Q. But on the average what you have come in contact with, grade for grade, does it run slightly wider than yours here?

A. Yes, it does; what I have come in contact with.

Q. Why is that? Because it comes from a slightly larger tree on the average?

A. I presume so.

1955 Q. By the way, does wider lumber sold from California command a slightly higher price than the narrower?

A. Do you mean in the common, or shop?

Q. Let's put it in all of them. You can tell us what it does.

A. A twelve inch usually brings a higher price than the narrower.

Q. How about the thirteen?

A. We sell that as thirteen and larger, and that——

Q. Do you know whether or not California produces a considerable quantity of thirteen or fourteen and wider?

A. I do in the shop lumber.

Q. Does it in the shop lumber?

A. It does in the shop lumber.

Q. Does your lumber produce a considerable quantity of thirteen and wider?

A. It does in the shop.

Q. In the shop?

A. Yes, sir.

Q. As much as the California white pine?

Mr. BURR. I doubt if the witness is qualified to answer that question.

Mr. WHEAT. I am asking if he knows. He is in the lumber business.

Mr. BURR. Yes; but he has testified he does not know much 1956 about the California wood.

Mr. WHEAT. Q. Now, did you market any Pinus ponderosa as western white pine?

A. I do not think so.

Q. When did you market Pinus ponderosa?

A. Well, we have marketed it more or less since I came West in the spring of 1907.

Q. How did you sell that Pinus ponderosa?

A. Why, as I remember, we sold it as western pine for a good many years, simply as western pine.

Q. And that continued up until about when?

A. Now, that continued until—oh, twenty-five or '26, when the name pondosa began to be used.

Q. Who began to use that, sir?

A. The manufacturers in this district began it.

Q. And when did you adopt that name, if you did? Do you manufacture any of that now?

A. Yes; we sell it as pondosa. We have since '26 or '27, I think.

Q. By the way, did you note any particular price change when you changed the name?

A. Because of the change of name?

Q. No. When you changed the name.

A. I do not recall any.

Q. There has a great deal of advertising been done of this
1957 name pondosa?

A. I have noticed a gread deal; yes.

Q. Have you participated in any of it?

A. No.

Q. Would you say that the lumber trade in general with which you deal is better acquainted with this wood under the name pondosa than it was under the old titles under which it went into the trade?

A. I would say that it was, because there were so many different names used in the earlier days.

Q. And could perhaps this additional knowledge that you may have come largely from this advertising?

A. Oh, that would impress it on the public, of course.

Q. And you think it has done so?

A. Yes.

Q. That is, the lumber trade in general?

A. Yes.

Q. By the way, this question I do not think I have asked of anyone. Did any of the Idaho producers of Pinus ponderosa ever market any of that lumber as Idaho white pine, do you know?

A. Not to my knowledge.

Q. You have been in that business how long in Idaho?

A. Oh, between twenty-five and thirty years.

Q. Pretty generally thoroughly——
1958 A. Do you mean in the State of Idaho?

Q. Yes.

A. Well, let's see; I have not operated—you mean have I produced lumber in the State of Idaho?

Q. No. How long have you been in the Idaho white pine business?

A. Oh, I have been in that since about 1908.

Q. Now, does your Idaho white pine compete to any great extent in any of its grades with the southern white pine, and if so in what grades and for what uses?

A. There is not much competition between the two woods.

Q. Why not?

A. Because the Idaho white pine sells for so much more money than the southern pine that there are certain fields in which the southern pine is used.

Q. What are they?

A. They are structural purposes, roofers, and things of that kind.

Q. Is Idaho white pine used extensively for those purposes?

A. No.

Q. Well, now, did the pondosa pine that you have sold under different names, under whatever name you have sold it, does that come into competition to any great extent with southern yellow pine?

A. More so; yes.

1959 Q. In what uses?

A. Well, in sheathing, roofing.

Q. What do you use your common Idaho white pine for?

A. For general building purposes.

Q. Sheathing?

A. Yes; we use it for sheathing.

Q. This pondosa, is pondosa used for structural purposes?

A. Not to any large extent, I do not think.

Q. What are the general uses of pondosa as a lumber in the trade?

A. Why, it is used—it is used in building, but not for structural timbers.

Q. What uses is it put to in building?

A. It is used for sheathing. It is used for finish, it is used for roof boards.

Q. Yes. Now, take the clears and the shop lumber, what are they used for?

A. Well, the shop lumber goes largely into sash and frame cuttings. Not so much doors.

Q. And what does clear lumber go into?

A. Mostly finish.

Q. We are talking about pondosa now?

A. Yes.

Q. Is that same true through the various grades of California white pine, as far as you know?

1960 A. Why, as far as I know it is.

Q. Have there been any important changes in those uses since you adopted the new name pondosa?

A. I do not recall any.

Q. Do you know whether or not there is now a price differential, grade for grade, on the average, of course forgetting particular fluctuations, but on the average between some grades of California white pine and pondosa pine?

A. Well, from actual experience I cannot say that I do.

Q. You do not know?

A. I do not know.

Q. Now, what would be the effect on your sale of pondosa, in your opinion, if Pinus ponderosa from California and southern

Oregon were marketed instead of as California white pine as Pondosa pine, would that increase your competition?

A. Why, I rather think it would decrease our competition.

Q. It would decrease your competition, you would not have as much to compete with in the same type of wood, is that true?

A. If I get your question correctly, it was what would be the effect if the name of California white pine was changed?

Q. Let's put it this way: What, in your opinion, would be the effect on relative prices of those lumbers if the name California white pine were changed to pondosa pine?

1961 A. The same as we use?

Q. Yes.

A. Well, I think that there would be a tendency to make the two sell on more even terms.

Q. Suppose that instead of calling it pondosa pine the California white pine people would call it western yellow pine?

A. Well, that would not be so good.

Q. In what way?

A. It would make it a little harder to sell, because immediately in the minds of the eastern consumers they would associate it with the southern yellow pine.

Q. You would think that would have an effect on the comparative price, then?

A. Yes; I do.

Q. Depress the price of California white pine?

A. It would have a tendency to do so.

Q. And suppose the California producers, instead of adopting the name pondosa, were to call their wood California pine; would that have any effect on relative prices?

Mr. BURR. I think this is getting rather speculative.

Mr. WHEAT. Well, I am now coming right into the exact point that we discussed yesterday, that this witness has claimed was a hindrance to his business.

Examiner DE BRÜLER. Go ahead and answer it. Answer it

1962 the best you can.

A. May I have the question again, please?

Mr. WHEAT. Read the question.

(Question read.)

Mr. BURR. If he knows.

Mr. WHEAT. Q. Yes; if you have any knowledge.

A. Well, of course, I can only answer it from what I would reason out to be the effect only.

Q. Yes. Well, what is that?

A. Well, there would, of course, be less confusion in the minds of the eastern purchasers if the same name were used in both cases. As I understand it, both woods are ponderosa pine, and if the same name, say, pondosa, were used there would be less confusion in the minds of the eastern customers and that would, of course, have a tendency to equalize prices.

Q. From their present differential?

A. If there is one.

Q. Would that be true of the name California pine? We will now come into that. You are speaking about pondosa?

A. Yes. Well, California—if you use the term California pine, that will give you a different name than we use for the same wood.

Q. Yes.

A. And naturally there would be more confusion.

1963 Q. Have these woods ever sold by the same name?

A. I do not think so. I do not recall if they ever have.

Q. Do you think there would be a confusion of some type if this lumber were to be called California soft pine?

Mr. BURR. I think, Mr. Examiner, that is speculative.

Examiner DE BRULER. I think——

Mr. WHEAT. I will conclude that examination with this one question.

Examiner DE BRULER. All right.

Mr. WHEAT. Q. State what your ideas are on California soft pine. What would be the effect, in your opinion, on relative prices and sales resistance if the term California soft pine were used?

Mr. BURR. And the pondosa people keeping their present name?

Mr. WHEAT. Of course.

A. The effect would be a great deal the same as though you were using California pine, because you are still using a different *name* and it simplifies *things* the less terms that you use, if you use the same name for the same wood wherever it is found naturally.

Q. What would be the effect, if you will answer the question rather than to go on a side issue as you have, on the relative prices

1964 and the sales resistance, if they were to adopt that name?

A. Adopt what name?

Q. California soft pine.

A. Well, I think if they adopted the name California soft pine there would be less resistance than there is in using the present name, the California white pine.

Q. Are you familiar——

Examiner DE BRULER. I think that relative matter has gone far enough. I will have to rule out any further questions along that line.

Mr. WHEAT. I was not going to ask any other question along that line, Mr. Examiner, except that I would like to ask this question:

Q. Are you familiar with sugar pine?

A. No.

Q. Not at all?

A. Just by general reputation is all.

Q. Does the wood that you market, if any, ever come into any competition with sugar pine?

A. Yes, sir.

Q. Now, I would like to ask this one more question. I think it is pertinent. In your opinion, would the term California soft pine and California sugar pine be confusing?

A. Yes; I think they would.

Q. That will be all along that line. How many logs per
1965 thousand feet do you get out of your Pinus monticola?

A. It varies a great deal. It runs from two or three a thousand to twenty a thousand.

Q. What is the average, in your estimation?

A. I would say an average would be eight or ten to the thousand.

Q. And is sap considered a defect in grading Idaho white pine?

Mr. BURR. If the examiner please, this matter of grading rules is something we had come up and there is no reference to it.

Examiner DE BRULER. I would say this is merely cumulative and not cross-examination of this witness.

Mr. BURR. This matter of grading rules is a highly technical matter and I do not think there is any necessity for injecting the grading rules and the technicalities of grading into this discussion, and the examiner so rules, and I think opposing counsel have heretofore acquiesced in cooperating with me in keeping those technical matters out.

Mr. WHEAT. I will agree. May I say this, Mr. Examiner: I expect to be able to prove that Pinus strobus up to relatively a few years ago was graded with sapwood as a defect, and that I must state the purpose of my questioning, that the reputation of Pinus strobus as a fine, long-lived lumber, grew up under rules
1966 which ruled out sap. Now, under that, which I think is very pertinent to this question, Mr. Burr has taken a great deal of time on this question of sapwood and heartwood. I am entitled to ask this witness whether in Idaho white pine, this lumber which he designates to be like Pinus strobus, sapwood is considered a defect in its grading rules?

Examiner DE BRULER. Ask him that.

Mr. BURR. Go ahead and answer that.

A. To the best of my knowledge it is not.

Mr. WHEAT. Q. By the way, is this price differential between Idaho white pine and the ponderosa pine grown in this area something new?

A. Something?

Q. New?

A. No.

Q. It has always sold, grade for grade, for more money, has it?

A. I would not say always, but that is usually the case.

Q. On the whole?

A. Yes.

Q. And that is just as true, is it, five years ago as it is today?

A. Well, my experience only goes back to 1908 or thereabouts in Idaho white pine, and as I remember it we had a differential at that time, but not so great a differential.

1967 Q. Not so great as you have today?
A. No.

Q. And when did you get this large differential, about, or has it been a gradual increase?

A. Well, the differential was greatest prior to the fall of 1927, when there was a pretty severe cut in Idaho white pine prices.

Q. But at the present time it is a greater differential than it used to be in the old days, is it?

A. Yes. It is greater in dollars and cents, and I rather think greater in proportion, too.

Mr. WHEAT. I think that is all.

Examiner DE BUTLER. That is all.

Redirect examination by Mr. BURR:

Q. Just one question I would ask. If the producers of the present California white pine were to revise their name to California pine or California soft pine, or some other term which would leave out the word white, would that relieve the confusion as regards California white pine and Idaho white pine?

A. I should say it would lessen it somewhat, but it would not relieve it.

Q. It would not relieve it entirely?

1968 A. No.

Q. In other words, the word soft would apply, so far as the application of the term to the wood in concerned, equally well if not better, to Idaho white pine than to the ponderosa produced in California, is that not true?

A. Yes. The term soft is one of the greatest characteristics of the Idaho white pine.

Q. It is better known to be a characteristic of Idaho white than it is of pondosa, is it not?

A. Very much more so.

Q. The term California white pine would be more distinguishing between ponderosa produced in California and Idaho white pine than California soft pine, would it, or western soft pine?

A. Yes; because it would not emphasize that quality.

Mr. BURR. That is all.

Recross-examination by Mr. WHEAT:

Q. Let me ask you, then, whether you consider the term soft as applied to pine to be similar to the term white as applied to pine, it is something that should be maintained for the white pine?

A. There is a very close association between the two terms, yes, sir.

1969 Q. Do you consider that the term soft pine should not be applied to Pinus ponderosa?

A. Not to the same degree that it is to Idaho.

Q. Do you say that Idaho soft pine is softer than pondosa?

A. It is generally accepted as so; yes.

Q. Are you familiar with the Government tests of that matter at the Madison Laboratory?

A. Well, you mean, then, by softness, you take that to mean a technical term?

Q. I am talking about whatever you mean by soft.

A. I am not familiar with any test at the Madison Laboratory on that particular quality of softness; no.

Q. I see.

A. No; I am not.

Mr. WHEAT. That is all.

Mr. BURR. That is all.

(Witness excused.)

(Thereupon an adjournment was taken until 10:00 o'clock a.m. of the following day, Wednesday, January 22, 1930, at which time the hearing was resumed and the following proceedings were had:)

1970 Before the Federal Trade Commission

In the matter of White Pine cases

Docket Nos. 1620–1669, inc.

SPOKANE, WASH., *January 22, 1930.*

Met pursuant to adjournment, 10:00 o'clock a.m.

Before: Ellis De Bruler, examiner.

Appearances:

Eugene W. Burr, for the Federal Trade Commission.

Messrs. McCutchen, Olney, Manson & Greene (by Mr. Carl I. Wheat), for the respondents.

Examiner DE BRULER. We will now proceed with the hearing, in keeping with the adjournment.

1971 W. C. GEDDES was thereupon called as a witness, and, having been duly sworn, testified as follows:

Direct examination by Mr. BURR.

Q. Mr. Geddes, has the reporter got your name?

A. W. C. Geddes.

Q. You are in the lumber business are you, Mr. Geddes?

A. Yes, sir.

Q. How long have you been a lumberman?

A. Since boyhood.

Q. And your company is of what name?

A. Craig Mountain Lumber Company.

Q. There is a Craig Mountain?

A. Yes, sir.

Q. Craigmont Lumber Company, that is another concern, isn't it?

A. Craig Mountain.

Q. You are not a respondent in this case, are you?
A. No, sir.
Q. You are not a party to this matter?
A. No, sir.
Q. Where are your headquarters?
A. Winchester, Idaho.

Q. And the lumber that you cut is where; your stand of
1972 timber is where?

A. At Winchester.
Q. Just right there?
A. Yes; in that vicinity.
Q. And your capacity with that company is president, is it?
A. Yes, sir. President and general manager.
Q. How long have you been president and general manager of this concern?
A. I have been general manager since 1923. President since last year, since our president died.
Q. Now, in connection with your product—first, let me ask you, is it pondosa pine or Idaho white, or both?
A. Pondosa pine exclusively in the pine.
Q. Mr. Geddes, were you a member of a committee in connection with the trade-name problem at any time, a committee of the pine manufacturers of this inland empire?

Mr. WHEAT. Now, before the witness answers, if Your Honor please, the fact that this witness might have been a member of a committee with reference to pine manufacture in this area, I submit has nothing to do with the question as to the term California white pine.

Examiner DE BRULER. I presume this is preliminary?
Mr. BURR. Yes, sir.

Examiner DE BRULER. Note the objection and exception.

1973 Mr. WHEAT. I object to any questions relating to any committee or anything like that with reference to this area. I ask that that objection be noted and an exception.

Examiner DE BRULER. Note the objection and the exception.
Mr. WHEAT. Also, Mr. Reporter, will you please note the examiner's ruling overruling the objection.
Examiner DE BRULER. Yes, sir.
(Question read.)

Mr. BURR. Q. Have you been a member of a committee with regard to the nomenclature of and advertising of any trade name in connection with the pine species of the inland empire?
A. Yes, sir.
Q. What association was that committee appointed by?
A. Western Pine Manufacturers' Association.
Q. And that concern is made up of manufacturers of Idaho white and pondosa both, is it?
A. Yes, sir.

Q. What is the name called, pondosa?
A. Yes, sir.
Q. Now, were you a member of such committee in 1924 and 1925?
A. Yes, sir.
Q. Will you relate what lead up to the appointment of that committee and what that committee did?

Mr. BURR. And, if the examiner please, I would like to
1974 state that there is a clause in the complaint with reference to the change in the trade name in the inland empire.

Examiner DE BRULER. I recall that.
Mr. BURR. And the adoption of the word pondosa.
Examiner DE BRULER. I recall that.
Mr. WHEAT. May it also appear in the record that we have no objection to any questions dealing with the fact of the question of this change of trade name. We want that thoroughly understood. We have an objection to any testimony of any sort dealing with any reasons for that change, on the grounds which I stated for the record previously, and also on the further ground that the complaint contains nothing as to the reasons for this change. You will recall at that time that it was stated by counsel for the Trade Commission that the complaint contained this allegation. I have studied the complaint very carefully since then for one allegation as to the reasons for that change. Now, those reasons, I take it, are absolutely immaterial to the case against the respondents, and the fact that these people may have changed their name, as a fact we have no objection to, but the reasons we will object to.
Mr. BURR. If the examiner please——
Examiner DE BRULER. The objection is noted, overruled, and exception allowed.

Mr. BURR. Q. Will you proceed with the question. Is it
1975 still clear to you?
A. You better repeat it.
Q. All right. Mr. Reporter, read it.
(Question read.)
A. In August, at our semiannual meeting, 1923, there was a committee appointed to like into the matter of advertising our wood, our products. I would like to ask if I may explain who that committee was?
Examiner DE BRULER. You may give the names.
A. The committee consisted of R. E. Irwin, J. F. Hennessey, and myself.
Mr. BURR. Q. Irwin is connected with what concern?
A. Irwin?
Q. Yes.
A. With the Potlatch Lumber Company.
Q. And Mr. Hennessey?
A. With the Shevlin-Carpenter-Clark Companies of Minneapolis.
Q. It was, then, the Shevlin-Hickson?
A. Yes, sir.

Q. All right, sir; proceed.

A. This committee was instructed to get in touch with the California association and try and device some way or means of——

Mr. WHEAT. Before the witness goes further, I have here
1976 an objection which will go to the merits of this whole controversy, as far as the California manufacturers are concerned. The association, whatever it may be, in California, is not a party to this case. The California White & Sugar Pine Manufacturers' Association is, I take it, the one the witness refers to. Is that so, sir?

The WITNESS. Yes, sir. I would understand that so.

Mr. WHEAT. That association is not a party to this case. Certain respondents are members of that association, and certain of them are not members of that association. Certain other manufacturers are members of that association. Now, anything that that association may have done or not done I submit is wholly immaterial to the sole question before the Commission in this case, whether there is any deceit or fraud or misleading in the trade name now and for many years used by the California producers of Pinus ponderosa.

Mr. BURR. I think the objection is exceedingly technical, for the reason that practically every important manufacturer of California white pine in that region is a member of that association, and the only way in which they can jointly act or jointly negotiate merely is through that association, and the condition of relationship is so close that I think the evidence should be received for what it is worth.

Examiner DE BRULER. I will let your evidence go in with
1977 the objections noted and exceptions. Lead right up to it; do not go into detail, but just state what happened.

Mr. BURR. I would like a fairly comprehensive narration.

Examiner DE BRULER. That is right.

Mr. BURR. Make it as brief as you can.

Examiner DE BRULER. As brief as you can.

A. There was so much of it, it is pretty hard, unless I give some detail.

Mr. BURR. Well, go ahead.

Examiner DE BRULER. Go ahead.

Mr. WHEAT. I ask also that it be limited to the respondents in this case. I think that is not a technical objection. I think this whole line of questioning should be limited to the respondents now before the Federal Trade Commission.

Examiner DE BRULER. The objection is overruled. Exception noted.

A. This committee had negotiations with California members who appointed a committee to meet with us, and after the negotiations or correspondence had been carried on for a few months, we could not decide on just what was best to do. In February of 1924, at our annual meeting, this same committee was given $25,000.00 to start

an advertising campaign. We arranged a meeting with Harold Martenson and John Spaulding.

Examiner DE BRULER. Who are they?

1978 The WITNESS. Of California.

Mr. BURR. Q. What was Martenson's concern?

A. Tillacum Bay Lumber Company.

Q. That is at Klamath Falls?

A. That is at Klamath Falls.

Q. And Mr. Spaulding's company is what?

A. I do not know. I think Pickering at that time. I am not positive.

Mr. BURR. Can you help us?

Mr. WHEAT. I cannot now. I do not know where Mr. Spaulding was at that time. It is material, however, whether he was representing some respondent.

The WITNESS. I could not answer that.

A. (continuing). The result of that meeting was the California association agreed to a certain sum——

Mr. WHEAT. Well, now, if the examiner please, what the California association may have agreed to or not agreed to certainly is immaterial in this case. I assume, Your Honor, that you are trying——

Examiner DE BRULER. Yes.

Mr. WHEAT. May I make my objection, sir, for the record? I assume that you are trying these respondents before this Commission. You are not trying in any sense the California association, whatever that may be. That is not before Your Honor, and what it may

1979 have done or not done is immaterial in every sense before the Commission at this time.

Mr. BURR. If Your Honor please, here is an association of which these are all members, and the negotiators, at least one and in all probability both, are respondents here. The only way these respondents can act collectively is through their association, and that is the way they did act. Of course, there are a few small respondents who were perhaps not members of that association. I supposed they all were, but I take counsel's suggestion as correct; but they are the smaller——

Examiner DE BRULER. I will overrule the objection and let the objection go in for what it is worth.

Mr. WHEAT. May it be understood, Mr. Examiner, that my objection goes to any question relating to the California association?

Examiner DE BRULER. That is understood.

Mr. BURR. I will stipulate that.

Mr. WHEAT. And that an exception may be allowed.

Examiner DE BRULER. Yes, sir. Now, let us proceed.

Mr. BURR. Q. Don't go into any more details than necessary. Lead up to what you did.

A. The question again before the committee, the main question, was how we could advertise a wood that was marketed under so many

different names. We submitted to this California committee
1980 that we would accept for our association any name that they saw fit to submit to us, so long as it did not contain the word white in it.

Q. Referring to the ponderosa lumber?

A. Pondosa lumber.

Q. Ponderosa at that time.

A. It was a multitude of names at that time.

Q. But it is the ponderosa species of lumber?

A. Exactly.

Q. All right; proceed.

A. They submitted a name which was agreeable to us, and we——

Examiner DE BRULER. What was that name?

A. That name was Pacific soft pines. We returned, reported to our association our action. We heard nothing from California until after they had started their advertising campaign. We were left with twenty-five thousand dollars to spend and fifteen or sixteen different names to advertise the pondosa pine under, or the ponderosa pine under.

Mr. BURR. Q. Had that many names been used by different manufacturers in the inland empire?

A. Some fifteen or sixteen. We were in a maze, and in order—in our endeavor to decide upon a name, we hit upon the name pondosa, and started our advertising campaign under that name. That, in brief, is the history of how the name came into existence.

1981 Q. And you have been advertising it under that name cooperatively ever since, have you?

A. Yes, sir.

Q. As an association?

A. Yes, sir.

Q. Have you conducted a national campaign in the magazines, and so forth?

A. Yes, sir.

Q. As regards that name?

A. Yes, sir.

Q. What became of the suggested name, Pacific pines, or Pacific soft pines, which was it?

A. Pacific soft pines was the name they submitted to us.

Mr. WHEAT. You said Pacific soft pine before.

The WITNESS. No. Pines.

Mr. BURR. He said pines before.

Q. Pines?

A. Pacific soft pines.

Q. What became of that name?

A. I do not know. It was never used by us.

Q. That was the name that the California people offered to you, was it?

A. Yes, sir.

Q. Do you encounter sales resistance from the use of the word white by competitors manufacturing California white pine, so
1982 called?

Mr. WHEAT. My objection to this line of testimony will, of course, be noted, will it not?

Examiner DE BRULER. Yes; note the objection to that. Objection overruled. Exception allowed.

A. Please state that question again.

Mr. BURR. Will you read the question, Mr. Reporter?

(Question read.)

A. No.

Q. You did not?

A. No.

Q. Why is that?

A. My reason for that is that we did not come in contact directly with the trade east of the Middle West, so called. Our product is sold through the wholesaler in the eastern territory and we only have two men in what we term the Middle West, and consequently we do not come in contact or conflict, apparently, with the name white in that territory. Apparently they do not care in that Middle West territory.

Q. Did you say your association adopted the name that was submitted by the California association of Pacific pines, or Pacific soft pine?

A. This committee had authority to accept any name that might be submitted that in their judgment would represent the pines, providing the word "white" was left out.

1983 Q. And did you act upon the name you proposed?

A. Yes, sir.

Q. Accepted it, did you?

A. We accepted it, with the understanding that they would follow suit.

Q. I see. Then what happened? They did not follow suit; is that it?

A. They did not follow suit.

Q. They have never adopted that name that was suggested to you?

A. Not to my knowledge.

Q. Well, you do know as a matter of fact that the respondent companies are—that the California ponderosa producers are calling their wood white pine, do you not?

A. Yes, sir.

Mr. WHEAT. That is admitted.

Examiner DE BRULER. I do not suppose there is any question about that.

Mr. BURR. Q. Now, did you report that to your association, the name Pacific soft pine?

A. Yes.

Q. As part of your report?

A. As part of our report.

Q. Just what territory do your salesmen cover who are
1984 located in the Middle West? They are located in Milwaukee and Kansas City, are they, their headquarters?

A. One in Milwaukee that handles our shop lumber almost exclusive. The one in Kansas City handles our lower grades.

Q. And how wide do they circulate out of those towns?

A. From the western boundary of Kansas to St. Louis, the Kansas City man covers.

Q. How far does the Milwaukee salesman cover?

A. The Milwaukee salesman does not go east of Milwaukee, and as far north as Green Bay, Wis., and to Davenport, Iowa, down the river points.

Q. That is his western terminus, is it, practically?

A. Yes; that is his western terminus. He has just got a strip up and down that territory.

Mr. BURR. I think that is all, sir.

Cross-examination by Mr. WHEAT:

Q. Now, Mr. Geddes, you have been a producer of pondosa pine for a good many years, have you?

A. All my life.

Q. How long have you been in that business, sir?

A. Since I was twelve years old. That would make it about '93.

Q. And from 1893 to the present day have you been ex-
1985 clusively in the lumber business?

A. Yes, sir.

Q. Have you always been in the manufacturing end?

A. Not altogether.

Q. What other experience have you had, sir?

A. I had charge of sales and in other positions at different periods.

Q. Sales for what companies?

A. The Oregon Lumber Company, the Southard Grand Ronde Lumber Companies.

Q. And where did they cut their wood?

A. In eastern Oregon, Baker district.

Q. What type of wood was it that they cut?

A. Pondosa.

Q. Have you had any experience with Idaho white pine?

A. None whatever.

Q. Your total lumber experience has been in the production and sale of Pinus ponderosa in Oregon and Washington and Idaho; is that true?

A. Oregon and Idaho. Never in Washington.

Q. Oregon and Idaho?

A. Yes, sir.

Q. Now, what is the Potlatch Lumber Company, with what organization, if any, is it connected?

A. I understand it belongs to the Weyerhaeuser group.

1986 Mr. WHEAT. I wonder if that might not be stipulated, Mr. Burr, if you know?

Mr. BURR. We will stipulate.

Mr. WHEAT. Q. And where is the headquarters of the Shevlin-Carpenter-Clark Company?

A. At Minneapolis.

Q. And in what other lumber business, if any, are they?

A. They are in the northern pine.

Q. By that you refer to Pinus strobus?

A. Yes; I presume so. I am not a botanist.

Mr. BURR. You mean northern white pine, not Norway, don't you?

The WITNESS. Northern white pine. I do not know what species they manufacture in their northern plants.

Mr. WHEAT. Q. Where is their plant?

A. Ft. Frances.

Q. Minnesota?

A. Yes. And Bemidji. Ft. Frances is in Ontario, and Bemidji, and now at Blind River. Bemidji, Minnesota, and now at Blind River in Ontario.

Q. Now, in the West, where do they operate?

A. At Bend, Oregon, and McGlond, California.

Q. How long have they been operating at McCloud, do you know?

A. I do not know.

Q. Do you know whether that is recent?

1987 A. I do not know.

Q. Do you know whether that is recent?

A. No; it is quite a considerable length of time.

Q. And they have been known under various names, haven't they? Were they once known, I understand, as the Shevlin-Hixen Company?

A. Yes; and is still so known at Bend.

Q. And they are the same interests; Mr. Hennessey represented both groups, did he?

A. He is vice president of both groups, as I understand.

Q. Now, with what respondents in this case before the Federal Trade Commission did you deal in this trade name matter, as to which you testified on your direct examination?

A. Well, I do not know that I know the respondents.

Mr. BURR. There are some fifty of them. I hardly think he knows them all.

Mr. WHEAT. I wanted to see whether the witness does know who the respondents are in this case.

Mr. BURR. I think it is immaterial.

Mr. WHEAT. Q. You do not know, do you?

A. I do not know all of them. I know some of them.

Q. What ones do you know?

A. That would be Shevlin-Hixen Company, at Bend.

Q. Are they respondents in this case, do you know?

A. That is my understanding. And the Grand Ronde Company.

1988 Q. The which?
A. Grand Ronde.
Q. Where was that?
A. At Pony, Oregon, or La Grande, Oregon.
Q. Are they respondents in this case?
A. Yes, sir.
Q. Do you know?
A. Yes, sir.
Q. And who else?
A. If my memory serves me right, I think McCauley was.
Mr. BURR. You mean respondents in this case, or respondents years ago in other cases?
A. Well, years ago in the other case. As I stated, I do not know who the respondents in this are.
Q. I am asking you who you dealt with in connection with this committee you testified to, who are respondents in this case?
A. I could not answer that. I do not know.
Examiner DE BRULER. As I understand it, he gave the name of the parties he did deal with, and the record will show who the respondents in this case are.
Mr. WHEAT. Yes, Your Honor, I understand that, but I want to know how much he knows about the respondents in this case.
Q. Now, you said the question you had to determine involved the advertising of this wood made from Pinus ponderosa under
1989 a number of different names. Will you state for the record all these names that you can now remember, taking first the inland empire region, so called?
A. Yes.
Q. From Bend, Oregon north, and the western portion of Washington, east into Idaho and Montana?
A. It was called Des Chutes pine, Des Chutes white pine, Oregon white pine, silver pine, Sumpter Valley soft pine, lookingglass pine, Blue Mountain pine, western pine, western soft pine, Mont pine.
Q. Did you include western white pine?
A. Not yet.
Examiner DE BRULER. He has not mentioned it. I understand.
Mr. WHEAT. I did not hear it.
A. And western white pine.
Q. What did you sell it as?
A. From our present company?
Q. Yes.
A. It was sold as Craig Mountain cork pine.
Q. Craig Mountain cork pine?
A. Craig Mountain cork pine.
Q. Were there some names under which it was sold that you do not at the moment recollect?
A. There might have been. There were fifteen or sixteen.
Q. All from this inland empire?
1990 A. All from this inland empire and eastern Oregon.

Q. Well, when you started your committee work in reference to the problem of how to spend your $25,000.00 which you were given for advertising I take it that was for advertising this pine in the inland empire?

A. Yes.

Q. Now, did you ever do any of this advertising of this pine in the inland empire with any of that money prior to your change of name to pondosa?

A. No.

Q. Will you tell me whether or not you found that your chief problem in connection with that advertising campaign was this large number of names under which the pine was then being marketed?

A. Our first—yes. I will answer the question; yes.

Q. Now, what did this proposed name Pacific soft pines include?

A. It includes the sugar pine, so called, of California, the California white pine, the different pines of this country, and the Idaho white pine. He would have two bases of figures or two bases of products today, figuring that the pondosa pine or ponderosa pine would come under one head and the other would come under the other head.

Q. Did you feel that the term soft could properly be applied to ponderosa pine?

1991 A. I do.

Q. You still do?

A. Absolutely.

Q. We will go into that matter a little later. Now, how was this proposal that you mentioned from Messrs. Martenson and Spaulding given to you, was it given to you in writing?

A. No, in person.

Q. Where?

A. At Portland.

Q. At a meeting of your committee?

A. Yes.

Q. Now, in what way was it offered to you?

A. We submitted to them our problem of the number of names and we had found that it would be impossible to properly spend the money of the association and advertise each individual operator's under his pet name, consequently our problem was to find a common name under which we could advertise it.

Q. And that was what you were trying to do when you arrived at the term pondosa, I take it?

A. Exactly.

Q. By the way, where did you get that term pondosa?

A. Really——

Q. What does it come from?

A. It comes from a mispronunciation by me of ponderosa.

Q. It does not come from any botanical term, does it?

1992 A. No. It is a shortening up of it.

Q. Well, it is not a botanical term, is it?

A. It is not.
Q. Is it a common term which had ever been used for this lumber?
A. Never before.
Q. Had you ever heard that name before?
A. No.
Q. Can you state positively that it never was used in the marketing of this lumber before your committee took it up?
A. To my knowledge it never was.
Q. And you have had very wide experience with the sale of this wood, have you not?
A. Yes, sir; over a period of years.
Q. Now, were you willing—let me say this first: Were the members of your association who produced Idaho white pine willing to sell their Idaho white pine under the same trade name as the members who were producing ponderosa pine?
A. They could not. No.
Q. Now, will you explain how the term Pacific soft pines would be applied to Idaho white pine?
A. That detail was never worked out. We were willing to accept anything to get on a common basis for advertising.
Q. When you say we, you include, do you, the producers of Idaho white pine who were on your committee?
1993 A. Yes.
Q. Did any producers of sugar pine ever tell you that the sugar pine manufacturers would accept the term Pacific soft pines?
A. They did not. We assumed that that committee had the same authority that we had.
Q. Did you ever see what authority that committee had?
A. I did not.
Q. Do you know that it had any authority whatever to bind members of the California white and sugar pine manufacturers' association?
A. Only by intimation.
Q. Yes. You do not know, do you?
A. I do not know.
Q. Now, do you know whether any member of your committee knows that?
A. I could not say.
Q. Your intimation did not come from some member of your committee?
A. Not at all. It is my own intimation.
Q. Now, has anyone ever sold any of these western pine woods under the name Pacific soft pines?
A. Not to my knowledge.
Q. By the way, was wood known as Oregon pine included in these Pacific soft pines?
1994 A. Oregon pine?
Q. Yes, sir.
A. No.

Q. It was not?
A. Oregon pine is known as fir.
Q. What is Oregon pine?
A. Oregon pine in the export trade is known as fir, here as fir.
Q. Oregon pine is fir?
A. In the export trade; yes, sir.
Q. What is it in the inland trade—in the United States?
A. I do not know of any being marketed as Oregon pine unless the word white, or Sumpter Valley, or Blue Mountain, or something of that sort is attached to it.
Q. Are you familiar with the trade name of Oregon pine?
A. Yes.
Q. Now, tell us to what lumber that refers in the United States trade?
A. I am not familiar in the United States of it being marketed under Oregon pine, but it——
Q. You do not know about that?
A. I am not sure of any being marketed under the name Oregon pine.
Q. Do you happen to know whether or not the lumber commonly marketed in the United States as Douglas fir is what has been
1995 known as Oregon pine?
A. In export trade only.
Q. In export trade only?
A. Yes.
Q. And when you have mentioned Oregon pine and stated it was a fir, you referred, did you, to the lumber marketed in the export trade as Douglas fir?
A. I did.
Q. Do you cut any fir at your mill?
A. Yes.
Q. What kind of fir is that?
A. It is a Douglas-fir type, known often as Mountain fir.
Q. Mountain fir?
A. Yes. Red fir.
Q. Do you know what its botany is?
A. Douglas fir; well—no; I do not.
Q. Do you know its botanical name?
A. No.
Q. Well, it is, in your estimation, what is commonly marketed as Douglas fir, is it?
A. Yes.
Q. Do you cut any lumber that is commonly known as Douglas fir?
A. No, sir.
Q. Do you cut any lodgepole pine?
1996 A. Oh, maybe get a tree occasionally; not much.
Q. How do you market that; do you sell it as lodgepole pine?
A. We cut so little of it we do not pay any attention to it.

Q. How do you sell it?
A. Of course——
Q. Under what name?
A. Well, it would be marketed under pondosa pine.
Q. And prior to the adoption of the term pondosa pine was it marketed under all of the various trade names that you have mentioned?
A. From our own point of view, I would say yes. I do not know what others did.
Q. You did sell what you find of it in your cutting as Craig Mountain cork pine, did you?
A. Yes, sir.
Q. Now, have you been a member of any other committee of your association in dealing with offers of various types with other associations?
A. I believe on grades and things of that sort.
Q. Were you ever a member of any other committee of your association that failed to obtain complete agreement with the committee of anu other association on these matters?
A. I do not think they have ever been brought to a conclusion.
1997 Q. I see.
A. They are still controversies.
Q. Then you have not arrived at a complete meeting of the minds as to your other controversies?
A. No.
Q. Now, were the only people you dealt with in connection with this matter that you have testified to Messrs. Martenson and Spaulding?
A. Directly; yes.
Q. I see. Now, who did you deal with indirectly?
A. Just through conversation only. There was no business dealing.
Q. With whom, sir?
A. Ray Danher.
Q. Now, what does Ray Danher produce and what company is he connected with?
A. I do not know what he produces, but he is connected with the California, or Michigan-California.
Q. You are not familiar with the type of wood that was produced by this company?
A. No; only through understanding.
Q. And what is your understanding?
A. I understand it is largely sugar pine.
Q. And who else did you have correspondence dealing with?
A. I do not recall anyone.
1998 Q. Then the only people you dealt with in connection with this proposed renaming of Pinus ponderosa and Idaho white

pine and sugar pine were Messrs. Martenson, Spaulding, and by correspondence with Mr. Danher?

A. Correspondence and personal interviews.

Q. Mr. Danher was not a member of this committee of the California association, was he?

A. He did not meet with this committee. I do not know who the committee was positively, but we met with Martenson and Spaulding.

Q. You do not know whether he was a member of that committee?

A. I do not.

Q. Now, you say that they submitted the name Pacific soft pine. Just what did they say about it? Did they say, "We will accept and market sugar pine or Pinus ponderosa produced in Oregon and California as Pacific soft pines"?

A. They did not say anything of the kind. It was a matter of working out a common name, the details to be worked out later.

Q. You say they submitted the name and offered it to you?

A. Yes. They said we could join in the joint advertising providing we could agree upon a common name under which we marketed and advertised our product.

Q. Well, as a matter of fact, after your first conversation about Pacific soft pine the matter went no further, is that it?

1999 A. It went no further with that committee.

Q. Then the sum and substance of your testimony about this Pacific soft pine is that you had some conversations with two members of the California white and sugar pine manufacturers, at which that name was discussed, and it was not adopted?

Mr. BURR. That is not fair.

Mr. WHEAT. I am asking whether or not that is his testimony.

A. It was adopted so far as we were concerned.

Q. I am asking whether or not it was adopted. It was not adopted, was it?

A. Finally, no.

Q. Then your committee did not arrive at the conclusion that you started out to procure?

A. I do not understand your question.

Q. You did not, then, come to a conclusion as to a single name under which Pinus ponderosa, Pinus lambertiana, and Pinus monticola throughout this western territory would be marketed?

Examiner DE BRULER. I think he has answered that at least three or four times.

A. The joint committee, no.

Mr. BURR. Beg pardon.

A. The joint committee never.

Mr. WHEAT. Q. Now, you say you heard nothing more from California. Do you mean that no one from the California

2000 Manufacturers' Association ever said anything more to you about the name Pacific soft pine?

A. Not to me directly; no.

Q. To your committee?

A. I was chairman of the committee, and I assume I would have gotten it had they said anything.

Q. And so you never heard anything more about it?

A. Until their advertising started on their campaign.

Q. How did they advertise their wood?

A. California white pine.

Q. And California sugar pine?

A. Well, I was not interested in that phase of it. I do not know.

Q. You do not know about that?

A. No.

Q. Now, is the lumber business a rather individual type of business; are lumbermen in general individualists?

A. Highly.

Q. Highly?

A. Yes, sir.

Examiner DE BRULER. I think that——

Mr. WHEAT. It is very important, Your Honor. I want to ask one further question.

Q. May I ask you this: Whether in your opinion Messrs. Martensen and Spaulding, or any two men in the lumber business
2001 spread over such an area as the California white pine and sugar production, could bind everyone producing in those areas?

Mr. BURR. I think that is speculative.

Examiner DE BRULER. It is cross-examination. You can answer if you know.

A. I could not answer for them, but I could answer for ourselves.

Mr. WHEAT. Q. You had definite authority?

A. Absolutely.

Q. To bind?

A. We could have called it Pullman mahogany and they would have to have accepted.

Q. So your company was invested with exceptional authority for such a committee?

A. Yes, sir.

Q. Now, let's go to your advertising campaign. When did you first start your advertising of Pinus ponderosa, and did that include Idaho white pine also under the new name?

A. Yes, under Idaho white pine.

Mr. BURR. Beg pardon?

A. We advertise—the joint campaign carried pondosa pine and Idaho white pine and fir and larch.

Mr. WHEAT. Q. Yes. Then you did not adopt—you said you adopted the name Pacific soft pines, but as a matter of fact.
2002 you did not adopt that, did you?

A. I said we had the authority to adopt it but the details had never been worked out.

Q. Yes, and therefore it was not adopted finally, is that true?
A. Absolutely.
Q. And you did adopt the name pondosa?
A. Absolutely.
Q. And that included only Pinus ponderosa?
A. That included only Pinus ponderosa.
Q. And includes only Pinus ponderosa from the inland empire regions?
A. And central Oregon.
Q. And that included bond?
A. That includes bond.
Q. When did you start this advertising campaign?
A. I cannot recall the exact date, but I think it was some time in '25.
Q. And are you still a member of the advertising committee?
A. Yes, sir.
Q. Have you been continuously since that time?
A. Yes, sir.
Q. Do you know whether or not a fairly large sum of money has been spent to advertise pondosa pine?
A. Yes, sir.
2003 Q. And has that been a successful advertising campaign?
A. We think so, as a committee.
Q. You think that the name pondosa is pretty generally known, do you, in the lumber trade in this country?
A. Yes, sir.
Q. And that pine is being sold generally as pondosa pine?
A. Yes, sir.
Q. Are you continuing your advertising?
A. Yes, sir.
Q. Can you give us an idea of anything about how much has been spent in that advertising to date?
A. Oh, I could not give you that. You might figure it back on the basis of about $50,000.00 a year.
Q. That is about six years, is it?
A. Yes.
Q. It would be about $300,000.00 practically, you think?
A. Approximately.
Q. And do you plan to continue your advertising campaign on about that basis?
A. If we can get the money, we are.
Q. Now, why do you call—why do you say that you believe that Pinus ponderosa can properly be marketed under a trade name including the word soft?
A. Will you read the question, Mr. Reporter?
(Question read.)
2004 A. Because it is soft.
Q. That is one of its general characteristics, is it?
A. Yes, sir.

Q. And is it a wood of good texture?

A. Yes, sir.

Q. Do you believe that it is a good product, a good wood——

A. I would not be——

Q. Just let me finish my sentence—for the general uses in which it is now used?

Mr. BURR. If the examiner please, let the record show that this gentleman now becomes a witness of respondents. I did not examine along these lines at all, and I think I have been very patient indeed, but it certainly is not cross-examination.

Examiner DE BRULER. He did not ask him any questions about that.

Mr. BURR. I object to it as not cross-examination.

Mr. WHEAT. This gentleman was qualified as an expert on pondosa, that he had handled pondosa for many years.

Mr. BURR. I am not objecting on that ground. I am objecting it is not proper cross-examination. If he wants to make the witness his own witness, very good.

Mr. WHEAT. All right. I will make him my own.

Mr. BURR. If the examiner will entertain that motion.

Examiner DE BRULER. You can ask him a few more ques-
2005 tions along that line, about what it was used for, but I think other witnesses did testify to the same matter you have gone into. We will let it go in.

Mr. WHEAT. Q. Now, when you cut your pondosa logs from your area, about how many legs did you put out per thousand board feet?

Mr. BURR. I object as not proper cross-examination. That is another line still.

Mr. WHEAT. All right. Let's have it understood. I will take the witness.

Examiner DE BRULER. You may.

Mr. WHEAT. All right.

Mr. BURR. Let the record show this is defense testimony.

Mr. WHEAT. That is perfectly agreeable to me.

W. C. GEDDES was thereupon called as a witness and, having been heretofore sworn, testified as follows:

Direct examination by Mr. WHEAT:

Q. About how many logs per thousand board feet do you cut?

2006 A. Our logs will run about five to the thousand.

Q. And are you about the average of the ponderosa used now marketed as pondosa?

A. Well, they might be slightly higher; they might be slightly larger.

Q. Your logs are slightly larger?

A. I would say so.

Q. And about what, in your opinion, is the average number of logs per thousand feet on the general average of those marketed as pondosa?

A. That is a question I could not answer.
Q. You could not answer that?
A. No. Nobody can.
Q. You think they are slightly smaller than yours?
A. Yes. I think so.
Q. But do you cut a particularly good grade of pondosa lumber?
A. We think so.
Q. You cut your clear lumber from the outside of the log, do you?
A. The center, if we could get it.
Q. But do you cut it from the center?
A. Sometimes.
Q. Yes.
A. Occasionally.
2007 Q. That is unusual, is it not?
A. Yes.
Q. Now, where does your shop lumber come from, does it come from the part of the log that has knots in it?
A. Yes, sir.
Q. And it is shop lumber because there are clear cuttings between the knots, is that the idea?
A. Yes, sir.
Q. And what is your common lumber? Are the knots more scattered over the log so that you cannot get these clear cuttings?
A. Yes, sir.
Q. Now, if you know, I wish you would tell me whether or not there is any general or average difference between the wood marketed generally as pondosa and that which is marketed as California white pine.
A. There is not any difference except the California tree, perhaps, is larger. You get a wider type.
Q. And what are the general uses of this pondosa lumber?
A. General utility wood.
Q. Well, now, what do you use the clears for?
A. Well, interior finish, siding.
Q. What do you use the shop lumber for?
A. It is used in sash, door, cut up.
Q. The common lumber, I suppose, is used for sheathing?
2008 A. Sheathing.
Q. Cut up, and boxes, and so forth?
A. Yes, sir.
Q. In your opinion, is pondosa lumber as you market it, a valuable wood for the uses to which it is properly put?
A. If properly put; yes.
Q. And do you think it sells upon its merits for the uses for which it is most fitted, by its appearance, quality, and utility?
A. I do.
Q. Yes?
A. I think you could sell it, it don't make any difference under what name. It does not need to usurp a name to sell it.

Q. What material change in the uses of ponderosa lumber has there been from the inland empire since you have changed to the name pondosa?

A. I do not know of any.

Q. It is used for the same purposes as it was before it was changed under that name?

A. So far as I know.

Q. Then I take it that you do not feel that you were prejudiced in the market when you changed your name to pondosa?

A. Repeat that question. I do not understand it.

2009 Q. I say, you do not feel that you were prejudiced in the market when you changed your name to pondosa?

A. No, I do not think so, individually.

Q. And do you think that this particular lumber is better known to the trade in general that uses it under the term pondosa than it was under the many terms before used?

A. Yes, sir.

Q. Is the sale of pondosa increasing or decreasing?

A. It has been decreasing the last——

Q. I am not talking about the present slump in the lumber business, but in general over a period of five years, we will say?

A. I can speak only for our own company and general knowledge. I do not think that it has decreased.

Q. Does your pondosa lumber compete directly to any great extent with southern yellow pine?

A. No.

Q. Do you find that Idaho white pine competes with the pondosa lumber?

A. In a very limited way in the lower grades.

Q. I see. Why is that?

A. Because it is used for cheap crating, or something of that sort.

Q. And Idaho white pine enjoys a differential in price, grade for grade, over your pondosa lumber, does it?

2010 A. Yes, generally speaking.

Q. Has that been true for a great many years?

A. As long as I have known it.

Q. Do you find any great competition with northern white pine?

A. No; except in the lower grades again, when we meet their markets.

Q. Now, why is it that you do not find a competition with that pine?

A. I do not know. We do not have contact enough in the trade here. Too much of our stock is sold through the wholesaler and we have not the direct contact to know these things.

Q. Do you know how your pondosa pine is resold by the people to whom you sell it?

A. I do not.

Q. Have you ever investigated that matter?

A. No.

Q. As a member of this committee who adopted this name, are you interested in having that name used to the ultimate consumer?

A. Yes, sir.

Q. What efforts have you made, if any, to have that name used to the ultimate consumer?

A. By species marking it. We adopted a species mark for
2011 our wood.

Q. And what is that mark?

A. I might draw it for you?

Q. Just describe it.

A. Two P's is what it is supposed to be. When we come to register that there was another mark used by Dupont, that they prohibited us from using two P's, so we drew a tree representing a pine tree, as near as we could, but separated by two distinct marks. I could show you in a second.

Q. Your description is sufficient. How do you use that mark?

A. We stamp it on the end or edge; we did until we were stopped from the use of a machine.

Q. I see. You do not do that.

A. Only by hand work.

Q. Is it done on a large proportion of your lumber?

A. Not on a large proportion of our lumber. I do not know what others are doing. We are advertising that species marked lumber. Pick up any magazines and you will find it.

Q. But a very small proportion is species marked?

A. In our plant.

Q. Who adopted this species marking, as you call it?

A. The Western Pine Manufacturers' Association.

Q. You are a member of that association, are you not?

A. Yes, sir.

2012 Q. You do not know, do you, whether this lumber that you market as pondosa is still sold in the trade under some name containing the word white?

A. I do not know, by not having contact with the trade, with the retail trade.

Q. It is the same lumber in general as was sold under various names including the word white prior to the adoption of the word pondosa, is it not?

A. Yes, sir.

Q. Yes.

A. The tree has not changed any.

Q. Now, is your pondosa, grade for grade, cheaper than Northern white pine?

A. I am not familiar with the price of it, but I assume it is.

Q. Do you know whether or not there is a price differential between certain grades of so-called California white pine and certain grades of so-called pondosa pine in the markets where you deal?

A. Read that question.

(Question read.)

A. It varies; that is, a dollar or two.

Q. What is that differential in general? Give me a description of it?

A. Well, you would have to decide on some specific grade.

2013 Q. We will take no. 1 shop.

A. There is usually from one to two dollars a thousand.

Q. In favor of yours?

A. In favor of California.

Q. And why is that?

A. I think largely because they are able to ship—or will ship—straight grades. The stock perhaps is a little wider and they get a little better cutting value. I do not know as to that, except I have always figured it was because of their being able to ship straight grades in one car, where we dislike to do that.

Q. Has that existed during your whole experience?

A. Yes.

Q. With the ponderosa wood?

A. Yes.

Q. Then, throughout your experience in cutting and manufacturing Pinus ponderosa, and in your experience with the Western Pine Manufacturers' Association, have the relative price levels of these various woods, Idaho white pine, and wood now marketed as pondosa, and the wood marketed as California white pine, been approximately the same; I say the relative price levels?

A. Oh, I should not answer that directly, because it——

Q. Idaho white pine has always enjoyed a differential over the other, has it?

A. In nearly all instances. There has been times when it

2014 has not.

Q. Well, excluding the unusual instances?

A. Yes, sir.

Q. In general?

A. In general, yes.

Q. And, in general, what you stated about the California white pine, does that apply over a period of years.

A. That would apply over a period of years on the grade that we discussed, of shop.

Q. Take, for instance, C select, does that apply to that?

A. No, not by any means.

Q. Tell us why not?

A. For the simple reason that when California gets a quantity of C selects or any of their selects they go out and dump them under our price.

Q. Tell me what you mean?

A. Dump, I mean, unload. They sell them at their own price and if we got any business we have to meet it or cut under them.

Q. Do you ever cut under them?

A. Yes, at times.

Q. Is that a general matter?
A. Not as a general matter.
Q. How about the other select grades, the clears, so called?
A. What do you mean by clears? C select is practically clear.

2015 Q. B and better. Do ponderosa and California white pine sell on a parity on the eastern markets?
A. On these grades?
Q. Yes?
A. In the retail trade; yes.
Q. Now, in the wholesale trade they do not?
A. What I mean by the retail trade, you better let me explain.
Q. Yes; sure.
A. The yards, the small yards, but when they come into the industrial plants that parity may not exist.
Q. You say it may not exist?
A. Well, it does not exist.
Q. What is the situation in industrial business?
A. In the industrial business the pondosa operator in this section does not get as much clears as California.
Q. Why is that?
A. Because of the size of the tree.
Q. A smaller tree in general, isn't it?
A. Yes.

Examiner DE BRULER: Hasn't that been gone over at least a half a dozen times?

Mr. BURR. Yes.

Mr. WHEAT. I want to be certain that is covered completely in the record.

2016 Q. Well, now, in the common grades I understand, or am I correct in understanding, that the wood marketed as pondosa obtains as good even a better price than California white pine in general?
A. Yes.
Q. Grade for grade?
A. Yes.
Q. And the reason of that, is it, sir, that the knots are closer together and tighter and sounder?
A. Do you want me to——
Q. I wish you would, please, Mr. Geddes.
A. The simple reason is that they do not know how to manufacture it down there.
Q. You obtain, do you, what you consider to be a better grade of common lumber?
A. Yes.
Q. Grade for grade?
A. Well, if it is put up grade for grade to sell under our grades, it would be practically the same.

Q. Now, would it sell for about the same price?

A. About the same prices; yes.

Q. And these price relationships have existed, have they, all through your experience in the lumber business in general?

A. So far as California was making their common lumbers,
2017 it has. They have just recently awakened to the fact that there was some value to common lumber.

Q. Now, on the other grades, have these general price differentials and levels that you have mentioned existed for many years?

A. Yes.

Q. By the way, how long have you been familiar with the trade name "California white pine"?

A. I do not know. Years.

Q. Years.

A. Yes.

Q. I want to get straight on one thing about this sap over heartwood, I am still at a loss on it. If counsel will permit me, I want to ask this witness if the amount of sapwood is greater in a Pinus ponderosa log equal in size to a Pinus moticola log, does it *d*ollow that in the total mill run of the lumber, due to the difference in the average size of those logs, the sap lumber that you get out is about the same?

A. I have never manufacured any Pinus monticola, and I could not answer that question.

Q. Well, I will get that from someone else then. By the way, what does the word "white" to you in white pine signify?

A. What does it signify?

Q. Yes; what does the word mean?

2018 A. Why, naturally, it would mean soft.

Q. Soft?

A. Soft. Light.

Q. Good texture?

A. Good texture.

Q. Workable?

A. Workable.

Q. Do you run a mill—by the way a remanufacture mill?

A. No.

Q. Oh, you do not?

A. Thank God.

Q. Now, how long have you been familiar with the word "white" in connection with pine and lumber?

A. I think since I had anything to do with selling.

Q. That is a good many years, is it not?

A. Yes, sir.

Q. And when you first began to sell that lumber did it signify—what wood did it signify in the tree?

A. To me it signified Oregon white pine.

Q. Now, just what does it signify to you, I mean under the new name here?

A. Today known as pondosa pine.

Q. Oh, I see. That is the first time you heard the word "white" in connection with pine?

Examiner DE BRULER. It seems to me that is immaterial.

2019 That has been gone into.

Mr. BURR. This is a new question.

Examiner DE BRULER. It is encumbering the record with matters that certainly amount to nothing in this case.

Mr. WHEAT. Do you wish, Mr. Examiner, to have that statement remain in the record that it amounts to nothing in this case?

Examiner DE BRULER. For the reason that it has been gone into so much.

Mr. WHEAT. I want that statement.

Examiner DE BRULER. What I mean to say, it has been gone over and over so much. It does seem to me like it has been gone over too much.

Mr. BURR. I would like to unite in counsel's motion, if he wants to get into this Oregon white pine.

Examiner DE BRULER. All right. Let's be brief about it.

Mr. WHEAT. Q. What was the next time you heard the word "white" in connection with lumber?

A. I cannot remember when it was.

Q. Well, that was the general thing as you first knew it?

A. Why, yes; because that was the first——

Q. Did you ever manufacture or sell lumber as Oregon white pine?

A. Yes.

Q. And that was Pinus ponderosa lumber?

A. Yes.

2020 Q. When was this?

A. That was up until the association adopted the name western white pine for Pinus ponderosa.

Q. By the way, that is a matter that I really did not want to go into. When did the Western Pine Manufacturers' Association adopt the name western white pine for Pinus ponderosa?

A. I cannot tell you the date.

Q. About when?

A. Oh, along about 1915 or '16, or somewhere along there. I do not remember the date.

Q. Then, was the wood used fairly generally, that name, throughout the inland empire region?

A. No; I would not say fairly general.

Q. Well, didn't the wood marketed as western white pine have a differential in price over the wood marketed under those names that you have mentioned?

A. I——

Q. In general?

A. I could not answer that question in general. I do not know what the others got for their product.

Q. You do not know of any such differential in price?
A. No.
Q. In its flavor?
A. No.
Q. Do you think that the name had anything to do with the
2021 price they got for the product in this area?
A. I do not know whether it did or not.
Mr. WHEAT. I think that is all.
Mr. BURR. I have one question on redirect and then I would like to go to cross.

Redirect examination by Mr. BURR:

Q. On redirect examination I would like to ask you this; Lodgepole pine, as sold by you under the term "pondosa", is merely with the common-lumber grades for box purposes and the like, on Pinus ponderosa, is it?
A. Yes; and we would not get five thousand feet of lodgepole pine in the manufacture of forty million feet annually, I do not believe.
Mr. BURR. Now, may the record show that my examination from here on is in the nature of cross-examination?
Examiner DE BRULER. All right. I hope you will make it as brief as possible.
Mr. BURR. I shall make it as brief as possible.

Cross-examination by Mr. BURR:

Q. Now, Mr. Geddes, turning to cross-examination now, did the Weyerhaeuser interests employ the name western white pine for
their ponderosa products in or about 1916, as you have
2022 testified that the association adopted it?
A. I do not think they ever adopted it or used it.
Q. Were they members of the association?
A. Yes, sir.
Q. And that time?
A. They were.
Q. Just they did not go in with the rest on the adoption of that name?
A. They and others.
Q. They and others stood out?
A. Yes, sir.
Q. Were you present at any time when their reason was expressed at any meeting of the association for not going in on that?
A. Yes. I could not give the dates.
Q. What reason did they give for not joining?
Mr. WHEAT. I want the record to show my objection to the reasons for the Weyerhaeusers not joining them on the same grounds I have many times stated.
Examiner DE BRULER. I understand. Be brief about it. You can answer.
Mr. WHEAT. Exception.
A. Repeat your question.

Mr. BURR. Q. What reason did they give for not joining?

A. Because they believed that the word western white pine
2023 was a misnomer, or not a proper name for the wood.

Q. On account of the word "white", was it?

A. I do not know all of their reasons, but I know that the Government called Idaho white pine western white pine.

Q. Now, is there a wide difference in the characteristics of pondosa lumber, or ponderosa species of lumber, ranging in different parts of the territory where it grows?

A. Yes.

Q. Is that a wider range than the Idaho white pine range?

A. A wider range than the Idaho white pine range?

Q. Yes.

A. Yes; it grows in a wider area.

Mr. WHEAT. If Your Honor please, I have not asked any questions on variability. If Mr. Burr desires to take the witness back, I will agree with him.

Mr. BURR. He has been asked questions with regard to characteristics of the timber, and the lumber, and the sap, and various things, and the variability would be part of the characteristics.

Mr. WHEAT. Go ahead.

Examiner DE BRULER. Read the the question.

Mr. BURR. He has already answered, and counsel has withdrawn his objection.

Examiner DE BRULER. All right, go ahead.

Mr. BURR. Q. Now, you testified with regard to the price
2024 differential. Is that due to smaller natural defects, that is, the preference of white pines in the market, is that due to the smaller natural defects in the wood?

Mr. WHEAT. Which wood do you refer to, Mr. Burr, now?

Mr. BURR. I am referring to both woods now. I am trying to.

Mr. WHEAT. Either of them?

A. I could not answer as to the Idaho white pine or monticola, because I have not marketed any of it.

Mr. BURR. Q. Now, does the word "white pine" in California white pine help to enable the California white pine products to sell at a higher price than the pondosa pine?

Mr. WHEAT. Now, if Your Honor please, this is certainly not cross-examination. If Mr. Burr desires to take the witness——

Examiner DE BRULER. I think that has been gone into pretty much.

Mr. BURR. I know; but this is a question of preponderance, if Your Honor please. We do not know how many score of witnesses this gentleman is going to bring down there in San Francisco.

Mr. WHEAT. Several.

Examiner DE BRULER. What is the question?

(Question read.)

Examiner DE BRULER. If you know.

Mr. WHEAT. Just a moment. The witness on direct examination by Mr. Burr answered that question once before. Now, if Mr. Burr desires to impeach his own witness, he must take him on direct again. It is not cross-examination.

Mr. BURR. That question was not asked on direct examination.

Examiner DE BRULER. If you know, you can answer that. Your objection is overruled.

Mr. WHEAT. I want an exception note.

A. Read the question.

Mr. BURR. Read the question to him.

(Question read.)

A. I do not know.

Mr. BURR. That is all.

(Witness excused.)

Mr. WHEAT. Does this conclude your witnesses at this hearing, sir?

Mr. BURR. This concludes my witnesses in the inland empire hearing, as far as I know.

Mr. WHEAT. I wish to call Mr. Wychoff.

Mr. BURR. I might have something in rebuttal, and I should prefer to put it on new rather than come back.

STEPHEN N. WYCHOFF was thereupon called as a witness, and, having been duly sworn, testified as follows:

Direct examination by Mr. WHEAT:

Q. What are your initials, Mr. Wychoff, and how do you spell your name?

A. Stephen N. Wychoff.

Q. Mr. Wychoff, where do you reside?

A. Spokane.

Q. And you appeared at this hearing on subpoena by the respondents in the case now in hearing?

A. Yes, sir.

Q. Now, what is your business here in Spokane, sir?

A. In the employ of the United States Department of Agriculture, and I am in charge of an office located at Spokane, charge of working on the control of a disease known as the white-pine blister rust.

Q. And what is the nature of this disease that you mention?

A. It is a fungus disease which attacks the white pines and has an alternate host, the group of plants, the currant and gooseberries, wild and cultivated.

Q. And are you alone in this office, or have you assistants?

A. I have assistants.

Q. Will you state how many men are in your employ in the summer and winter here?

A. We have a permanent organization of about thirty men, most of whom are located in Spokane and some at other towns in the West. We have a summer or temporary organization varying from one hundred and fifty to two hundred.

Q. And are they scattered throughout the western territory?
A. Yes, sir.
Q. In the territory of what lumbering operations?
A. Montana, Idaho, Washington, Oregon, and California.
Q. With what particular species of trees do you deal in this work?
A. Well, our work thus far has centered around the western white pine, or Pinus monticola, and the sugar pine, Pinus lambertiana.
Q. Has the white-pine blister rust attacked Pinus lambertiana yet?
A. Not to the best of our knowledge.
Q. That includes both the stands of lambertiana in California and Oregon?
A. Yes, sir.
Q. Do the stands of so-called penuine white pine, Pinus monticola, overlap the stands of Pinus lambertiana?
A. You mean do they grow in the——
Q. Yes; do they grow in the same forests?
A. Yes, sir.
2028 Q. And has this white-pine blister rust grown in its attacks in any of these trees in the last few years?
A. I do not understand you.
Q. Has it been a more serious problem, year by year?
A. It has, for the reason that it is a disease of foreign origin which is spreading now through this western pine.
Q. When did it first attack Pinus monticola?
A. It first attacked Pinus monticola in its native State very shortly after it entered the western part of North America in 1910, at Vancouver, B.C.
Q. Now, has it attacked Pinus strobus, to your knowledge?
A. Yes, sir.
Q. And you have made a study of that, too, have you?
A. I have seen it years back on Pinus strobus.
Q. Has it constituted a serious problem in connection with Pinus strobus?
A. It has constituted a serious—a difficulty which is now being overcome by control methods which have been adopted.
Q. The control methods consist in the killing of the alternate hosts, do they?
A. Yes, sir.
Q. Those are methods which must be pursued constantly in order to maintain the control?
A. The forests have to be kept at constantly.
Q. Is that the method of control in this area?
2029 A. That is the method which we are adopting for this area.
Q. Do you know whether or not the white pine blister rust is spreading elsewhere in the stands of Idaho white pine, in through Oregon and towards the stands of Pinus lambertiana?
A. Yes, sir.

Q. Does that constitute a serious menace to Pinus lambertiana?

A. We think it will constitute a serious menace unless these control operations are put into effect.

Q. How does that white pine blister rust operate?

A. It attacks the needle of the pine and the fungus grows down through the needle into the twig and on down into the branch and in many cases gets into the tank of the tree, and there the action is a circling action and when it finally grows all the way around the trunk or branch the tree is killed.

Q. Is that because it has attacked the live portion of the tree just under the bark?

A. Yes, sir. The cambium.

Q. Now, Mr. Wychoff, does the Federal Government assist in a monetary way in that work of fighting the white pine blister rust in this area?

A. The Federal Government has a direct interest in the fighting of white pine blister rust in the Western United States, for the
2030 reason that a great—well, a good deal of the white pine timber which is more likely going to be attacked in the national forests. It also recognizes a responsibility in working out methods of control for the lands which are not in Federal ownership.

Q. Has the Federal Government contributed any money toward this control?

A. You mean on private lands?

Q. On any lands?

A. Yes, sir.

Q. Can you tell us how much it has contributed, say contributed last year?

A. I have some figures here. Can I refer to them?

Q. Yes. Refresh your memory.

A. They are rather numerous.

Q. Just give it to us in general. We do not want any details. About what did the Government spend last year in this effort.

A. Under the terms of agreements or understandings which we have with the five Western States which I have mentioned, the Federal Government spent approximately $103,000.00 and the States spent approximately $87,000.00 on this work.

Q. Did any private lumber interests contribute toward the support of your work?

A. They contributed toward the support of the work on their own land.

2031 Q. And about how much did they put in, if you know?

A. There was about $20,000.00 in north Idaho for actual work, field work.

Q. And some of the States have contributed services as well as money, have they?

A. Yes, sir.

Q. Does that run into a considerable number of men?

A. Yes, but not for a full-time use of their men.

Q. I see.

A. Those men are doing certain types of work. It is while they are doing their duties for the State.

Q. Now, do you know, by the way, if your studies have carried you thus far, whether this blister rust attacks all five-needle pines?

A. To the best of my knowledge it attacks all species of pines which bear their needles in groups of five, with the exception of two species.

Q. What are they?

A. The teney pine.

Q. What is that botanically?

A. Pinus teneyana.

Q. And the Pinas arizonica.

Mr. WHEAT. That is all.

2032 Cross-examination by Mr. BURR:

Q. Now, the teney pine and the arizonica, they are in territories that have not yet been reached, are they, by this blister rust?

A. Yes, sir.

Q. Do you feel sure that they won't attack the teney and the arizonica, the blister rust insects, or whatever they are?

A. That has been the subject of special study in the laboratories of the Department of Agriculture in Washington, D.C. They have there repeatedly endeavored to inoculate these species of pines with this disease and have not been successful.

Q. Have they tried to inoculate the lambertiana with it?

A. Yes, sir.

Q. And it works fine?

A. Yes, sir.

Q. That is, lambertiana is subject to this disease, is it?

A. Yes, sir.

Q. How about the Pinus ponderosa, did they ever try that?

A. Yes, sir.

Q. How does it work with them?

2033 A. Not susceptible.

Q. Not susceptible at all?

A. Yes, sir.

Q. They are immune, are they, without ever having recovered from the disease?

A. Yes, sir.

Q. Now, what reason, if you know—do the botanical studies of your Department indicate, that makes the so-called "genuine white pines" susceptible——

Mr. WHEAT. If Your Honor please, he has used the predicate genuine white pine.

Mr. BURR. Q. The monticola, lambertiana, and strobus are genuine white pines, aren't they?

Mr. WHEAT. This gentleman has not made use of any such terms.

Mr. BURR. He is an expert along this line, and everybody has said that they are.

Mr. WHEAT. I have not called him as such.

Examiner DE BRULER. It seems to me this is merely for the purpose of paving the way to another question.

Mr. WHEAT. Mr. Examiner, I have not qualified him as such an expert, nor do I admit that there is any such thing as genuine white pine. We used the term roughly in this case, but I will not admit that.

Mr. BURR. It has been used by all witnesses in this case.

2034 Mr. WHEAT. Yes; it has been used roughly.

Mr. BURR. Yes. I am using it roughly.

Examiner DE BRULER. These technical matters, I do not believe the Commission is interested in as much as what this man——

Mr. BURR. Are you a botanist at all, sir?

A. To a limited extent.

Q. Well, the Pinus strobus is recognized by botanists to conform such view as a genuine white pine, is it not?

A. I do not know exactly what you mean by genuine white pine.

Q. All right, I will withdraw the question, if you do not know what genuine white pines are. Now, what is there in the quality or characteristics of the various types of lumber, or of the tree, I should say, that you have testified to as being subject to blister rust, what is there which makes these trees susceptible to this disease and the others immune, if you know?

Mr. WHEAT. Yes; I was going to add if he knows?

Mr. BURR. I know. I put that in here instead of your belief.

A. I wish very much that we knew, but we do not.

Q. Has the Department made a special study to ascertain what variation of tree it is that makes it immune or subject to that disease?

A. Not to my knowledge.

2035 Q. You have certainly not, at any rate?

A. No, sir.

Q. Is that true?

A. Yes.

Q. Now, how close must the alternate hosts be to the pine tree that is susceptible in order to have the disease progress?

A. The currant or gooseberry—under eastern conditions the maxium distance of spread from currant or gooseberry to white pine is nine hundred feet.

Q. I see.

A. In the West it is very likely somewhat further, a maximum of one mile.

Q. Now, the only alternate host, then, is the wild or domesticated currant and gooseberry bush; is that true?

A. Yes, sir.

Q. And these are perennial plants, are they not?

A. Yes, sir.

Q. This disease has not reached the lambertiana forests as yet; do I understand you correctly?

A. It has been on the alternate host at the extreme northern range of the Pinus lambertiana in Oregon but no Pinus lambertiana trees have there yet been found infected.

Q. You feel sure from your experiments that they are subject to it, or do you not?

A. The Pinus lambertiana has been observed in Europe in
2036 parks and has there been found infected.

Q. Have you got any data as to the percentage of deaths from infection? Is it a fatal disease necessarily, or do they recover?

A. It is very, very seldom that a tree ever recovers from an attack in this district.

Q. Does it continue to live for a long period after becoming impregnated with the disease?

A. That depends almost entirely upon the size of the tree which is attacked.

Q. Have you developed any curative methods?

A. No, sir.

Q. No curative methods have been developed?

A. No, sir.

Q. How long have you been studying that at your Department?

A. Since approximately 1916, in the eastern United States.

Mr. BURR. That is all.

Redirect examination by Mr. WHEAT:

Q. Does this blister rust attack young as well as old trees?

A. Yes, sir.

Q. Is it more liable to be fatal to young trees than old trees?

2037 A. I do not think it is any more liable to be fatal. It will kill a younger tree in a much shorter time than an old tree.

Q. And that is true in both east and west areas, is it?

A. Yes, sir.

Q. You stated the distances from the gooseberry to the pine which would enable infection to pass. How far in the other direction, from the tree back to the gooseberry, will this infection pass?

A. We believe a maximum of 180 miles.

Mr. WHEAT. That is all.

Recross-examination by Mr. BURR:

Q. But it has got to pass both directions in order to keep going, has it not?

A. Both types of plants are necessary for the life cycle of the disease?

Q. For it to continue?

A. Yes, sir.

Redirect examination by Mr. WHEAT:

Q. If at say one hundred miles away, it should infect a
2038 gooseberry, that gooseberry could infect pines if they were grown within the area mentioned by you around that gooseberry?

A. Yes, sir.
Mr. WHEAT. That is all.
Mr. BURR. That is all.
Examiner DE BRULER. You are excused.
(Witness excused.)
(Thereupon an adjournment was taken until 2:00 o'clock p.m. of the same day, Wednesday, January 22, 1930, at which time the hearing was resumed, and the following proceedings were had:)

2039 Before the Federal Trade Commission

In the matter of White Pine cases

Docket Nos. 1620–1669, inc.

SPOKANE, WASH., *January 22, 1930.*

Met pursuant to adjournment, 2:00 o'clock p.m.
Before Ellis De Bruler, examiner.
Appearances: Eugene W. Burr, for the Federal Trade Commission.
Messrs. McCutcheon, Olney, Mannon & Greene (by Mr. Carl I. Wheat) for the respondents.

Examiner DE BRULER. We will now proceed with the hearing in keeping with the adjournment.

2040 HENRY C. KLOPP was thereupon called as a witness, and, having been duly sworn, testified as follows:

Direct examination by Mr. WHEAT:

Q. State your name?
A. Henry G. Klopp.
Q. You reside in Spokane?
A. Yes, sir.
Q. You are here under subpoena on behalf of the respondents, are you, sir?
A. Yes, sir.
Q. What is your business, Mr. Klopp?
A. I am what is commonly known as a sash and door manufacturer.
Q. Here in Spokane?
A. Yes.
Q. What is the name of your company?
A. White Pine Sash Company.
Q. And what is your position with that company?
A. I am the manager of it.
Q. And have you been in that business for years?
A. Yes, sir.

Q. How long?

A. Well, I started selling millwork on the road in 1893
2041 and went to work in an office in the factory in 1895.

Q. Where were those early experiences?

A. The first concern that I sold with was located in Chicago, and the factory that I afterwards became connected with was located at Minneapolis.

Q. And how long were you in that work there?

A. I was eleven years at Minneapolis.

Q. And after that where did you go?

A. I went to Portland.

Q. And were you in the lumber business there?

A. Yes. I operated factories at Seaside, Oregon, and at Astoria.

Q. Those were manufacture plants, were they?

A. Yes; the part that I operated were remanufacture plants, this same line of work.

Q. Manufacturing what type of product?

A. At Seaside, Oregon, we manufactured out of spruce and hemlock, and at Seaside, Oregon, spruce, hemlock, cedar, and fir.

Q. And while you were in Minneapolis what was the product?

A. Northern white pine.

Q. And in all these remanufacture plants that you mention you are making sash and doors; is that true?

A. Not in all of them. We do not manufacture doors to
extent in the present plant, and at Minneapolis we did not
2042 manufacture doors.

Q. What did you manufacture?

A. Well, at Minneapolis we manufactured sash, mouldings, and frames principally.

Q. And at the plant at Spokane what do you manufacture?

A. The same items.

Q. And out of what woods?

A. We manufacture those out of pondosa pine and Idaho white pine.

Q. Can you approximate the number of sash a day that your factory manufactures?

A. Well, at full capacity——

Q. Pairs—pairs of sash—that is, windows?

A. At full capacity we make eighty-five hundred pair of sash a day. At the present time we are running about four thousand. That is not alone in this factory; we also have a factory over in Missoula, Montana. The two factories produce those amounts.

Q. And the reason for the drop at the present time is because of the particular condition in the lumber market at this time, is it?

A. Yes. The lack of demand.

Q. About how many ash would you say, in your opinion, have been manufactured under your management in the last twenty years?

A. Well, over twenty million.

2043 Q. Do you find that there is any general demand for Pinus ponderosa wood for sash and door purposes?

A. Yes, sir.

Q. Is it a large demand?

A. Yes, sir.

Q. A general demand?

A. Yes, sir.

Q. Do you find and have you found in your experience that that use is a natural use of the Pinus ponderosa lumber?

A. Yes, sir.

Q. Why is that, sir?

A. Because Pinus ponderosa produces a large amount of what is sometimes termed factory plank, more commonly termed shop lumber.

Q. Just what is shop lumber?

A. Shop lumber is a type of lumber that has usually large knots, or defects of some character that are large, that would weaken it for construction purposes for the use of the piece as a whole, but it has clear cuttings in between the knots which are suitable for working up into general millwork, such as sash and doors, and frames.

Q. Now, while we are right on that point, does the Idaho white pine that you are familiar with produce as great a proportion of this so-called "shop lumber" as the Pinus ponderosa?

A. No; it does not.

2044 Q. Why not?

A. Because of the character of the knots and the amount of them. Idaho white pine, as cut on the average, has a large amount of small knots scattered through it, so that a good many of the cuttings that you would take out would be all right for millwork as far as the actual practical use is concerned are not wanted, because the trade has become accustomed to clear wood to be used.

Q. Now, do you have any knowledge of the approximate—whether or not this old Pinus strobus, so-called "northern white pine," produces shop lumber in a large degree?

A. Well, it did in days gone by, but as they got those forests cut over most of the stands that had the large trees in them were cut off, so that the production, the percentage relationship of the shop lumber to the whole cut, was much smaller.

Q. Is that true today; do you know?

A. Yes.

Q. Now, if only northern white pine as it now exists, Idaho white pine, and sugar pine were used for sash and doors, what, in your opinion, would happen to the supply of those woods?

Mr. BURR. Wait a minute. I do not think you have qualified him along the line of the entire amount of lumber available.

Examiner DE BRULER. He may answer.

Mr. WHEAT. Q. All right. If you know.

2045 Mr. BURR. Wait a minute. I object, on the ground this witness is not qualified to answer.

Examiner DE BRULER. Objection overruled. Exception noted.

A. Well, as to Northern white pine and Idaho white pine, there is not nearly enough cuttings coming on. I really do not know about the quantity of sugar pine available.

Q. Well, now, when you say there are not nearly enough cuttings coming on, do you mean—you mean to supply the demand for shop lumber?

A. Yes. There is not enough shop lumber produced in Northern white pine and Idaho white pine by—a very large percentage, to supply the amount of such lumber needed, such grades of lumber needed to produce the sash and doors that are wanted for building purposes today.

Q. And you are not directly familiar with sugar pine?

A. I am not.

Q. Now, in your opinion, must Pinus ponderosa enter this so-called "shop trade?"

A. Yes.

Q. And do you feel that it is a wood well fitted for these uses?

A. I do.

Q. Are you in competition with sash and doors produced from Pinus ponderosa marketed as California white pine?

A. Yes, sir.

2046 Q. Do you find in your business that you suffer from what is generally termed sales resistance because of the use of the term "white" in the trade name California white pine?

A. No.

Q. Do you feel that you are hampered in your business by the fact that the California manufacturers have retained their old trade name California white pine?

A. No.

Q. Has there been any change in the general price relationships between California white pine and what is now marketed as pondosa since the change to that name here?

A. No. Not generally.

Q. Now, I wish you would describe to the record what those price relationships have been during your experience.

A. Well, going back some years, California while pine shop lumber always sold at higher prices on the average than the pondosa pine, I will put it, as describing the shop lumber from this district. The reason for that being that the trees in California on an average grow larger, producing larger logs, and comparatively older and larger trees, so that they have more of the old-growth type, and consequently produced larger shop plank, and the situation of just the human situation of when you have a large amount of anything you are not struggling to get it, you would naturally furnish a bet-

2047 ter grade than a concern that only had a small amount of shop lumber coming out of its logs and had to hustle pretty hard to get an amount to satisfy their trade in proportion to the other items that they would produce from the logs.

Q. Now, just how has that been material in the general price relationships?

A. Well, a nominal grade such as no. 2 shop in California white pine, for the reasons I have given, will produce a bigger percentage of sash and door cuttings than the same nominal grade of pondosa pine and cut in the Spokane district.

Q. And for that reason it has commanded a slightly higher price, has it?

A. Yes.

Q. Has that relationship been changed at all since the change of name to pondosa, and if so, has the name anything to do with it, in your opinion?

Mr. BURR. Wait a minute. One question at a time.

Mr. WHEAT. Q. All right. I will ask whether there has been any change?

A. The only change has been the reverse, due to the fact that a large number of woodworking factories come into the Spokane district within a relatively short period and created competition for pondosa pine lumber, so that for a period of from three to five years the shop lumber in the immediate territory surrounding Spokane for a distance of two hundred and fifty miles was higher priced
2048 than California white pine at the mill in this same time, but that was due to a business condition of supply and demand. You see the factories in the Spokane district has what is known as a milling and transmit basis that they work on in connection with their freight rates, the point being that they get a reduction of a certain portion of their inbound freight for shipments where the product is destined for shipment East. Now, the limit that you can bring lumber into Spokane is two hundred and fifty miles, so that, of course, the factories in Spokane only have the product of the sawmills located within two hundred and fifty mile circle, and this increase in factory production in this particular district caused that advance in the price of shop lumber in this district.

Q. Yes. Now, over the country in general, do you know whether there has been any particular difference in the price differentials that you have mentioned?

A. No; not that I know of. I would say in general probably not.

Q. Do you know of any price differential which has been caused, in your opinion, by the use of any particular name for Pinus ponderosa wood?

A. No.

Q. Do you know, or may I ask you this, of any sales resistance that you meet in selling your product, in your opinion has any
2049 portion of it been caused by the name used for any other products of Pinus ponderosa?

A. I do not think so. No.

Q. Are you selling your windows, now, in your opinion, with as little sales resistance as when this wood now known as ponderosa was sold generally as white pine?

A. No, no more.

Q. It was generally sold as western white pine, was it, at one time, fairly generally?

A. Yes.

Q. Were these certain companies that did not sell it as western white pine?

A. Oh, yes; many of them.

Q. Do you know, if you do not know, of course state it, whether or not the companies which sold under some other name than western white pine and under some other name which did not include the word white, suffered generally from any trade differential against them, grade for grade?

Mr. BURR. Excuse me——

A. I do not know.

Mr. BURR. He says he don't know. We will agree on that.

Mr. WHEAT. Q. Is it, in your opinion, a question of supply and demand that fixes the price rather than the name which is applied to the lumber?

A. Yes.

2050 Q. Now, I will ask you whether or not Idaho white pine has during your experience, in your judgment, a differential in price, grade for grade, ordinarily, over the wood. marketed now as pondosa?

A. Yes, it has.

Q. That has continued for many years, has it?

A. Yes.

Q. Continues today, does it?

A. Yes.

Q. May I ask you whether or not there has been any change in that differential since the change in name to pondosa?

A. Yes.

Q. Now, will you explain what that has been?

A. Well, one of the large factors in the business saw fit to reduce the differential some time ago with the statement that the old talk about white pine becoming extinct was used so much that the trade was coming to a point or not relying on it any more and buying other woods, and in order to put white pine back on the market, as they stated, they reduced the price of it and built up to a larger volume in proportion to pondosa pine, and then after having the volume built up some, the demand came on stronger and there was a natural raising of the price again.

Q. The differential is now greater, is it?

A. It is now greater than it was, yes.

2051 Q. Now, when you say a large factor in the production of Idaho white pine, do you refer to certain of the Weyerhaeuser interests, so called?

A. Yes; I do.

Q. And are you connected with the Weyerhaeuser interests?

A. No, sir.

Q. In marketing your Idaho white pine, did you find it necessary to follow the reduction in price which was made by this group, to any extent?

A. Well, we naturally followed the lumber market in making our market price, although, of course, there are other factors that enter into it. If we got a big demand and might buy our lumber real cheap, we probably might take advantage of the demand and get as much as we could out of our articles.

Q. Yes; but, in general, did the price you got for Idaho white pine follow rather closely the price fixed at the time of this reduction you mentioned?

A. Yes; other things being equal we would follow the matter of cost in our selling price, whether it comes from raw material or labor, or other items.

Q. But at the present time you are getting more for your Idaho white pine, then, and for your pondosa than you were seven or eight years ago?

A. Yes, sir.

Q. By the way, was that a reduction in 1927, if you remember?

A. I do not know.

2052 Q. But it was within a comparatively recent period, was it not?

A. Yes.

Q. May I ask you this, too: Are the differences in general in the price of Idaho white pine and pondosa pine, under whichever name it has been marketed, in your experience do you think they are also in general caused by the law of supply and demand, rather than the name under which the lumber is marketed?

Mr. BURR. Wait a minute. This man has not qualified as an economic expert, and familiar with the law of supply and demand.

Mr. WHEAT. I will withdraw the question, then.

Q. I will ask you whether or not, in your opinion, the question of supply and demand for lumber of Idaho white pine and pondosa, respectively, causes the general price relationships, rather than more names?

A. Yes; I think it does.

Q. Well, let me ask you whether, in your opinion, you are put to any greater expense in marketing your Idaho white-pine products because of the use of the word "white" in the trade name of California white pine?

A. No; I do not think so.

Q. Have there been any changes in the uses to which ponderosa pine is put since the inland empire producers of that lumber

2053 changed the name to pondosa?

A. No; not of any consequence that I know of.

Q. Are the uses to which it is generally put at the present time, in your opinion, the natural uses of that wood?

A. Yes, sir.

Q. Do you think—in your opinion, and based on your experience, is this wood fitted for those uses?

A. Yes, sir.

Q. Does it satisfactorily meet those wants?

Mr. BURR. Counsel is leading his witness in every question.

Mr. WHEAT. Q. All right. I will ask you, does it satisfactorily meet those uses?

A. From our experience, it does.

Mr. BURR. *Peg* pardon?

A. From our experience, it does. We have been selling it for twenty years.

Mr. WHEAT. Q. I will ask you whether or not, in your opinion, if the California white-pine producers were to drop the word "white" from their trade name, would the uses to which Pinus ponderosa from California is now put be changed?

A. Why, I could not see that they would.

Q. Must this wood, in your opinion, go into the trade for the uses to which it is now put?

A. Yes.

Q. Are they its natural uses?

2054 Mr. BURR. Every question is suggestive.

Mr. WHEAT. I submit, Your Honor, that that is not a leading question.

Q. Are they in natural uses?

A. We think they are, or we would not have established a factory to manufacture these articles from this lumber.

Q. Do you know of any effort made by the pondosa manufacturers to force the retailers to stop using the word "white" in reselling that pine?

A. No.

Q. Do you know whether Pinus ponderosa wood has ever been marketed as yellow pine?

A. It has not, to my knowledge, as far as lumber or millwork is concerned.

Q. Are you in general familiar with the uses of southern yellow pine?

A. In a general way; yes.

Q. Are they the same or different uses from those to which Pinus ponderosa is put?

A. They are different.

Mr. BURR. We concede that.

Mr. WHEAT. We want the record to show it.

Mr. BURR. Well, it does show it.

Mr. WHEAT. Q. Let me ask you whether or not in your opinion the lumber produced from Pinus ponderosa as you know it is

2055 more nearer like, in its uses, in its general uses, the old northern white pine than the southern yellow pine?

Mr. WHEAT. Do you concede that, too?

Mr. BURR. Then it is to the southern yellow pine?

Mr. WHEAT. Yes.

Mr. BURR. Oh, yes; I concede it. I think the complaint concedes it.

Mr. WHEAT. I doubt it.

Mr. BURR. The complainant concedes that it differs more than it does from the yellow pine and white pine of the North. I think it concedes that. At any rate I will concede it for the record. I have asked witnesses that very question expecting that very answer and gotten that very answer several times. Will you read that question and let me make sure I have gotten that question correct when I say that?

(Question read.)

Mr. BURR. Then does southern yellow pine, then I interprosed and said I concede that.

Mr. WHEAT. Q. Going to the subject of marketability, Mr. Klopp, do you find that the wood marketed as ponderosa works up well in remanufacturing?

A. Yes, sir.

Q. Is it easy to work?

A. Yes.

Q. And easy to tool?

2056 A. Yes.

Q. Is it easier to work than Idaho white pine, to tool?

A. It is easier.

Q. Did you ever use it in your business for pattern making?

A. Pinus ponderosa?

Q. Yes.

A. Yes; we do.

Q. And just explain what your experience has been in that line.

A. Well, we only build patterns for machines we make for use in our own factory, but we have built quite a number of machines, varying in size from small machines two feet square and two or three feet high to machines that weigh five or six ton, and we have always used Pinus ponderosa for making patterns for those machines.

Q. Does your pattern maker ever use Idaho white pine?

A. Well, he has never used it in any particular quantity. He might use it if it is the first piece of wood he comes to if it looks as suitable, but the pine that he starts with when he is looking for a piece is Pinus ponderosa.

Q. You find it works satisfactorily for that purpose, do you?

A. Yes. It works easier than Idaho white pine.

Q. Is it as soft as Idaho white pine?

2057 A. Well, that particular part of it is possibly a little softer than we use in patterns.

Q. Have you recently come in contact with a frame taken from an old building in this city?

A. Yes, sir.

Q. Have you it in your office?

A. I have a piece of it in the office, a sill.

Q. Now, is it Pinus ponderosa?

A. Yes, sir.

Q. Where did it come from?

A. It came from a house formerly located in Brown's addition, which is in the west end of town here, one of the old residential districts, and I asked two people about the house that had reason to know how old it was——

Mr. BURR. Wait a minute. I am going to object as hearsay.

Mr. WHEAT. Yes. I think that is true, if that is hearsay.

Q. Have you made any investigation on the age of it, or from your own knowledge of the section could you say about what age it is?

Mr. BURR. The section, you say?

Mr. WHEAT. Well, of the place where it came from?

A. I was not here when the house was built, so I could not say. It is the oldest residence district in the city of any consequence, and the majority of the houses down there were built a long time ago.

2058 Examiner DE BRULER. About how long ago?

The WITNESS. Thirty, thirty-five years. One man said over thirty years, and the other one over thirty-five years, this particular house.

Mr. WHEAT. That may go in under that objection. I believe that is hearsay.

Q. But what kind of nails are in this piece of wood that you got?

A. The old time cut nails.

Q. Have you any knowledge, from your own knowledge, how long ago they ceased to use those nails in this community?

A. No. I would not be able to remember how long ago they ceased using those nails in this community, because there was more or less a smattering of the two when wire nails came in, cut nails were used for quite a while afterwards. It don't all change at one time.

Q. Now, is there any decay in this frame that you mention?

A. No; it is a very sound piece of wood. It is wet stained a little at one end, but apparently no decay.

Q. Does it appear to have been in place for a considerable period of years?

A. Yes.

Q. Let me ask you whether if properly manufactured, installed, and painted, in your opinion, pondosa lumber will last as long as the building in general?

2059 A. Yes, sir. I think it will.

Q. And this is your opinion, is it, notwithstanding the fact that you may have heard of certain failures of this wood?

A. I have seen failures of the wood.

Q. Have you ever heard of failures in other woods?

A. Yes, sir; I have.

Q. Now, properly made and protected, is it your opinion that one wood will last as long as another in a building?

A. Yes. I think that any wood that is dry before it is installed and then is painted, manufactured also in tight joints, and painted so well that the moisture cannot get into it, that it is bound to keep from rotting indefinitely.

Q. Would that apply to woods also that have—that are softer and lighter than Pinus ponderosa?

A. Yes, sir. That would apply to any wood at all. If you keep the paint on it, or the surface sealed so that the moisture could not get inside of it, there would be no tendency to rot, as far as I understand it.

Q. Now, are you familiar with the Anderson Frame Company, and its products?

A. Yes.

Q. Do you know whether or not that company uses Pinus ponderosa for any portion of its frames?

A. Yes; it does.

Mr. WHEAT. Mr. Burr, I believe the record states that—
2060 I believe that Mr. Anderson stated when he was on the stand that he used Pinus ponderosa for pulley sticks?

Mr. BURR. I am not able to say. I have not read the record since.

Mr. WHEAT. I will ask the witness whether he knows that.

Q. Do you know for what portion of the frames made by the Anderson Frame Company they used Pinus ponderosa?

A. They do. We have used Pinus ponderosa in the pulley styles and they used in the Anderson Frame Company. I have seen their frames.

Q. In your opinion, what is the most exposed part to decay of the frame?

A. Either the pulley styles or the sill where they come together. The junction would be the place where it is most exposed to moisture conditions.

Q. Is there a groove there of some sort, ordinarily?

A. The sill is dadoed into the pulley style, or in the door case, the sill is grooved, and the pulley style dadoed into it.

Mr. BURR. Is what?

The WITNESS. Dadoed is the term we use for this groove, and the term we use of dadoeing one thing into another really is not strictly proper.

Mr. BURR. What is it, a dovetail?

The WITNESS. No. It is just a groove, just like we put
2061 a groove half an inch wide down in this table and put a piece into it. It is done in shelving. It is a very common method of shelving. Now, if that joint was not painted at all, the paint was not applied so that moisture could get in there when it rained, water naturally lodges on a flat surface, and the sill is a sloping sill, but it has somewhat of a flat surface, water hitting in there unless the wind is blowing absolutely at right angles to the window, it will hit one side or the other of the window frame, consequently it is driven

right to that joint, and what water gets in there on ordinarily constructed frames has no way of getting out except by evaporation.

Q. This is the joint that you mentioned between the pulley style and what other piece?

A. An the sill.

Q. Have you ever had any experience as to the replacement of sash made of Pinus ponderosa?

A. Well, we have had some complaint of sash rotting at the bottom rail joint, where the bottom rail enters into the style.

Q. About what proportion of the sash that you have supplied has that been?

A. Well, it would be so small you could not figure it; but I would say—I would put it into figures of what the total amount have been—

I would say less than five hundred windows.

2062 Q. In how many million?

A. Twenty million.

Q. Now, is there very much young growth in the Idaho white-pine forests that you are familiar with, in general?

Mr. BURR. Wait a minute. Was he up there?

Mr. WHEAT. Q. I will ask you, Have you had any experience in the Idaho white-pine forests?

A. Yes.

Q. What has that experience been?

A. Well, I operated a sawmill in the Clearwater Forest at one time.

Q. And does your company now have any timber?

A. We have no timber in white pine in that particular forest. We have a little white pine in connection with some of our other operations.

Q. Where?

A. We have a plant out here at Milan that has some white pine in connection with it, Idaho white pine.

Q. Have you had experience in the Idaho white-pine forest?

A. Yes.

Q. And do you know whether or not in that forest there is any considerable proportion of what might be called young growth?

A. Well, what I would term young growth would not be large enough for, say, timber. We have what we call second growth and old growth.

2063 Q. Just explain that, please.

A. I am not a technical man on this, but what is penerally conceded amongst the ordinary lumberjacks and practical men that work around the woods is a second-growth tree is one that has small branches sticking out of it close to the ground, and an old-growth tree is one that has shed these branches and it has all been healed over for a considerable distance from the ground, I would say, offhand, thirty to fifty feet, there are no limbs appearing, the bark is all smooth. We term that type of three surface clear up to a certain distance.

Q. Well, now, is there any considerable proportion of this so-called second growth in the Idaho white-pine forest?

A. Very large proportion.

Q. And do these trees when cut out produce any particular proportion of clears?

A. No; they do not produce a large proportion of clears.

Q. Do they produce much of the upper grades of shop lumber?

A. No.

Q. What do they produce mostly?

A. A large amount of high-grade common, no. 1 and no. 2 common.

Q. Well, now, are you able to state what your experience has been as to the average number of Idaho white-pine logs per

2064 thousand feet?

Mr. BURR. Of this new stuff?

Mr. WHEAT. I am talking of the average run, the way the forest comes.

A. Well, what we cut in the Clearwater Forest ran pretty large for Idaho white-pine logs. They ran something like seven or eight to the thousand, but still it was second-growth timber and yielded this sound-knotted common that I speak of. That size there is much larger than the average in, for instance, the Coeur d'Alone district, the territory tributary to Lake Coeur d'Alone, although you will—you will go up one creek and find that—for instance, some creeks tributary to the Coeur d'Alone will have all pretty big timber on it. I think they are more or less of the old-growth type.

Q. Now, let's get back to this point: What average, from your experience with Idaho white pine, would you put as the number of logs to the thousand board feet?

A. Oh, I would say probably around fifteen, upon the Coeur d'Alone property.

Mr. BURR. That is the virgin stuff and second growth both, is it, averaging it up?

The WITNESS. Yes; of what is put into the Coeur d'Alone Lake territory.

Mr. BURR. What goes into the sawmills there?

The WITNESS. Yes.

2065 Mr. WHEAT. Q. Well, now, in the majority of Idaho white pine that is now produced, about what proportion would you say there is of shop lumber?

A. Well, I would not know. It would be pretty small, probably——

Mr. WHEAT. I think the record shows. I withdraw that, I do not want him to guess it.

Q. Now, from your experience in selling pondosa lumber, or pondosa sash and doors, does the lumber trade that you come in contact with generally understand that pondosa is the same wood formerly largely marketed as western white pine?

A. Yes.

Q. And in general, and forgetting for the moment any present price or sales slump just at the present time, will you say that the sale of pondosa is increasing or decreasing?

A. Well, taking into calculation the present lack of the demand due to the slackening up of building operations, the use of pondosa is increasing.

Q. How long have you been familiar, by the way, with the term "California white pine"?

A. Well, prior to 1907. I do not know——.

Mr. BURR. We concede longer than that, why ask this question. We have proved it is thirty years old ourselves.

Mr. WHEAT. I will follow that up then with this statement.

Q. Has that term been generally used in the lumber trade
2066 for a good many years?

A. Yes.

Q. Has it been advertised in the trade journals for many years?

A. Yes.

Q. Do you think it is a well known trade term in the lumber trade?

A. Yes.

Q. By the way, I would like to have you tell for the record what in your opinion are the qualities of what you understand to be a good commercial white pine. Qualities of the wood, of course?

A. The qualities?

Q. Yes.

A. Well, it would be a pine that would work easily with tools, form well, and would take paint well.

Q. Can you tell me whether or not the Pinus ponderosa with which you have been familiar takes paint well?

A. It does.

Mr. WHEAT. That is all.

Cross-examination by Mr. BURR:

Q. Is there a good deal of diversity in the Pinus ponderosa as regards its qualities and characteristics as lumber?

2067 A. Yes, sir.

Q. In different parts of the grain?

A. Yes, sir.

Q. Is there a good deal of diversity in the Idaho Pinus ponderosa with which you are most familiar, among different trees, I mean?

A. Not a great deal. There is some, however.

Q. Is there more or less diversity in the Idaho white pine?

A. There is more in ponderosa than there is in white pine.

Q. And that is in regard to color, is it, and softness, and amount of pitch, and various characteristics?

A. Yes; the general characteristics would be different.

Q. Now, there are some sections where it is very materially heavier and denser and darker in color, isn't that true, than in others?

A. Well, you say sections. Of course, I do not know what area you mean by section. If you mean a very largely extended area,

I would say no, but if you took a little valley or draw, as we would term it in the timber business——

Q. Yes.

A. I would say yes. As compared—it depends somewhat on the soil, on the moisture in the ground largely, and the altitude.

Q. Pinus ponderosa adapts itself and manages to live over a great diversity of different conditions of soil and climate
2068 and altitude and rainfall than Idaho white pine, isn't that true?

A. Well, it is—I do not know that that is true; no. I would say that it is grown over a larger area of the country than Pinus monticola, or Idaho white pine, but you have it growing over through the Cascades, grows down in California.

Q. Which?

A. Grows over in Montana. So-called Idaho white pine.

Q. The Idaho white pine grows down into California?

A. Yes, sir.

Mr. WHEAT. It shows on your map.

Mr. BURR. It is very scattering down there, is it not?

A. It is very scattering anywhere, just outside of this district surrounding Idaho. It grows in Washington and it grows over in Montana, but Idaho seems to be about the center of it.

Q. Does it grow over in the Puget Sound country?

A. Yes, sir. There is a mill in Vancouver, B.C., that saws nothing else.

Q. Now, are you skilled in the detection of woods? If you were offered various pieces of wood could you, without any doubt, tell which was Idaho white pine and which was ponderosa white pine?

A. In that size piece?

Q. Well, say a piece a foot and a half long, or something
2069 like that?

A. No. I do not believe that the man lives that could tell without chemical inspection or——

Q. Microscopic inspection?

A. Microscopic or something of that kind. From my experience in it, I would say so.

Q. Well, now, that is true of the lumber whether it is seasoned and has been in use some time, or whether it is a fresh piece, freshly cut; is that true?

A. Well, I think you probably could tell quicker in green lumber than you could——

Q. In the dry?

A. In dry, because I do not happen to have the faculty very well developed, or the senses very well developed, but a good many people can tell by the odor. I have lived in this cold climate so long that my sense of smell is not very good.

Q. Are you sure that that sill you testified to was Pinus ponderosa, or white pine?

A. I am sure it is Pinus ponderosa.

Q. I wonder if you could send——

Mr. WHEAT. Wait a minute. Let him answer the question. You say, it is Pinus ponderosa?

A. Yes, sir.

Mr. BURR. Q. Just how do you tell Pinus ponderosa?

2670 A. Well, by the looks of the examination of it for one thing, and the color of the wood for another.

Q. I thought you testified that you could not tell a piece of wood, particularly if it was one that had been cut for a long time and had been in use?

A. Now, you put the question to me on the basis that I could tell any piece of wood that was handed to me, as an expert. Now, I can tell you—I can pick up pieces two inches long and tell you for sure, but when it comes to picking out the difference in picked samples, I say the man don't live that can pick them out without chemical or microscopic analysis.

Q. What are the reasons for believing this to be a Pinus ponderosa piece?

A. There are some pieces that are well marked, that anybody can tell that has had any experience in lumber, but there are other pieces that you cannot tell. I have sent pieces of cedar posts to the laboratory at Madison and have it come back and say it was pine, from a small district in which they said it was not grown, just to see how much they knew about it. That is just—that is just trick stuff, you know. You get a little piece of lumber the size of your hand, six inches long, and just cut it so. You pick a specimen looks more like another wood than it does its general variety, and you would fool most anybody with it.

Q. I believe you said that properly painted, that any

2071 variety of wood, in your judgment, would last indefinitely, sir?

A. Yes, sir.

Q. That has not only got to be originally properly painted, but you have got to have the paint repainted just as soon as it begins to reach the point where moisture might penetrate; isn't that true?

A. Yes, sir. The way I attempted to state it, if all the moisture was taken out in the first place and then you kept it preserved, kept the moisture out of it, that you would have no rotting.

Q. As a matter of fact, we house owners do not always paint as we should, do we?

Mr. WHEAT. Now we are getting to a point ruled out.

Mr. BURR. This is cross-examination, and I think I am entitled to ask that question.

Q. That is the general rule?

A. Well, some people never paint their houses and some people do not paint them often enough and some paint them often.

Examiner DE BRULER. I think that is a matter of common knowledge.

Mr. BURR. Yes.

Q. And the majority of them do not paint as often as they should to keep out all evidence of moisture?

A. Well, I do not know about the majority. I am not in
2072 the paint business. I probably could tell you if I was.

Q. Do you paint your own house as often as there is any slight chance of entrance of moisture?

A. Well, now, that slight chance is putting it very fine-haired; but I paint my house as often as I think it should be, and I have no rotting conditions in any house that I own.

Examiner DE BRULER. I think that is rather far-fetched cross-examination.

Mr. BURR. All right.

Q. Now, I believe you testified to making patterns from Pinus ponderosa?

A. Yes, sir.

Q. At one time you were selling lumber, selling lumber that your company was manufacturing; is that true?

A. Yes.

Q. I mean aside from the millwork, you were selling lumber?

A. Yes, sir.

Q. Were you selling lumber for pattern purposes?

A. No; I have never sold lumber for pattern purposes—oh, yes. Yes; I have, too. I sold northern white pine for pattern purposes in the days when I was in Minneapolis.

Q. Is that a better wood for pattern purposes than Pinus ponderosa, in your judgment?

A. Well, I do not know that it is any better. I think prob-
ably it would be generally considered by pattern makers as
2073 being much better.

Q. I see. Why?

A. Well pattern makers are sort of a peculiar type of their own. Ypu cannot get the average pattern maker to use shop lumber. He would rather pay $150.00 a thousand for a piece of lumber sixteen feet long, all clear, although he is only going to cut it up into two-foot pieces, than he would $25.00 or $50.00 a thousand for a piece that had a few knots in it.

Q. It has got to have pretty uniform texture, and it has got to be workable?

A. That is it; yes.

Q. And the knots are not so workable as the clear lumber, are they?

A. I would not expect a pattern maker to use knots in making patterns. I would expect him to cut between, the same as we do for sash and door stock, but he uses such a small amount compared to the labor that he does not pay so much attention to the price on this, very small proportion of the product he is going to make.

Q. Now, the Pinus strobus and the sugar pine are the leading woods, are they, among the pattern makers of this country?

A. I think they are so sold today. I think Idaho white pine is also sold for that purpose.

Q. And is more sold for that purpose than ponderosa, is it not?

2074

A. I think it is.

Q. You are not at the present time cutting any timber at all, are you?

A. No, sir.

Q. You are buying all of your stock?

A. Yes, sir.

Q. And it runs about fifteen to twenty percent Idaho white and the balance ponderosa, does it not?

A. Oh, somewheres thereabouts.

Q. Now, I believe you said you were not making doors?

A. Not in any considerable quantity. We probably make a thousand, two thousand doors a year.

Q. And do you ever get orders for white-pine sash?

A. Yes.

Q. And you then furnish that?

A. If we get an order for white-pine sash from a concern that we have been selling to for ten or fifteen years, they would use just the initials M.P., and we would furnish Pinus ponderosa, Pinus pondosa. If we get an inquiry from a concern we never had heard of, or never done any business with before, and asked us for a price on white-pine sash, being located in Spokane, we would ask them a question before we quoted them, or quote them on both Idaho and pondosa.

Q. Such an order from a strange concern you would not regard as very clear, you would have to get more information as to what they wanted, is that true?

2075

A. Yes; I rather think so, from a strange concern. There have been some cases of firms furnishing pondosa pine on an order for white-pine sash and in certain territory due to unknown causes, but there are good reasons for believing that the situation was somewhat stirred up; they have been rejected after they were delivered on the job, because they were not made from Pinus strobus or Pinus monticola.

Q. Now, the name of your concern is what?

A. White Pine Sash Company.

Q. White Pine Sash Company?

A. Yes, sir.

Q. And about fifty-eight percent of your sash are made from Pinus ponderosa, did I understand you right?

A. Yes, sir.

Q. Now, when these sash are resold, what does a white-pine sash in the trade mean, does it mean——

A. It means California white pine or pondosa white pine.

Q. White-pine sash means that?

A. Yes, sir.

Q. In your judgment?
A. Yes, sir.
Q. Now, then, if the buyer wants a white-pine sash made from strobus, he has got to specify northern white pine or
2076 strobus, has he, in order to get it?
A. There has been a custom in the office for quite a few years back, in a few territories——
Q. Can you answer my question yes or no, and then explain your answer?
A. I can.
Q. Read the question, please?
(Question read.)
A. I would say "no", because you have not given all of the different——
Q. Possibilities——
A. Prefixes that are used in ordering what you are going to term probably as genuine white pine.
Q. All right. Will you give me the other prefixes?
A. I started to explain.
Q. I want it explained.
A. I would say, generally speaking, the answer would be "yes".
Q. Yes.
A. Now, it has been the custom in the trade for some time past, and is not so well defined at the present time, but certain territories where they really prefer northern white pine as against California white pine or any other pine or pondosa pine, to specify Wisconsin white pine, Michigan white pine. As a matter of fact, the
2077 word "northern" has been very little used in that connection.
Q. In the Middle West?
A. In the territory where they want it.
Q. I see.
A. The Middle West is rather a scattered territory, but Ohio would be one of the territories that they would not use that term.
Q. Then, if a man wanted to get a strobus sash he would have to specify, perhaps, strobus or northern white pine, or Michigan white pine, or Minnesota white pine, or one of those designations of the territory where the so-called "Pinus strobus" grows; is that true?
A. Yes, sir.
Q. And then, according to your testimony, if he merely said he wanted white pine he would almost invariably get California white-pine or pondosa sash; is that true?
A. He would, if he inquired generally in the trade, but I explained if he was a new customer, we had not heard from him before and he inquired about white-pine sash, we would explain to him.
Q. Now, a stranger ordering from your company named as it is and advertising its name, if he were ordering from a district where white-pine sash still meant northern white pine, he would expect to get a northern white-pine sash from you, wouldn't he?

2078 A. I do not know of any district where white-pine sash means northern white-pine sash today. I would like to make a little further explanation in connection with that answer. The question is, I take it, as to the name of our concern?

Q. Yes.

A. The reason that we named our company the White Pine Sash Company is that we were going to manufacture what is commonly known to the trade as white-pine sash, when we manufactured it.

Q. What was commonly known as "white-pine sash"?

A. Pondosa-pine sash.

Q. When was this?

A. In 1910.

Q. And you still think that white-pine sash means ponderosa sash, do you?

A. In the trade; yes.

Q. In the trade?

A. In the trade that handles volumes of goods; yes, sir.

Q. By the trade you mean the wholesalers? Who do you mean, the wholesalers?

A. Yes, sir.

Q. You do not mean the consumer by that, do you?

A. No. I do not think the consumer knows.

Q. No.

2079 A. Of course, there is one thing I would like to state, if I may. You have been using the term "genuine white pine."

Q. Yes, sir.

Q. It has been used in advertising, by some people.

Q. Yes.

A. Now, I do not quite agree with the term "granite white pine" as applied to the few varieties named, such as strobus, lambertiana, and monticola.

Q. You think it ought to be applied equally to ponderosa pine?

A. Any pine that is white.

Q. Now, the California—the heartwood in many sections is not white, is it?

A. No.

Q. And that you would not allow to be sold as white pine, if it is dark-colored wood; is that true?

A. The parts of it that is dark—you could throw out certain parts of strobus that are not white—if you want to do that.

Q. It is very small, isn't it, in strobus?

A. Yes; very small.

Q. In other words, the knots are not white?

A. Oh, the wood of Pinus strobus is not white.

Q. It is a yellowish color?

A. No; it is not a yellowish color.

Q. There is not very much that is not pale?

A. Oh, it is lighter colored, generally speaking; yes.

2080 Q. Do you know of any concerns that are discarding the darker-colored heartwood in their white-pine products?

A. No.

Q. Perhaps you do that yourself?

A. No.

Q. You do not do that yourself?

A. If we attempted to discard, we would discard all but the white sap part on the basis of that argument, but the rot-resisting conditions, we would put the heartwood into the part of the millwork where it is mostly exposed to moisture conditions.

Q. Then you would not make the criterion that of color, would you, as to whether or not it was proper to call it white pine?

A. Well, if you are going—if you are just going to call it something, and it is a pine, and it is white, I do not know why you cannot call it white pine. I do not know upon what authority you can call strobus white pine, other than that it is a pine and it is white.

Q. Now, on the market strobus has a reputation for various characteristics and qualities, does it not?

A. Yes, sir.

Q. And it has been known for a long period in the eastern market and has been known to an extent throughout the country, hasn't it?

A. Yes, sir.

2081 Q. Will you tell me whether strobus enjoys a high reputation for its character and utility?

A. Yes, sir; quite high, I would say.

Q. Now, the word "white pine" is associated with the strobus lumber, isn't it?

A. It has been associated with that longer than it has been with Pinus ponderosa; sure.

Q. Yes; and longer than it has with Idaho white pine, too?

A. Yes, sir.

Q. That is true? Now, then, the term "white pine", then, is associated in the public mind with other characteristics besides the pale color of the Pinus strobus; isn't that true?

A. Yes, sir.

Q. In other words, the softness and uniformity?

A. Yes, sir.

Q. And the good texture and likeness—lightness in shade and weight both; that is true, isn't it?

A. Well, I would think that I would say yes, but I would want to explain, but I think that the reason that it is associated with, or is associated with the lightness in color, possibly, or probably and the texture, and the workability with tools.

Q. Yes. In other words, there is association in the public mind not only of color of the white pine, but also these other characteristics you have testified to?

2082 A. Yes.

Q. Now, let me return to that pattern matter for a moment. Isn't the reason that the pattern makers like selects for their pattern work, that the shop has cross grain and the selects is a straight-grain proposition?

A. That is one of the reasons that they give, but we cut up door sills seven feet long that are perfectly straight-grained cut of shop lumber, and the pattern maker would not want to get a piece three foot long cut of it.

Q. Seven feet long, did you say?

A. Yes.

Q. How wide?

A. Five inches wide. Seven feet long, five inches wide, and four and seven eighths inches thick.

Q. Lumber that long, wouldn't it go into the selects rather than the shop?

A. No. It is in the shop. That is where we get our door cutting; that is the size of our door cutting.

Q. Can you tell how much in board feet, approximately, the total shop cut of lumber from northern white pine or strobus is annually today?

A. No.

Q. In this country?

A. No.

Q. You could not give me a fair estimate on that?

2083 A. None at all. I have not followed it up in years.

Q. How about Idaho white pine; could you give me an estimate on that?

A. No, sir; I could not, in Idaho.

Q. Could you give me an estimate as to how much the board footage that goes into sash and frames and door and millwork in the course of a year is; have you got those figures?

A. Well, I could give you an estimate, idea.

Q. All right. Suppose we have it.

A. In sash, for instance, we make about thirteen percent of the windows made by the stock factories in the United States.

Q. On sash, about thirteen percent of the total output?

A. Of stock factories.

Q. Of stock factories?

A. Now a planing mill, or little factory that builds a full house, that mill is not classed as a stock factory. A stock factory would be a concern that would manufacture carload stuff principally and ship to lumber yards and dealers.

Q. You call yourself a shop factory, do you?

A. A stock.

Q. I mean a stock factory.

A. Yes, sir. We use for windows about twenty million foot per annum.

Q. Beg pardon. How much?

2084 A. We use for windows on an average about twenty million feet per annum of shop lumber. You would multiply that by eight to get the amount that is used for windows. Doors we are not manufacturing, so I am not versed in it. I just volunteer that figure as giving you some idea.

Q. Millwork as a whole belongs to what class—sash and door and frames, and what else?

A. Store work, kitchen cabinetwork, all the interior finish of a house that would not be ordinarily manufactured by a concern having just a planing mill.

Q. Well, now, when you testified a while ago on direct examination that the total amount of shop lumber produced in the country in Pinus strobus and monticola together would not be enough for the millwork, was it the millwork business of the country?

A. Yes.

Q. You included those terms that you have just now enumerated, have you?

A. Yes.

Q. The stock that you manufacture is only for sash and frames and a few doors; is that right?

A. Yes, sir. Mouldings.

Q. So that multiplying by eight would only give the amount in the country, you estimate that amount in the country for those particular items?

2085 A. That is used for just sash.

Q. I see. So it would have to be much bigger for all this interior work?

A. Well, the doors——

Q. A tremendous item, must be?

A. Yes.

Q. Well, do I understand then, when you say yours is a stock factory, you are making the finished product, aren't you?

A. Yes; some cases. Some cases partly finished.

Q. Are you also engaged in selling your stock to those who manufacture?

A. Very little.

Q. Most of it you take care of yourself?

A. Yes. On account of not manufacturing doors, we usually sell all the door stock we accumulate to door factories.

Q. With regard to paintability, the texture of the wood has a good deal to do with the ability of the wood to take paint and hold it, doesn't it?

A. Yes, sir.

Q. And you would say that the denser and harder the wood, the more resistance it interposes to the entering of paint and the absorption of paint?

A. Yes, sir.

2086 Mr. BURR. That is all.

Redirect examination by Mr. WHEAT:

Q. When you said that the wood of ponderosa was white, you meant in general, didn't you?

A. Yes.

Q. You did not mean any particular piece?

A. I meant first the sapwood is whiter than most any part you would find in Pinus strobus or Pinus monticola, and then the wood inside varies in color, sometimes a light pink, sometimes a light yellow, would probably average up white for a ways in. Some trees would be white and some trees after you get inside a ways would be almost brown.

Q. As a matter of fact in strobus the heartwood is almost pink, is it not?

A. In strobus?

Q. Yes.

A. Yes; there is a pink color to that too.

Q. There is a pink tinge to it often, isn't there?

A. Yes.

Q. Now, in your opinion, I take it, Mr. Klopp, the term "white" has applied to pine wood and has been broadened in practice over the years from any pristine significance it may have had applying to only Pinus strobus; is that true?

2087 A. Yes.

Q. Have you in your experience found Pinus ponderosa to be a satisfactory wood from the standpoint of enduring qualities?

Mr. BURR. He has not had any experience.

Mr. WHEAT. He has made twenty million sash in twenty years.

Mr. BURR. Is it not proper redirect anyway. I have not gone into that with him; only got it on his direct examination.

Mr. WHEAT. All right. I will eliminate it.

Q. Let me ask whether these pieces of wood Mr. Burr asked you whether you could tell apart, these pieces that you say would take an expert to tell apart, are exceptional pieces, are they not?

A. Yes.

Q. In general, you can tell the difference between the woods, can you?

A. I think most any lumberman that has had any experience of consequence can tell any difference of a sixteen-foot board.

Mr. BURR. This was not a sixteen-foot board. This was a little piece of sash or sill. Was this as sixteen-foot sill?

The WITNESS. No; it is three feet six inches long.

Mr. WHEAT. Just a moment, Mr. Burr.

Mr. BURR. I beg pardon.

Mr. WHEAT. Q. I will ask you that question. How large 2088 is this piece of sill that you mentioned getting out of a frame?

A. It is a two by four, three feet six inches long.

Mr. WHEAT. Mr. Examiner, I am frankly embarrassed that piece is not down here.

Mr. BURR. If he will mail you a cutting that he says is from that piece, and you say it is the piece that he mailed you, it will be all right with me.

Mr. WHEAT. All right. We will get an expert to miscroscopically examine it.

Q. Will you cut off a piece of that frame and send to me in San Francisco?

A. I would rather mail or express the whole piece, then you can judge more fairly.

Mr. BURR. That will be all right.

Mr. WHEAT. Q. Then will you add in your letter that that is the piece talked about in your testimony.

A. Yes, sir. You give me the address to send that to you.

Mr. WHEAT. I think that is all, Mr. Klopp.

Redirect examination resumed by Mr. WHEAT:

Q. Just what do you mean by stock factories?

A. By a stock factory is meant one that produces goods in
2089 large quantities and sell to wholesale jobbers or dealers of various kinds in the business, and does not ordinarily supply a complete house, built to architect's specifications.

Q. Now, are there other types of millworking plants in the United States making sash and doors?

A. Yes.

Q. What are they?

A. Well, they are the type that are known to the ordinary layman as planing mills, or they are sash and door factories which manufacture a wide variety of millwork, usually furnishing all of the millwork required for any one house, and usually purveying those goods within a short distance of the factory.

Mr. BURR. Locally?

The WITNESS. Yes.

Mr. WHEAT. Q. Now, when you said that your concern produced thirteen percent of the sash produced in stock factories in the United States, you did not mean, did you, thirteen percent of all the sash produced in the United States?

A. No; I did not.

Q. That would be a very much larger number, would it?

A. Yes.

Q. Have you any figures on which you could approximate that?

2090 A. No.

Mr. WHEAT. I think that is all.

Mr. BURR. That is all.

(Witness excused.)

(The taking of testimony at Spokane, Washington, was completed at 3:20 o'clock in the afternoon of January 22, 1930, and the hearing continued until 10:00 o'clock a.m., January 23, 1930, at room 303, U.S. Patent Office Building, at Portland, Oregon.)

2091 Docket Nos. 1620–1669, inclusive

PORTLAND, OREGON, *January 23, 1930.*

Met pursuant to adjournment from Spokane, Washington, 10:30 o'clock a.m., in Room 303 U.S. Postoffice Building, Portland, Oregon.

Before Ellis De Bruler, examiner.

Appearances:

Mr. Eugene W. Burr for the Commission.

Messrs. McCutchen, Olney, Mannon & Greene, San Francisco, California (by Mr. Carl I. Wheat), representing respondents named in transcript of Boston hearing.

Mr. WHEAT. Mr. Cowlin, will you take the stand, please? This is out of order, but I just want to put him on so he can get away.

Mr. BURR. Let the record show that this is a defense witness.

Mr. WHEAT. Yes.

ROBERT W. COWLIN was thereupon called as a witness, and having been duly sworn, testified as follows:

Direct examination by Mr. WHEAT:

2092 Q. What is your name, please?

A. Robert W. Cowlin.

Q. Where do you reside?

A. At Portland, Oregon.

Q. Are you now employed by the United States Forest Service?

A. Yes, sir.

Q. Is that a recent employment?

A. Yes.

Q. Prior to that time and during the calendar year 1929, were you at certain times employed by the respondents represented by the firm of McCutchen, Olney, Mannon & Greene, in San Francisco?

A. Yes, sir.

Q. In connection with that employment did you make a study of certain advertisements which have appeared in the periodical known as the "American Lumberman"?

A. Yes, sir.

Q. Just briefly state what the study consisted of?

A. The study consisted of a study of advertisements of the California Pine Producers, dating from the year 1900 to approximately 1907.

Q. Why did you start at 1900?

A. It was the earliest issue available of the American Lumberman.

Q. Where were these magazines?

A. The magazines were in the library of the University of
2093 California at Berkeley.

Q. Did you make a tabulation showing the date, the issue, and the page number of how these pines were advertised?

A. I did.

Q. I will hand you this document and ask you if that is a copy of the study that you made.

A. It is.

Mr. WHEAT. This is the same document a copy of which I handed to you, Mr. Burr.

Q. And just what does this purport to show, Mr. Cowlin?

A. This shows the manner in which Pinus ponderosa is advertised by these various companies in the manner described.

Q. All the advertisements listed in this document were actually seen and inspected by you, and this document lists the advertisements which you looked over?

A. It does.

Q. And will you tell me the reason why you didn't go beyond about 1907?

A. The advertising pages were removed prior to binding after 1907.

Mr. WHEAT. Mr. Burr, I think the record will show that you and I have stipulated, anyway, that this has been advertised as such for a long time as California white pine, but I merely want to ask that this be received as an exhibit on behalf of the respondents

2094 as a study of that advertising in that early period.

Mr. BURR. I am entirely agreeable to stipulating that, and let it be so received, on the understanding that I had with counsel that I may in return offer excerpts from advertising a little further on to show how the advertising was conducted.

Mr. WHEAT. That is perfectly agreeable. And in that case the respondents, Your Honor, may desire to submit photostatic copies of some of these advertisements. I don't think now we will do that.

Mr. BURR. No objection to that.

Mr. WHEAT. That is all.

Mr. BURR. I would like to ask the witness a few questions.

Mr. WHEAT. I would like to have this marked as an exhibit.

Examiner DE BRULER. It may be marked, certainly.

Mr. BURR. The exhibit that you are offering is a duplicate of the one that you gave me, with the exception of this first page that is now rewritten, this substitute first page?

Mr. WHEAT. That is a substitute first page. There was a typographical error on the part of my stenographer in San Francisco.

(Said tabulated lists, entitled "Advertising in American Lumberman", pages numbered 1 to 45, inclusive, was thereupon received in evidence and marked "Respondent's Exhibit no. 30, witness Cowlin", and is forwarded herewith.)

2095 Cross-examination by Mr. BURR:

Q. Referring now to respondent's exhibit no. 30, will you be kind enough to state whether you paid any attention to anything in connection with the ad except the use of the term under which it was advertised?

A. Why, I read the advertisement through.

Q. Yes?

A. I noted the contents of the advertisement.

Q. Did you notice cases where in the body of the advertisement the word "white pine" was used without the word "California"?

A. Why, in cases where it was used it is noted in the advertisements.

Q. It is noted in the exhibit?

A. In the exhibit.

Q. Can you turn to any page where that was done by you in your exhibit? It may save time.

(Witness indicates on exhibit.)

Examiner DE BRULER. Excuse me; if there is a page you had better give it to the stenographer. You probably want the stenographer to take the page.

The WITNESS. Yes; page 24, and continuing——

Q. (By Mr. BURR.) You call my attention to pages 23, 24, and also 25 of the exhibit——

Examiner DE BRULER. Respondent's exhibit no. 30.

2096 Mr. BURR. Yes; the exhibit referred to.

Q. And the same is true of page 29, is it not, and of several other pages at different points?

A. There are one or two other cases in there.

Mr. WHEAT. Mr. Burr, may I ask whether you refer to any persons who are respondents in this case?

Mr. BURR. I was just going to ask him that very thing.

Q. Have you confined yourself in this compilation, respondents' exhibit 30, to respondent companies?

A. No; I didn't. I took all the companies that were advertising——

Q. That were advertising what?

A. Ponderosa pine; Pinus ponderosa.

Q. How did you determine whether they were advertising Pinus ponderosa or whether they were not?

A. Principally familiarity with the region and with the companies, and also their manner of describing it.

Q. You used your editorial ability and your general knowledge to determine whether or not in your judgment they were advertising ponderosa pine?

A. Yes.

Q. What is your association with the lumber business?

A. Well, it has been a matter of some five or six years in California.

Q. In what capacity?

2097 A. In various capacities; with several pine operators, with a lumber company some time ago, and also study through the University of California. I am a graduate of the Forestry School of the University of California.

Mr. WHEAT. I don't think this is material here, but if you want to ask him, it is perfectly agreeable. I don't want to burden this examination.

Mr. BURR. Well, I am not going to burden this examination, although it seems to me it might be rather difficult for a man who is not especially qualified to divine by intuition whether they were advertising ponderosa pine or something else.

Mr. WHEAT. Let me qualify the witness on that.

Mr. BURR. Well, I am qualifying him.

Mr. WHEAT. All right; go to it.

By Mr. BURR:

Q. All right. Did you pay any attention to those who were advertising western white pine?

A. There were none that I knew of that were advertising western white pine in California. These are all California producers.

Q. Simply California producers?

A. Yes, sir.

Q. No southern Oregon producers?

A. There were some Klamath Falls producers.

Q. Then it wasn't confined to California. It was confined to the Klamath Falls region and California; is that right?

A. I would like to refresh my memory to see if there are

2098 any Klamath Falls producers in there.

Well, I won't take the time—I won't take the time. It is not material.

A. I don't think there are any Klamath Falls producers in there, but there may be one.

Q. Now, what I want to get at is this: Where there is a notation here made by you of some concern that has used the word "California" white pine, are you able to testify positively that, after having said, perhaps, in the heading of the ad——

A. Yes.

Q. Among the products that they sell California white pine, do they later on in the ad, so far as you noticed, at times also refer to the same product as "white pine" without the word "California"?

Mr. WHEAT. If he knows any particular instance.

Mr. BURR. No; let him testify generally.

A. I didn't notice it.

Mr. BURR. A particular instance might have flown from his memory.

A. I didn't notice any case where they referred——

Q. Did you read it?

A. In practically all cases. Some of the ads are standard; the same ad appears in issue after issue. I merely glanced through those. I didn't read it word for word, but I read most of the ads where a new ad appeared, a change of form.

2099 Q. Now, did you notice any advertising that referred to California white pine, and then talked about the qualities

of white pine in general, and the stand that they have, and the reputation and good will attached to white pine?

A. No; I didn't notice that.

Q. Did you read them carefully enough to have noticed that?

A. I think I did.

Q. Now, are there any respondents in here? Do you know who the respondents are in these cases?

A. In a general way I know the names of the larger ones. There are some of the names—I don't know the total list of them.

Mr. WHEAT. Well, I assume that the record will show whether there are respondents in there, Mr. Burr.

Mr. BURR. Yes; I know. I don't see any except this Hobart Mills; that is a respondent. That is the Hobart estate.

Mr. WHEAT. That is now the Hobart estate; yes.

Q. Did you pay any attention to Arizona and New Mexico advertising?

A. Yes; in the ad there were several advertisements of the American Lumber Company, I believe it is. It is Navajo white pine. That is listed there.

Mr. WHEAT. May I ask this question: You were requested, in making this study, to include any Arizona mills that you found, were you not?

A. Yes, sir; and also include advertisements of Wuichet, who represented Arizona mills.

2100 By Mr. WHEAT:

Q. Where is he located?

A. He is located in Chicago, Illinois.

Q. Do you know how to spell that name?

A. W-u-i-c-h-e-t.

Q. Then you were instructed to get the Arizona, New Mexico, California, and Klamath Falls district mills, so far as you could supply them?

A. Yes.

Mr. WHEAT. I think that is all.

(Witness excused.)

W. B. GREELEY was thereupon called as a witness and, having been duly sworn, testified as follows:

Examiner DE BRULER. Mr. Greeley, you reside at Portland?

A. Seattle.

Examiner DE BRULER. What is your Seattle address—business address?

A. West Coast Lumbermen's Association.

Direct examination by Mr. BURR:

Q. You were formerly chief forester of the United States Forest Reserves, were you?

A. Yes, sir.

Q. At what period?

A. From April 1st, 1920, until May 1st, 1928.

2101 Q. About approximately eight or nine years; is that true, sir?

A. Yes, sir.

Q. And prior to that what relation did you have to the forestry business and study?

A. I took the course in forestry at the Yale Forestry School, entered the Federal Forest Service in July 1904, and remained there in various capacities until 1928, with the exception of two years of military service during the war.

Q. What was your capacity immediately preceding your becoming chief forester?

A. The first year was spent in investigative work on eastern hardwoods. In 1905 I was assigned as timber sales inspector to the California district, and spent that year in organizing and initiating timber sales on national forests in various parts of that State. In 1906, '07, and '08 I was supervisor of the Sequoia National Forest, in the southern portion of the Sierra Nevada Mountains. In 1909, '10, and '11 I was district forester in charge of the national forests of Montana and northern Idaho. From 1911 until the war I was in Washington as head of the branch of forest management for the service, which embraced the administration of timber sales on all of the national forests, timber cruises, and timber planting. In that capacity I covered most of the national forests in the country on inspection visits. Then that position was resumed after the war until 1920, when I was made head of the Forest Service.

2102 Q. Now, what have you been doing since then? You resigned from the position of chief forester?

A. I accepted work with the West Coast Lumbermen's Association as secretary and manager, with headquarters in Seattle.

Q. And you have held that position since, have you, sir?

A. Yes, sir.

Q. And that association is composed of the manufacturers of what kind of lumber?

A. The so-called "west coast" woods, western Oregon and Washington, British Columbia, and Alaska; chiefly Douglas fir; also west-coast hemlock, Sitka spruce, and western red cedar.

Q. Now, your member lumber manufacturers do not handle commercially Pinus ponderosa, do they?

A. No, sir.

Q. How about Idaho white pine?

A. Only in very negligible quantities.

Q. How about Pinus strobus? Of course, there is none of that among any of your membership, is there?

A. No, sir.

Q. You have written on this subject of forestry, I presume, from time to time?

A. Occasional articles; yes, sir.

Q. Now, you are familiar with the Pinus ponderosa in various parts of the country; are you, sir?

A. Yes, sir; I have seen a good deal of it over most of its
2103 range, from Arizona and New Mexico up into northern Washington.

Q. And clear over into Montana, I take it?

A. Yes, and in Montana and Idaho.

Q. Yes. And also California, of course?

A. Yes.

Q. You have seen it both standing and cut, have you?

A. Yes, sir.

Q. You have seen it in the course of manufacture of lumber; is that true?

A. Yes.

Q. Now which do you regard as the commercial species of genuine white pine?

Mr. WHEAT. Now, may I ask, Mr. Burr, whether he is using the term "genuine" white pine to mean some particular botanical phrase?

Mr. BURR. Well, I think that ought to be comprehended within the witness' answer. I think it is a proper subject for cross-examination. I would like to let the question stand, if I may.

Examiner DE BRULER. Do you understand the question?

Mr. BURR. Shall he read it?

A. I regard the species of genuine white pine as limited to three of commercial importance—namely, eastern white pine, or "strobus", as the botanists call it, the Idaho white pine, or "monticola",
2104 as the botanists call it; and the California sugar pine, "lambertiana." There are several other species of genuine white pine, but of relatively slight commercial significance.

Q. Now is Pinus ponderosa, in your judgment, a genuine white pine?

A. No, sir.

Q. By the by, the Forest Service has been designating Idaho white pine, or monticola, as a western white pine, has it not?

A. Yes.

Q. And the Forest Service has designated in its publications and in its forest signs and so forth, the ponderosa tree as western yellow pine, has it not?

A. Yes.

Q. That has been true for quite a number of years?

A. Yes.

Mr. WHEAT. We will stipulate that that is true. We will stipulate that the Forest Service has, for a number of years, I don't know how long, called Pinus ponderosa in its timber sales and in its publications western yellow pine.

Mr. BURR. Very good; very good.

Q. Now, will you be kind enough to contrast the texture of the genuine white pines that you mentioned and Pinus ponderosa?

A. Viewing the range of lumber products of the two species, the average commercial run of lumber, and not attempting to deal with this from the standpoint of any individual board, or the
2105 product of any individual tree, the so-called genuine white pines are softer woods, they have a more uniform texture, there is less of a contrast between the spring wood and the summer wood, which, together, make up the annual ring, so that the texture throughout the annual growth is more uniform. The woods of the genuine white pines are less resinous than the woods of the ponderosa pine. The difference between the sap and heartwood of the genuine white pine is usually less marked than in the case of ponderosa pine. Now those differences in texture will vary as between the samples you select. But speaking of the average product of the two species of timber, in my judgment those distinctions hold; the woods of the genuine white pine are softer, the texture is more even, they are somewhat less resinous, and there is less difference between the sap and heartwood portions of the tree.

Q. Nevertheless, would the Pinus ponderosa approach in those respects more nearly the genuine white pines than it approaches the southern pines of the South—the yellow pines of the South?

A. Your question comparing the averages, the lumber of Pinus ponderosa would approach those qualities of the genuine white pine more closely than the yellow pines of the South.

Mr. WHEAT. Than it does the yellow pines of the South, or than the yellow pines of the South do?

A. Than the yellow pines of the South approach the qualities of the genuine white pine. The wood of Pinus ponderosa is
2106 more variable from different portions of its range and from the different kinds of trees, or different ages and characteristics of trees from which the lumber is manufactured, than is the case of the true white pine. Pinus ponderosa occurs in many locations near the border line, the tree growth is fixed by climate, where the wood is coarse grained, brittle, harsh, tending to be hard in texture. On the other hand, you can select wood of Pinus ponderosa from the area where the tree attains its best growth, the largest size, where its texture will quite closely approach that of the genuine white pine. One of the difficulties in an exact comparison between the woods is because of the marked difference between the characteristics of the ponderosa lumber in the different portions of its range.

Q. Does Pinus ponderosa differ in the same locality to a greater extent than the genuine white pines in a given locality?

A. If you mean by the same locality in an extended area, like taking a section of the Sierra-Nevada Mountains, for example, from the lower elevations where Pinus ponderosa first appears in the forest, up to the highest elevations where it disappears from the forest, I would say yes. There is a greater variation in the texture and qualities of the wood than you would ordinarily find in the case of true white pine. Of course, texture of other woods also varies some-

what, depending upon the soil and climatic conditions where the individual trees grow.

2107 Q. Now, if I understand you correctly, then, the Pinus ponderosa occupies a ground between the yellow pines to the south, which are harder and denser, and the genuine white pines. Let me ask you this further question——

Mr. WHEAT. Mr. Burr, that, of course, is a leading question. I am not objecting on that ground, but I would like to have the witness answer that. You asked him a question and then started another one.

Mr. BURR. Strike the whole thing, then. I think he has answered the question, but I will ask it again.

Q. Does Pinus ponderosa occupy, with regard to its characteristics that you have named, in which it differs from the genuine white pines, a ground somewhere between the genuine white pines and the hard southern pines?

A. Yes, sir.

Q. Now, then, let me ask you this, which is what I intended to ask a minute ago: Does Pinus ponderosa, as an average, approach more nearly in the characteristics that you have outlined the white pines, or does it approach more nearly the hard pines of the South?

A. On the average it approaches more nearly the white pines.

Q. I see. Now, then, you are familiar with the Arkansas soft pine?

A. Yes.

Q. Is it, in its characteristics, nearer to the Arkansas soft pine or to the white pine of the North?

2108 A. If you select the Arkansas soft pine by itself as distinct from the general run of southern hard pines, I would say that the wood of the ponderosa approaches the Arkansas soft pines very closely.

Q. Those two then are more or less interconnected between the hard genuine yellow pines, regularly called the yellow pines of the South, and the genuine northern white pines and the Pinus lambertiana; is that true?

A. Yes.

Q. Now, generally speaking, is the sapwood of Pinus ponderosa distinctly thicker than the sapwood of the genuine white pines that you have referred to?

A. In old-growth stumpage I think that is true in the average.

Q. Have you noted whether white pines grow in as great a variety of soil, irrespective now of climatic considerations, greater variety of soil conditions and rock conditions, and so forth, than the Pinus ponderosa?

A. The genuine white pines are more limited in their soil requirements, or in the combination of soil and climatic requirements. They are more exacting trees in their soil and climate and drainage requirements than the Pinus ponderosa; that is, you don't find a widespread distribution of the white pines throughout the forest

areas where they are found to the same degree that you do in the case of Pinus ponderosa.

Q. Those differences in soil as well as climatic conditions
2109 lead to diversity in the tree, do they?

A. In the case of Pinus ponderosa?

Q. Yes.

A. They lead to diversity in the characteristics of both tree and the lumber.

Q. Yes. Now, then, does that result in a greater diversity in a given stand with regard to the particular conditions of soil than might exist in variations in the same stand and in the same locality?

A. Well, if by the same stand you take in an area having a considerable range in soil and climate, you may select extensive areas of Pinus ponderosa timber where the timber and the lumber——

Q. Run uniform?

A. Runs very uniform. On the other hand, you go beyond those particular slopes or benches having a uniform soil, rainfall, and other conditions, and go to the upper and lower limits and you will find a greater variation, because Pinus ponderosa is a hardier tree than the white pines. It will subsist under conditions of soil and climate where the white pines cannot.

Q. Have you ever had occasion to notice any indications of durability in down timber and the stumps of logged-off timber as regards the contrast, if any, between the genuine white pines and Pinus ponderosa?

A. No; nothing that would give any dependable results.

Q. Have you yourself ever made any study on the question
2110 of comparative durability?

A. No, sir.

Q. Now, is there any difference between the average ability of the so-called genuine white pines and Pinus ponderosa as regards staying in place—that is, shrinkage and warping, and characteristics of that kind?

A. Well, I really cannot answer that question from my own knowledge. I am not a wood technologist. I do not wish to assume such qualifications. I will answer in this way: That from my contacts with lumber users, with the investigations made at the Forest Products Laboratory and elsewhere——

Mr. WHEAT. Mr. Examiner, if the gentleman states that he is not a technologist, he cannot answer a question on shrinkage. Therefore I must object to him making some general statement on the matter.

Mr. BURR. I wish you would finish your statement so far as you can, but without characterizing a wood in that respect until counsel has an opportunity further to object. Will you read the answer as far as he had gone?

(Answer read.)

The WITNESS. I believe that——

By Mr. BURR:

Q. Have you any other sources of information besides those you have just stated?

A. And material about woods that I have read?

Q. Yes.

2111 A. I believe it is true——

Mr. WHEAT. Now; if the examiner please, he is now about to make a statement. I object to any statement based upon such general matters.

Mr. BURR. Let me ask you another question or two.

Examiner DE BRULER. I think he can answer that for what it is worth. Let him go on and finish that. Let's see what he was going to say.

Mr. WHEAT. I reserve the right, of course, to move to strike. I don't want to be held down on the ground that I have not been timely on the objection.

Mr. BURR. There will be no objection that your motion is not timely.

The WITNESS. I believe it is true that the woods of the genuine white pine are regarded by the trade——

Mr. WHEAT. I will ask that any such statement be not received, Mr. Examiner, because it is not responsive to the question. The question was on this matter of shrinkage.

By Mr. BURR:

Q. Well, now, in view of your experience and your exceptional means of ascertaining the facts which you have outlined, which you obtained in your official position and other experience, will you state what the reputation of genuine white pines for durability is as contrasted with the reputation of Pinus ponderosa for durability?

Mr. WHEAT. Now, Mr. Examiner, this is an entirely new

2112 question. He is now talking about durability. Have you eliminated your question on shrinkage? Your question was one of shrinkage.

Mr. BURR. Fix that last question and put "shrinkage" in place of "durability."

Examiner DE BRULER. Now you may state your objection.

Mr. WHEAT. Well, I have stated my objection.

Examiner DE BRULER. The objection is noted and an exception allowed. The witness may answer. Read the question as it is now.

(The last question was read, as follows: "Well, now, in view of your experience and your exceptional means of ascertaining the facts which you have outlined, which you obtained in your official position and other experience, will you state what the reputation of genuine white pine for shrinkage is as contrasted with the reputation of Pinus ponderosa for shrinkage?")

A. The genuine white pines have the reputation of holding shape and form in service more closely than lumber of Pinus ponderosa.

By Mr. BURR:

Q. As an average?

A. As the average.

Q. Now, as a matter of common repute and reputation, what is the comparative position of Pinus ponderosa and the genuine white pines as to durability?

Mr. WHEAT. Now, if the examiner please, the witness has
2113 just made a statement previous to this matter of shrinkage, which I have taken down, to the effect that he has not made any study or comparison whatsoever.

Mr. BURR. I am now asking him common repute.

Examiner DE BRULER. The objection is overruled and exception noted. You may answer. You may answer now as to the reputation.

A. The genuine white pines have the reputation for greater durability in uses exposed to the weather. That would not apply to interior uses protected from the weather.

Q. (By Mr. BURR.) Now, upon the ground of the differences and reputed differences in these woods used as lumber, is there a public interest in the protection of the genuine white pines from the use of the word "white" in connection with Pinus ponderosa products?

Mr. WHEAT. Now, if Your Honor please, we are getting on a point which is the exact question which this Commission must determine. That is the question on which Your Honor must make your finding, and to ask any witness to make a statement exactly on that, not to ask him the facts on which that is based only, I think, is going far beyond what the Federal Trade Commission or any court would ever allow.

Mr. BURR. If the examiner please, I would like to say just a word on that subject: Prior to the decision of the Supreme
2114 Court in the "Shape Shop" case, which came up from the District of Columbia, as you may recall, Your Honor, prior to that decision I did not ask questions with regard to public interest except insofar as the defense went into those topics, but inasmuch as the Supreme Court has now held that the findings of public interest by the Commission is not a final determination, but must be reconsidered by the Commission on evidence and must furthermore be reviewed by the courts if it come to the courts, it seems to me that we have a right to prove the matter of public interest here, and perhaps the language of my complaint, or my question, was not as——

Examiner DE BRULER. I am familiar with that decision.

Mr. BURR. Careful, perhaps, as it should have been, but it seems to me that the objection is rather captious, because I can make four or five questions that lead up to this——

Mr. WHEAT. I will ask, Mr. Examiner, that these questions be asked, because the gentleman is now asked for the conclusion which the Commission must make, and from every basis of law and every decision, including the "Shade Shop" decision, which I am also familiar, certainly, with, it is held in that decision to be a final conclusion on which the Commission must make its finding.

Examiner DE BRULER. Will you read the question, please?

Mr. BURR. I think, strictly speaking, counsel is correct. I don't object to the expenditure of time that may be taken.

Examiner DE BRULER. Go back and read the question.

2115 Mr. BURR. It will probably put me in a stronger position myself. Please don't trouble to rule differently on that question. In other words, I don't press the question at this time.

Q: Have you given consideration, Colonel, to the effect upon the ultimate consumer of the use of the word "white" in connection with Pinus ponderosa products?

A. Yes, sir.

Mr. WHEAT. If Your Honor please, this witness has not stated that he knows anything about the use of——

Examiner DE BRULER. Objection overruled; exception noted.

Mr. WHEAT. I have not completed my objection, Your Honor. Certainly I have the right to make my objection.

Examiner DE BRULER. Yes; go ahead.

Mr. WHEAT. I will now make the objection that the witness has not stated as yet if he knows, and what the extent of his knowledge is, as to the use of the word "white" on products of Pinus ponderosa. I think that ought to be shown before he is asked this. I have no doubt he is qualified on the matter.

Mr. BURR. I will show that.

Q. Colonel, have you observed that Pinus ponderosa products are being sold on the market as California white pine, Arizona white pine, New Mexico white pine, or any one of those three?

A. Yes.

Q. Is that term "California white pine" reasonably widely known among lumber circles?

2116 A. Yes.

Q. How long has that been the case, sir? How long have you had personal knowledge of it, perhaps, I should say?

A. For at least twenty years.

Q. Those products are marketed in a large area under the trade name "California white pine", and the others that I have mentioned, are they?

A. Yes.

Mr. BURR. Now, Mr. Reporter, can we go back to that last question that I asked?

(The record was read as follows: "Have you given consideration, Colonel, to the effect upon the ultimate consumer of the use of the word 'white' in connection with Pinus ponderosa products?—A. Yes, sir.")

Mr. WHEAT. Of course, the witness has already answered the question, but I desire to object to the question as to whether he has considered the effect on the ultimate consumer, because there has been no foundation as to whether he knows whether there is any effect on the ultimate consumer, or what he considers to be the ultimate consumer, and that is exactly one of the other questions on

which the Commission, as a matter of law, must make its finding in this case.

Mr. BURR. Well, I will lay the foundation still further. I think counsel is getting a little bit captious, but I will waive the present question.

2117 Q. Colonel, is the question of trade names an important one in the lumber industry? Is nomenclature a negligible matter or is it an important one?

A. It is important.

Q. In what respects is it important?

A. It is important from a number of respects, among which is that of accurate identification of the product that is being offered to the trade.

Q. Now is that an element of importance of any weight to the ultimate consumer of woods?

A. Yes, sir.

Q. Now, in what respect does it affect the ultimate consumer?

A. The ultimate consumer should have assurance in commercial practices that he is actually obtaining the species and grades of lumber which he desires to obtain.

Q. Now, in view of the reputation of Pinus strobus in various parts of the country, do you have experience and knowledge sufficient to say whether or not white pine is ordered by consumers with the purpose of obtaining Pinus strobus?

Mr. WHEAT. If the witness knows.

Mr. BURR. Yes; I said in his experience.

A. I have been advised——

Mr. WHEAT. Now, I object to any hearsay testimony.

A. In individual cases by consumers. That is the only way I can answer your question.

2118 Mr. WHEAT. I shall object to his answer on the ground it is entirely hearsay.

Examiner DE BRULER. He may answer the question. He is stating it as a fact that he has been advised——

Mr. WHEAT. Well, now, if Your Honor please——

Examiner DE BRULER. By the consumers. He says he has been advised by the consumers.

By Mr. BURR:

Q. That is a customary matter, is it not?

A. What is?

Q. That is a customary matter, for architects to order white pine, isn't it?—specify white pine?

A. In many instances; yes.

Q. The reputation in the architect's trade of white pine, as well as the ultimate consumer, is well known, isn't it?

A. Yes.

Mr. WHEAT. I object to any further questions on architects, because this witness has not qualified as an architect. He has not stated that he ever has been an architect.

Examiner DE BRULER. The objection is overruled and exception noted.

Q. (By Mr. BURR.) Now, as a result of your experience, can you say whether or not the trade term "white pine", as used for Pinus ponderosa products, has a capacity and tendency to confuse the ultimate consumer?

Mr. WHEAT. Now, before that is answered, I shall refer to
2119 page——

Mr. BURR. I will concede it is in the complaint.

Mr. WHEAT. No, Mr. Burr; page 1028 of this record. It was ruled by the examiner that a question as to a tendency to mislead the consumer could not be asked in this case, and that having been a ruling in this case, I assume that we must follow it.

Mr. BURR. I think the other examiner, if he were present, has the power to revoke the ruling, just as the Supreme Court said——

Examiner DE BRULER. How does that question read?

Mr. BURR. I think that this examiner may properly rule or overrule as he pleases.

Mr. WHEAT. Have you a copy of that transcript with you, sir?

Mr. BURR. I have it in my trunk, which is on the way to San Francisco.

Mr. WHEAT. Now, I will again refer to page 1028 of that record, at which point the examiner hearing this case stated that this question of tendency to mislead was, in his opinion, the precise question which the Commission must ultimately determine, and that it was not a proper question to be asked of any witness.

Examiner DE BRULER. I didn't get this question. Will the reporter read the question?

2120 (The last question was read.)

Examiner DE BRULER. Have you any facts, any knowledge, upon which to answer that as a fact?

A. Only information given me by lumber dealers and consumers.

Mr. WHEAT. Your Honor, I renew my objection on the ground that it is also hearsay.

The WITNESS. I have never individually ordered white pine and received Pinus ponderosa. My information on this is necessarily what I have derived from people who have done so.

Mr. BURR. If the examiner please, the circuit court of appeals has twice in a New York district ruled that the Commission may receive evidence which is subject to a strict objection in courts of law.

Examiner DE BRULER. I understand that.

Mr. BURR. And the courts have held the same thing with regard to the Interstate Commerce Commission, and it seems to me that inasmuch as this is information from a man who has had an exceptional opportunity to find out just exactly what the situation is from his eight years in the chief forestry position in the country, it seems to be that this is the very kind of thing to which the New York Circuit Court of Appeals referred when it said that the Commission may take into consideration matters that will influence business men

and upon which business men might base their conclusions and spend their capital.

2121 Mr. WHEAT. Will you cite that case, please, sir?

Mr. BURR. I cannot cite it right now, but there is such a case, sir.

Mr. WHEAT. Will you furnish me the citation?

Mr. BURR. I will be glad to furnish you with the citation when I get back to Washington and brief this thing, but I am not going to do it on this trip.

Examiner DE BRULER. Has anyone ever spoken to you that had been misled in regard to the purchase of this lumber?

A. Not individually misled; no, sir. The dealers and others have told me what their judgment was of the effect of the name upon the consumer.

Examiner DE BRULER. We won't go any further with this, then. We won't go any further with this. Let it stand for what his statement is worth.

Mr. WHEAT. He has not answered the question yet.

By Mr. BURR:

Q. Does white pine in the former strobus-producing States mean something definite? Is there a definite concept in the public mind with regard to the characteristics and qualities of Pinus strobus?

A. Yes.

Q. And those are the qualities, in general, roughly speaking, that you outlined at the beginning of your testimony, or substantially the beginning; is that true?

A. Yes. The qualities are: Very soft, easily worked, easily

2122 machined wood.

Q. Does the consumer, in ordering white pine, in your judgment and as a result of your experience, believe that he is getting genuine white pine?

Mr. WHEAT. Now, if the examiner please, that goes even farther than the other question.

Examiner DE BRULER. Objection sustained.

Mr. BURR. All right.

Q. Now, have the genuine white pines a high degree, compared with Pinus ponderosa, of adaptability to high-priced specialty use, particularly where exposed to the weather?

A. Yes.

Q. Will you explain what that situation is in that respect?

A. Such uses as very high-grade millwork, door entrances, high-grade cornices, where the lumber or the fabricated lumber must be of uniform texture, easily worked, and hold its shape and form after fabrication, is one example.

Q. How about pattern work?

A. Pattern work?

Q. Yes.

A. The old-growth white pine has a very high reputation for pattern work, because of its uniform soft texture, ease in working, and ability to hold the pattern after it is cut.

Q. Is sugar pine in that class?

A. Sugar pine?

2123 Q. Yes, sir. Is Pinus ponderosa a good wood for pattern purposes?

A. The best product of Pinus ponderosa is used for that purpose to some extent but is not as highly regarded for it as the genuine white pine.

Q. Now, for such purposes, in your judgment, should the term "white pine" be protected for genuine white pine lumber?

Mr. WHEAT. Now, if the examiner please, I object to that. The ground of my objection is that which was stated to the former question—first, that that is the ultimate fact, the ultimate question, on which a finding must be made by the examiner and the Commission; and second, that it is purely heresay.

Examiner DE BRULER. Objection sustained.

Q. (By Mr. BURR.) In what way, Colonel Greeley, in your opinion, can the ultimate purchaser of these specialty products to which you have referred be protected when he desires genuine white pine for those purposes?

A. I believe he should be protected by——

Examiner DE BRULER. He asked you how he can be protected.

A. Well, he can be protected by limiting the use of the word "white" to lumber products of the genuine white pine. That is one method, and the most obvious method.

By Mr BURR:

Q. Is he protected at the present time, in view of the wide sale of ponderosa pine as various descriptions of white pine, including the term "California white pine"?

2124 A. No; not completely, at least.

Q. If you were in need of lumber and placed an order for white pine, what product would you expect to receive?

Mr. WHEAT. Now, if the examiner please, what product he would expect to receive——

Q. (By Mr. BURR.) What kind of lumber would you expect to receive?

Mr. BURR. I think your objection was captious.

Mr. WHEAT. I am not intending to make any captious objections in this case. There are very important matters, in which a large industry is involved.

Examiner DE BRULER. You may answer the question.

A. I would expect to receive lumber from a genuine species of white pine.

By Mr. BURR:

Q. You would expect to hold the contractor up to that level, would you?

A. Yes.

Q. Now, I wish you would turn to the question of reforestation. Has there been a widespread reforestation, so far as you know, in Pinus strobus—or first let me ask you what opportunities to observe you have availed yourself of, if any, of reforestation matters, in various varieties of lumber, if you would kindly state that briefly.

A. During my last fifteen years in the Forest Service, I was quite closely in touch with reforestation work, both of the
2125 Federal Government and of the various States who were so engaged, and to a considerable extent on the part of private forest owners.

Q. Did you actually go out and observe this line of work?

A. In a great many instances.

Q. And a great deal of it was conducted under your administration with the Forest Service; is that true?

A. As far as national forests were concerned; yes.

Q. That is what I mean.

A. The Government was also cooperating financially with some thirty States in the maintenance of State nurseries and the distribution of planting stock, and it was part of my duty to keep in touch with that.

Q. And did you have a special division or branch of your Bureau that was in charge of that work and under your supervision?

A. Yes, sir.

Q. How many men, approximately, would you say were under you in that capacity?

A. On the national forests approximately twenty-five men were employed primarily in nursery work and timber planting. In addition to that we had some three or four inspectors of the cooperative work with the States who kept in touch with the State nurseries and planting.

Q. Now, did you spend considerable time in the field supervising this work and seeing what the results were, and so forth?

2126 A. Quite a good deal.

Q. Now, about Pinus strobus, is that being reforested to a considerable extent by these various agencies you have described?

A. Pinus strobus has been planted more extensively than any other species in the Northern and Northeastern States.

Q. How far west would you call northern and northeastern?

A. Including Minnesota. In the national forest plantings in my former district of Idaho and Montana, the Idaho white pine, or western white pine, was more extensively planted than any other species.

Q. Now, could you be a little more specific in some fashion—I don't know whether it is a fair question—but can you give us an idea, roughly, or as accurately as possible, of the acreage or the number of trees, something to tie this with more definiteness; square miles, or something?

A. I made an estimate in 1926 that the extent of annual tree planting at that time amounted to about forty million trees a year, of which probably sixty percent represented species of genuine white pine. The planting projects of such large States as New York, Pennsylvania, Massachusetts, Vermont, and so on, to a considerable extent in the Lake States, use white pine more largely than any other species.

Q. Now, when you speak of millions of trees, could that be translated into acreage? How many to an acre would that represent?

A. Approximately a thousand trees to the acre.

2127 Q. Have you given any study to this disease of genuine white pine known as blister rust?

A. Yes.

Q. Do you regard that as an agency that is going to destroy these white-pine forests?

A. No.

Q. You think it can be controlled, then, do you?

A. Yes.

Q. Is it in process of being controlled at the present time?

A. It is under pretty fair degree of control in the Northeast, where its presence has been known for the longest time and the controlling operations have been most active. I personally examined a number of areas in New England where the blister rust has been present for years, where I believe that while some damage will be caused, some timber will be destroyed, in all probability it will be fairly well controlled. In the West the situation is much less definitely known. The disease has but lately been found in the western white-pine areas, and it is a serious menace and a question, but in my judgment it will be controlled.

Q. And that control is by virtue of the destruction of certain vegetation, is it?

A. One of the methods is to destroy the alternate host plants of the Ribes family, gooseberries and currants, apparently the most successful method of controlling the disease.

Q. Now, those plants are alternate hosts, are they?

2128 A. Yes.

Q. By the by, is that rust vegetable or animal?

A. It is a fungus; it is a vegetable organism.

Q. After a part of the white-pine forest has been infected, then the destruction of the alternate hosts will not stay the pestilence?

A. Yes.

Q. It will or will not?

A. It will. The pest can only extend from tree to tree through the alternate host. Once a tree becomes infected, that tree is doomed to probable slow death; but before other trees can be affected the pest must find the alternate host on which to repropogate itself and redistribute itself.

Q. In other words, pine tree B cannot catch the disease from pine tree A?

A. No, sir.

Q. It has got to have the gooseberry or the currant in order to catch it from the other tree through an intermediary; is that true?

A. That is the information that the experts have given us.

Q. Now, returning again to the question of pattern stock, what are the characteristics and qualities required for pattern stock beside those that you mentioned? Is uniformity of texture one?

A. Uniformity of texture, softness, clearness from any defect or blemish, and ability to hold the pattern after cutting.

2129 Q. Uniform workability throughout?

A. Uniform texture throughout.

Examiner DE BRULER. Do you mean by that lack of shrinking?

A. Lack of shrinkage, lack of warping. Patterns are often of considerable width; and if the boards should warp or twist, why, of course, the value of the pattern is destroyed.

Q. (By Mr. BURR.) Do you think there is any relation, Colonel, between the good will of the public toward the lumber industry and the use of proper nomenclature in the sale of lumber?

Mr. WHEAT. Now, if the examiner please, this is going very far afield. I submit it is entirely immaterial to the present issue as to whether the name "California white pine" in and of itself does work a misleading of the public.

Mr. BURR. If the examiner please, that is a part of the public interest. I am not asking him now as to public interest. I am asking him a specific question, and it goes directly to the public interest.

Examiner DE BRULER. Let me get that exact, please.

Mr. BURR. If there is not a public interest in the welfare of the lumber industry, I am very much disappointed.

Examiner DE BRULER. Let me get that exact, please.

Mr. WHEAT. We submit there is a public interest in the welfare of the lumber industry, Mr. Burr.

Examiner DE BRULER. Will you read the question?

2130 (Last question read.)

Examiner DE BRULER. Are you in a position to answer that?

A. I can only express my opinion, sir.

Examiner DE BRULER. Give your opinion as an expert.

A. Yes, sir.

By Mr. BURR:

Q. What is that relation, please?

A. I believe the good will of the public toward the lumber industry will be strengthened if the public is assured of an exact identification of the woods which it purchases.

Q. Are you familiar with the tree from which the so-called Douglas fir is manufactured?

A. Yes.

Q. What is that tree?

A. Do you mean the botanical——

Q. Well, botanical or the common designation, either or both.

A. The common name for it is Douglas fir.

Q. And that botanically is not a genuine member of the Abies variety of tree, is it?

A. That is correct.

Q. It is, you say?

A. It is not a true fir.

Q. Abies is the genuine fir, is it?

A. Yes; fir and balsam.

Q. Are you a trained specialist in the technique of botany?

A. No, sir.

2131 Q. You don't claim to be an expert on that subject?

A. No, sir.

Q. Now, is the so-called Douglas fir sometimes called Oregon pine in the trade?

A. Yes, sir.

Q. That is more in the export trade, isn't it?

A. That is the old name for it, the original name under which it was put on the market.

Q. Now, applying common terms, strictly speaking, that is a false hemlock rather than a real fir, is it?

A. Well, the botanical name Pseudotsuga is built up on a combination of Latin terms that may be interpreted as meaning "false hemlock", but it has no botanical relationship to the hemlock. It is simply a distinct species of its own. It is neither a true fir nor is it a balsam; it is a distinct species of its own, with its own characteristics.

Q. In other words, it belongs to a separate genus, does it, rather than a species of some other genus?

A. Yes.

Q. Now do you regard that naming of the tree that you have described as a fir when it is not a fir as one that is deceptive to the public?

Mr. WHEAT. Now before that question is answered, this question applies to matters not at issue in this case, and is far afield

2132 from anything that is in issue in this case, and appears to us to be an attempt to throw some other wood in the case. I believe it is totally immaterial and should not be allowed weight.

Mr. BURR. If the examiner please, I think counsel is correct, with this one qualification: Counsel himself has injected this tree into the record when Professor Record, of Yale, was on the stand. He has brought this thing—dragged this thing—into the record without any particular excuse, so far as I could see. I am going to settle the thing now.

Examiner DE BRULER. I remember that, and I remember it was not objected to. I will let it go in.

Mr. BURR. I objected to it that one time it was offered. Now he turns around and objects to it. I think I was right in the beginning.

Mr. WHEAT. I think I shall have to now state the purpose of any questions we asked as to Pseudotsuga taxifolio: that in the lumber business it has not been the custom in general, in the making of common names for lumber, to follow purely botanical distinctions. Now we have no purpose beyond that, and we don't believe that the question of the proper name of Douglas fir can be brought into this case, nor do we wish to bring it in this case. We don't believe it is proper in this case, and we assume that the Commission could make no findings on that point in this case. Therefore, it is purely immaterial to this case.

2133 Mr. BURR. May I say just one word before the examiner rules. I want to show here the distinction between the misnaming of this wood and the misnaming of the woods that are here in interest. That will take the entire relevancy out of the matter entirely.

Examiner DE BRULER. All right; you show it.

Mr. WHEAT. Just a moment.

Examiner DE BRULER. The objection is noted. The objection is noted and overruled.

Mr. WHEAT. Save an exception.

Mr. DE BRULER. Exception allowed. You may answer that question.

Mr. BURR. Now does he know anything about what the question is about?

(Last question read.)

A. No; it is not.

Q. (By Mr. Burr.) Will you state why? What is the distinction between the naming of ponderosa as and for white pine and the naming of this particular species as fir when it is not a fir? What is the practical difference between those two misnomers?

Mr. WHEAT. Now, Mr. Burr, do you refer to your word, "deceptive" that you used in your other question?

Mr. BURR. Beg pardon?

Mr. WHEAT. Do you refer to your word "deceptive" that you used in your other question?

2134 Mr. BURR. I think the question is able to stand on its own feet and is clear. I will stand on that question.

Mr. WHEAT. Then, if the examiner please, I want the record to show very definitely that any question which involves a conclusion of deception on the part of this or any other witness in this case is objected to on the grounds which have been maintained by the Trade Commission in innumerable cases; that that is the final question which the Commission must determine. Now, the question of deception certainly cannot be proved by asking the witness whether there is a deception.

Examiner DE BRULER. Do you recall the question? I don't recall just the question.

(Last question read.)

Examiner DE BRULER. The objection is noted and overruled; exception allowed. You may answer the question, if you can.

A. The practical difference in this case, in the case of ponderosa pine, the wood which, in my judgment, at least, is not equal in quality to the long-established woods known as white pine, has used the term "white" in its common nomenclature. In the case of Douglas fir the shoe is on the other foot. Douglas fir has commercial qualities very distinct from the true firs, and for all ordinary uses of lumber superior to those of the true firs. To the extent there may have been any confusion in name between the Douglas firs and the true firs, that confusion has run to the injury of the lumber-
2135 men and not of the consumer. As a matter of fact, Douglas fir, having such distinctive qualities and such large-scale production, has, as far as I know, very seldom carried any conception to the user as being a true fir; but we have had some situations where users objected to Douglas fir, thinking that it was white fir, where the injury, if there was one, was to the lumber business producing Douglas fir rather than to the consumer that is buying it.

Q. Do you know of any misnomer that is confusing to the buyer other than the one as to which you have testified heretofore as to the white-pine situation?

Mr. WHEAT. Now, if Your Honor please, certainly this is going far beyond even the last question.

Examiner DE BRULER. You object to that, do you?

Mr. WHEAT. Yes; I certainly do.

Mr. BURR. May I say, before the examiner rules, opposing counsel has asked Professor Record and other witnesses with regard to the juniper situation and the cedar situation, and—I don't know—one or two others, certain matters that I did not know about and have not borne in mind; and it seems to me that without going into each one of these situations, I may ask the witness whether he knows of a misnomer in the lumber trade that is comparable to this misnomer of the white- and yellow-pine situation, or the white pine and the ponderosa situation, I should say, so that we may have an offset for the questions that this gentleman has already asked of my
2136 witnesses and presumably will when he has his own botanical expert on the stand.

Mr. WHEAT. Now, if the examiner please, this certainly is opening the jackpot; and I now state that I will offer—if this question is sustained—I certainly will offer a very large amount of evidence as to all types of misnomers in the lumber business, and I assume that those questions go into this record from now on.

Mr. BURR. If the examiner please, what I am doing is to make irrelevant all this immaterial matter. I am now eliminating the necessity to try all of these cases. He has injected this in here, and I must answer pro tanto, and no further, and my desire is here not to try all these other misnomers, but to show that there are no such misnomers as would affect this situation. If I am wrong, why, I will withdraw the question.

Examiner DE BRULER. I think we are going outside the record, in my judgment.

Mr. BURR. I will withdraw the question, then. I don't want to be a particeps criminis in trying other cases. I think counsel has been at fault in that respect.

Mr. WHEAT. I warn counsel now that I certainly shall expect, under the ruling of the examiner as to Douglas fir and going into it in the way you have, I shall certainly offer testimony going into the complete lumber business as to this matter. You have opened the jackpot, and I certainly shall continue it.

Mr. BURR. I want to make an offer to stipulate right now,
2137 which it seems to me will cover this whole situation. My questions here have been protective merely; they have been in the nature of rebuttal in order to, in turn, cover this question. I have put them in, perhaps, out of order. I want to say right now that I will stipulate to withdraw this question and this answer, anything relating to Douglas fir, if counsel will admit that his questions with regard to Douglas fir and regarding these other misnomers having nothing to do with the white-pine situation may be withdrawn.

Mr. WHEAT. I don't want to stipulate to anything of that character.

Mr. BURR. Of course, you don't. You are the one that wants to go into this. That is your proposition here. He has not been sincere with the commission.

Mr. WHEAT. I ask that the last statement of counsel be expunged from the record, Your Honor. I would ask that the reporter read it.

Mr. BURR. If counsel is sincere in bringing these questions in, I will ask to remove it.

Mr. WHEAT. He is making that statement for the record.

Examiner DE BRULER. Just wait a minute.

Mr. BURR. I withdraw my consent to expunging it and ask that it be left in the record, sir.

Mr. WHEAT. Fine, sir.

Mr. BURR. I want my statement there a moment ago in the record.

2138 Mr. WHEAT. All right; I want it in, too.

Mr. BURR. We are all satisfied. Now, let us go forward. Now, is my offer to stipulate in the record?

The REPORTER. Yes, sir.

Mr. BURR. That is all, sir. You may cross-examine.

(Short recess.)

Mr. WHEAT. I assume, Mr. Burr, that we probably cannot complete the cross-examination of Colonel Greeley prior to the noon recess.

(Discussion off the record.)

FRED W. ROBLIN was thereupon called as a witness and, having been duly sworn, testified as follows:

Direct examination by Mr. WHEAT:

Q. Now, Mr. Roblin, where do you reside?

A. I reside eight miles from Portland.

Q. But you are in business in Portland, are you?

A. In Portland.

Q. What is your business, sir?

A. I am the manager of the pine department of the Morrill & Sturgeon Lumber Company.

Mr. BURR. What lumber company?

A. Morrill & Sturgeon.

2139 By Mr. WHEAT:

Q. Are they wholesalers or retailers, or what end of the lumber business are they in, sir?

A. We are wholesalers and manufacturers, both.

Q. Do you produce lumber?

A. We produce lumber; yes, sir.

Q. In the State of Oregon?

A. In the State of Oregon.

Q. In other States?

A. No.

Q. Where do you market your lumber, not only that which you produce but which you wholesale?

A. In practically every State in the United States and some in Canada and foreign countries.

Q. Taking into consideration only the pines, what species of pines do you market?

A. Pondosa pine, Idaho white pine, coast white pine, sugar pine, California white pine, and the allied species, like fir and larch.

Q. Yes; but I am speaking only of pine for the moment.

A. Those are the pines.

Q. Do you know whether or not the so-called, what we have called, coast white pine is the same botanical species as any other of those mentioned by you?

A. I do.

Q. What is it allied to?

2140 A. Pinus monticola.

Q. And that is the same botanical tree which is also called Idaho white pine, is it?

A. It is.

Q. The Pinus monticola, which is called Idaho white pine and grown in the inland empire region, is it?

A. Yes, sir.

Q. And that which is grown on the coast, here on the Pacific coast, is called coast white pine, is it?

A. Coast white pine.

Q. That is a trade term for it?

A. A trade term.

Q. Speaking now, botanically again, are there any other words that you would use which refer to the same botanical species. Take

the word "pondosa"; does that refer to the same botanical species as any of the other words you have mentioned?

A. No; it does not refer to either of those that I have mentioned.

Q. But does it refer to any one of the other pine names you mentioned?

A. It does.

Q. What is it?

A. California white pine.

Q. Those two are the same botanical species?

A. They are the same botanical species.

2141 Q. If you know, what is the botanical name for that species?

A. Pinus ponderosa.

Q. Now, how long have you been selling Pinus ponderosa lumber?

A. Do you mean as Pinus ponderosa?

Q. No; lumber produced from the tree Pinus ponderosa under whatever name.

A. Twenty-six years.

Q. Has that experience taken you, yourself, into the eastern markets?

A. It has.

Q. And you have also been connected with it, have you, in the western end?

A. Yes, sir.

Q. Have you both bought and sold lumber produced from Pinus ponderosa?

A. Yes, sir.

Q. Do you sell Pinus ponderosa extensively under the name "California white pine"?

A. We have done so.

Q. Do you sell it extensively under the name "pondosa pine"?

A. To some extent.

Q. How long have you been using that term, sir?

A. About two years.

Q. I see. Did you adopt that term when it was adopted by the Western Pine Manufacturers' Association?

2142 A. Shortly after that.

Q. Now let me ask you whether or not in marketing your pondosa pine in the general markets which you serve you find yourself hampered by the use of the trade name "California white pine" by producers of lumber from Pinus ponderosa in California?

A. I am afraid that I didn't quite get the question.

Q. I will reframe it then. Do you find in selling the so-called "pondosa lumber" you meet with any sales resistance because of the use of the term "white" in the trade name "California white pine"?

A. No.

Q. That covers your entire experience in selling this lumber, does it?

A. Practically ninety-nine percent of it.

Q. Now in marketing your Idaho white pine, do you find that there is any sales resistance—do you meet with any sales resistance—because of the use of the word "white" in the trade term "California white pine"?

A. I don't confuse those two words in my sales.

Q. All right.

A. I cannot recall now of having had anything that I would call sales resistance.

Q. How long have you been familiar with the term California white pine?

A. Well, I would say, off-hand, twenty-five or twenty-six
2143 years; possibly longer than that.

Q. Now, when you get an order for white pine what do you ship ordinarily and what is the custom in this area?

A. Pondos pine.

Q. Is that generally understood in the trade with which you deal?

A. With the trade that I deal with; yes.

Q. Have you ever had any complaints as to that? If so will you state what they have been as to the use of that?

A. I have had no complaints as to the question of "white" in my sales.

Q. In your opinion and from the customers with which you have deal in your sales—or let me reframe that: Do your customers ask you botanical names of species?

A. Not as a rule.

Q. And when they do, do you explain the botanical names?

A. I try to.

Q. Do you explain them along the lines that you have testified to this morning?

A. Yes.

Q. Have you found that your customers in general are interested in the botany or the number of needles on a tree?

A. No.

Q. Are they interested primarily in the quality and utility of the lumber produced from that tree?

A. Yes.

2144 Q. Now can you approximate the volume of business that you had in a year in California white pine, pondosa, and Idaho white pine—just approximately?

A. Well, it has varied so greatly that it is hard for me to say. My sales on those woods have decreased considerably and I kept a record for a long time, and I found in 1917 and '18 that I sold nearly eight thousand cars of lumber in that twelve months, and I have had years since when I was lucky if I sold twelve hundred cars. It has varied according to business conditions, and it is pretty hard to say. I am selling lumber every day, and I would like to sell much more than I am.

Q. Just forgetting the present slump in the lumber business, of course, has your sales of pondosa and California white pine been growing?

A. No; it has not been growing.

Q. And is that due to general lumber conditions?

A. I think so.

Q. Have you had any experience with the remanufacturing of these products?

A. I have.

Q. Will you tell the Commission which lumber, in your opinion, and on the average, works better in the machines generally used for remanufacturing purposes, Idaho white pine or the Pinus ponderosa?

A. Pinus ponderosa.

2145 Mr. BURR. May I ask that that question be read?

(Last question read.)

By Mr. WHEAT:

Q. Have you noted any particular changes in uses to which pondosa pine is put in the general market since its name was changed from western white pine to pondosa?

A. Not in my own business.

Q. Do you believe that Pinus ponderosa lumber which is of a grade useful for those purposes is suitable for high-grade machine work?

A. I do.

Q. Is it, in your opinion, suitable for such high-grade millwork as cornice work?

A. It is.

Q. And other high-grade mill and specialty work?

A. It is.

Q. Did you ever have any complaints to the effect that grades of that wood suitable in general for such uses were not suitable because they were Pinus ponderosa?

A. No.

Mr. WHEAT. I think that is all, sir. You may cross-examine.

Cross-examination by Mr. BURR:

Q. Mr. Roblin, is your concern actively engaged in selling and manufacturing all of the four varieties that you refer to in

2146 your testimony, the coast white pine, the pondosa pine, Idaho white, and the California white?

A. No.

Q. Which of them are you now engaged in actually logging off the land?

A. We are actually manufacturing at the present time pondosa pine. In that pondosa pine we occasionally come across some Pinus monticola.

Q. That is your coast white pine, is it?

A. Or Idaho white pine.

Q. Yes. In other words, the monticola that you refer to is by you in this section designated "coast white pine." Is that right, now? Am I correct?

A. If it grows in this section; yes; if it grows here.

Q. You are talking about what grows in this section as being the lumber of that description that you are yourself engaged in manufacturing, or do you have some mills out in the Idaho white-pine section proper?

A. Well, the mill that we are operating in our pine now happens to be in eastern Oregon, very close to the Idaho line.

Q. And there it is known as "Idaho white" rather than "coast white", isn't it?

A. It is known as "Idaho white."

Q. Where are you getting your coast white pine?

A. Well, we get it from points in British Columbia, points
2147 around Tacoma, points around Grays Harbor; also around Dallas, Oreg.

Q. Well, you are jobbing them, are you not; that is, hunting up purchasers?

A. Yes; we are buying it.

Q. Now, you are actually yourselves cutting and manufacturing the pondosa pine. Are you manufacturing any of the California white pine, cutting that yourselves?

A. No.

Q. I see. You are then jobbing all but the pondosa; is that true?

A. Yes, sir.

Q. Do you job some of your pondosa, too?

A. Much more than we cut ourselves.

Q. And your jobbing operations are much larger than your manufacturing operations at the present time?

A. Yes, sir.

Q. Now, your customers are retailers entirely, are they?

A. No, sir.

Q. Retailers and jobbers?

A. They are retailers and jobbers, sash and door factories, planing mills, and industrials of that nature.

Q. Now, do you get orders for white pine occasionally without any further designation?

A. Almost every day.

2148 Q. And what do you send them when they want white pine and don't say what kind of white pine they want?

A. Pinus ponderosa.

Q. For how long has that been your custom?

A. For a good many years.

Q. Where do you get that Pinus ponderosa that you sell them when they ask for white pine?

A. From northern California, southern Oregon, eastern Oregon.

Q. Now, wait a minute. What do you mean by southern Oregon? Klamath Falls, or Bend, or what?

A. Klamath Falls—well, from Grants Pass south.

Q. Now, what do you mean by eastern Oregon?

A. From The Dalles east.

Q. Now, if they want Idaho white they have got to say "Idaho white pine" instead of saying "white pine", have they?

A. Or indicate on their order certain sizes or details.

Q. Now, is that true of your customers in all parts of the country, that you sell them in that fashion?

A. No; it would not be every place, because I have sold lumber to certain people for fifteen or twenty years, and I know exactly what they expect from me. They oftentimes don't even put the word "pine" on the order in any form or shape, they just——

Q. Ask for carloads?

A. No; they ask for one to five cars of six-quarter no. 1 shop.

Q. And then you, from your long experience, know what
2149 they want and send it to them?

A. I know what that particular customer has been using.

Q. But ordinarily an order for white pine would bring either California white pine or pondosa pine; is that true? Do you sell pondosa pine on orders for white pine just as you do California white pine, or not quite so freely?

A. Well, the trade is gradually being educated to the name pondosa pine, and a good many of them use that, although I believe that fully fifty percent of my customers just use the initial W.P.

Q. In their orders?

A. On their order.

Q. And then you would be more apt to send them California white pine than you would the pondosa; is that true?

A. I do not differentiate between those two species.

Q. You don't differentiate between those two species?

A. It is according to the supplies in my mills.

Q. Is there much difference in quality between pondosa and California white? You say you don't differentiate that?

A. A lumberman's practical difference in it—for instance, California white pine is a big tree.

Q. They are a little wider width, is that true?

A. They are a little wider, grade for grade; a larger percentage of cuttings than there would be, grade for grade, in what we term "pondosa pine."

2150 Mr. Burr. That will be all.

Mr. Wheat. Just one moment. I have a few questions.

Redirect examination by Mr. Wheat:

Q. Have you found that there is considerable variability in the wood of the Pinus monticola from the forest regions in which it grows?

A. There are decided characteristics in the wood.

Q. Will you just explain briefly what they are, how wood varies over its range?

A. The Idaho white pine, growing in the State of Idaho and in the Coeur d'Alene district, stretching down to, perhaps, Lewiston, Idaho, is a smaller tree than the Pinus monticola growing on the coast. The common type, what we call the common type in lumber, being knot-defected wood, is smaller; it is embedded into the grain of the fiber of the wood and much more pronounced in the Idaho white pine than in the coast white pine. The coast white pine is a larger tree and produces—is a very much larger tree as a rule, and produces some black knot. I have never seen any cherry red knot in it. They have told me that it existed in it, but I have never seen it. It is a larger knot. The coast white pine for shop purposes would be, in my opinion, better than the Idaho white pine. The Idaho white pine, however, would be better for structural purposes, or boxes, or something like that, than the coast pine.

2151 Q. What is the color of the heartwood of the Pinus monticola, if you know?

A. Well, it is just a little darker in color.

Q. Than what?

A. Than the sap, than the outside.

Q. Now, has this usage that you mentioned of selling Pinus ponderosa wood on orders for white pine been well understood in the trade that you deal with for a number of years?

Mr. BURR. Will you please give me that question?

Mr. WHEAT. Will you read the question?

(Last question read.)

A. I can answer that; yes. I would like to qualify just a little.

Q. I wish you would, sir.

A. One of my customers—I will mention his name, the Huttig Manufacturing Company, at Muscatine, Iowa; Roy Richards, their purchasing agent and manager, knows probably as much about pine as anybody in the industry. Everyone of his orders come out for white pine, or they come out "W. P.", or they come out without any name on it. He has never sent me an order in which he has put pondosa pine on it. Consequently, I have never felt that I was taking any advantage of my customer in any way. In fact, I thought that the wood that I shipped him as pondosa pine or California white pine was what he wanted, what he expected, and what he bought.

Q. And you have never had any complaint from him, have you?

2152 A. Never have.

Q. Now, in certain grades of wood there has been, has there, for a number of years in general, and eleminating particular market difficulties, a price differential between pendosa and California white pine? Just explain if there has been, and what it is.

A. There has been for many years approximately a two dollar a thousand difference, an average two dollar a thousand difference between the shop prices, shop grade prices of California white pine

and what we used to term western white pine, or what is called pondosa pine now.

Q. Has there been any change in that general differential since western white pine has been called pondosa pine?

A. No, sir.

Q. Now proceed. I interrupted you.

A. My trade has told me that in shop grades, factory grades——

Mr. BURR. I think I will object to what his trade has told him.

Examiner DE BRULER. Now, that would be proper in stating a fact that they had told him. Let it go in.

By Mr. WHEAT:

Q. Just state your experience as to the——

A. I found in selling California white pine that I can obtain a better price than I can for pondosa pine in shop grades.

Q. And that applied also, did it, before the name was changed to pondosa pine?

2153. A. It has always applied.

Q. Have you ever noted that there was any difference because of that change in name?

A. Not in my sales.

Q. In your opinion has the name under which the lumber is sold anything to do with that difference in price?

A. None.

Q. Do you sell any white fir?

A. Yes, sir.

Q. What is that used for?

A. Generally for structural purposes in erecting houses.

Q. And do you know whether it is also used for butter boxes and food containers?

A. Lower grades are used for that.

Q. In what way is it a good wood for that purpose?

A. It is supposed to be fairly tasteless and odorless, and has a lot of resin or pitch in it that would make it good for that.

Q. Are you familiar with a wood which is sold commonly in the market as Douglas fir?

A. Yes, sir.

Q. Do you know whether for those purposes you have mentioned Douglas fir is superior or inferior to white fir?

Mr. BURR. Wait just a moment. I am going to object to all those questions with regard to the fir proposition upon the ground
2154 that it was ruled out this morning and incompetent and irrelevant.

Examiner DE BRULER. I think that has gone far enough.

Mr. WHEAT. Your Honor, this jackpot has been opened by Mr. Burr.

Examiner DE BRULER. The jackpot has not been open. We will not go into it further. You may ask this witness that one question.

Mr. BURR. I object to that right now.

Examiner DE BRULER. It may go in over your objection. I want it understood no further questions will be gone into except that. Now, you finish up on that.

Mr. WHEAT. No further misnomers.

Examiner DE BRULER. He may answer that question.

Mr. WHEAT. Can you answer that question, sir?

A. For the purpose that you have spoken of it would be dangerous to ship Douglas fir. It would not be suitable.

Q. Why is that?

A. Well, because of pitch and because of a certain taste and odor to the wood.

Mr. WHEAT. I think that is all.

Examiner DE BRULER. That is wholly immaterial; but that is on the record, and I have let that in because I let it in this morning, and I think perhaps I should not have done so. It was in the record before, and I let it go that far.

2155 Recross-examination by Mr. BURR:

Q. Now, has eastern white pine a high reputation in the market?

Mr. WHEAT. If Your Honor please, I didn't ask this gentleman anything about eastern white pine.

Mr. BURR. If the examiner please, this gentleman has gone into matters on supposed redirect which were not proper redirect. I was very patient, and I didn't object upon that ground, because I know Your Honor would allow him to return to direct if he chose, but he has gone into a lot of matters that were not proper redirect. Now, I have got a right in my recross-examination to go into the same things he has gone into, this matter of the white pine situation, from a different aspect, and it seems to me I am laying a foundation question.

Examiner DE BRULER. What was that question?

Mr. BURR. Read the question, please.

(Last question read.)

Examiner DE BRULER. Oh, you may answer that, if you know.

A. Yes.

By Mr. BURR:

Q. Northern white pine has a high reputation, does it not, on the market?

Mr. WHEAT. We admit that, Mr. Burr.

By Mr. BURR:

Q. Now, I think you said that your trade are retailers in part?

A. Yes, sir.

2156 Q. Now, retailers are selling to a public not so well informed, of course, with regard to lumber matters as the retailer himself is, is that true?

A. Yes, I would think so.

Q. Now, do you believe that the trade that you sell to are informed as to the identity of Pinus ponderosa and California white pine as being from the same tree, or don't you think so? I am not sure what you testified.

A. Oh, I think they think it is the same tree.

Q. Now, in reselling that lumber, and bearing in mind, please, the high reputation of northern white pine, don't you think there would be some advantage to the retailer in being able to call his product California white pine, call it white pine to the trade as contrasted with pondosa?

A. It would in certain States.

Q. Which States would you say?

A. In particular, Iowa.

Mr. WHEAT. Now, just a moment. May I have the record show whether this witness retails lumber in Iowa?

Mr. BURR. He said in all parts of the country.

Mr. WHEAT. He didn't say he retailed.

Examiner DE BRULER. I think he is qualified. You can answer if you can.

Q. (By Mr. BURR.) You have got retail customers in Iowa, have you?

2157 A. I have them; yes, sir.

Mr. BURR. All right, that qualifies him, I think.

Examiner DE BRULER. You may answer.

A. In Iowa, because the German trade there come in and ask for white pine. They are given fir, hemlock, old growth yellow fir, pondosa yellow pine; anything that is a light colored wood and not a shaky wood has come to be known by the average German buyer in those towns as white pine.

Q. Now how about New England? Isn't it an advantage to the retailer to be able to sell California white pine with the word "white" in it in filling orders for white pine in New England?

Examiner DE BRULER. If you are qualified to state that.

A. I don't think they sell it as California white pine.

By Mr. BURR:

Q. Beg pardon?

A. I don't think they sell it as California white pine.

Q. In New England?

A. In New England.

Q. They sell it as white pine?

A. You mean to the customer?

Q. To the customer.

A. Yes.

Q. When they sell it as white pine, then they order it as white pine?

A. When the customer comes in for white pine, that is, when a consuming customer comes in for white pine, he will probably

2158 get more times pondosa pine than he will genuine white pine.

Q. By pondosa pine you include California white pine, too, do you?

A. It is the same tree.

Q. Yes. And if there was a complaint on the part of the customer that he was not getting white pine, if it was California white pine you sold him the retailer would be able to say, "Here, it is California white pine", better than if it was pondosa pine, would he not, that he had sold him?

A. Well, I don't believe that the average Easterner coming into the yard would ask that. I think that would be asking a technical question that would be asked by an architect or somebody like that.

Q. Well, the architect represents the consumer. Now, isn't it an advantage to the retailer when he has orders for white pine to be stocked up with California white pine with the word "white" in it than to be stocked up with pondosa pine, which he has not bought as white pine but has bought as pondosa?

A. Only for certain purposes, I would think.

Q. You would think so for certain purposes?

A. I would think so for certain purposes.

Q. What purposes would you say those were?

A. Well, the most pronounced that I could think of would be pattern lumber.

Q. I see. Well, now, how about outside finish?

2159 A. I don't think it would make any difference.

Q. Our records already shows that a good many ask for white pine for exterior finish. Now, if a man was stocked with pondosa and with California white pine, which would he be more apt to sell to the customer?

A. It would be simply a matter of price, in my opinion.

Q. Well, if they were practically the same price, if he was stocked with California white pine and with pondosa pine, and he is asked for white pine, he would be more apt to sell him California white pine, would he not?

Mr. WHEAT. Now, are you making that as a statement to the witness?

Mr. BURR. "Would he not" is a question. I have a right to lead, as you know well.

A. My answer to that would be from my own small amount of retail experience, that if I had a pile in my yard that was white pine and a pile in my yard that was pondosa pine, and the pondosa pine had cost me $40.00 a thousand and the pile of white pine had cost me $50.00 a thousand, I would want to get the $50.00 a thousand lumber out quicker than I would the forty, because I would be reducing my investment and probably be making more profit on it.

Q. Yes. Well, now, there is no thought of a differential, as a matter of fact, is there, of ten dollars?

A. In the retail yards; yes.

2160 Q. I see. Now, if the customer came to you and asked for white pine and you had something that you could say was

California white pine, would you or would you not be more apt to sell him California white pine than you would pondosa pine?

A. Well, the trouble is——

Q. Can you answer "yes" or "no" and then explain why you would do so?

A. The trouble is that I don't think that the yards carry a stock of lumber in their yard as—now retail yards, I am speaking of retail yards—as a rule as California white pine. I don't believe they carry it under that name.

Q. Then if he came in asked for white pine he would get California white pine if he happened to be best stocked in that variety; is that true?

A. That is true.

Q. I see. Now, do you think that a retailer who has called for white pine would prefer to stock with California white pine over the pondosa?

A. With the retailer it would be purely and simply, in my opinion, a question of price.

Q. You think it would be purely a question of price?

A. I think so.

Q. You think that the retailer with calls constantly coming to him for white pine would stock either with pondosa or with California white pine, irrespective of that name "white" and pay

2161 no attention to it, when he has calls for white pine constantly?

A. Well, that would depend upon the territory in which he was retailing his stuff.

Q. Now, in territories like New England, where there is a call for white pine and where the old northern white pine has the reputation that it has, now which would you prefer, California white pine with the word "white" in there, or pondosa pine, when he is going to sell on orders for white pine?

A. Well, I will tell you; ninety percent of the time the customer would probably be getting from the New England retailers spruce.

Q. Spruce?

A. That would be the best answer I could give you to that.

Q. Now, suppose architects install spruce, the risk of the retailer in that condition is very great, isn't it, when he is giving him something he is not buying at all?

A. I don't think so in the retail trade. That is, for house purposes—now you are speaking of the retail dealer, are you talking to me for residence purposes?

Q. For residence purposes; yes.

A. Now, I am a salesman.

Q. Yes.

A. And I sell all woods.

Q. Yes.

A. All soft woods that are out here, and I figure and realize

2162 that they are all very good woods, that it is a lot of bunk when——

Mr. BURR. I object to this. It is not responsive. What is the question, please?

Mr. WHEAT. I ask that the witness be allowed to finish his answer.

Examiner DE BRULER. This witness is being asked about matters in New England. Are you familiar with sales there?

A. Well, I have lived in New England.

By Mr. BURR:

Q. Where did you live in New England?

A. I lived in Boston and Brooklin, both.

Mr. BURR. I see. Now will you please read the last question, Mr. Reporter?

(Last question read.)

Mr. BURR. Now, I don't want a lot of evidence here about "all bunk." I want an answer to that question. This witness can be specific, and then he can answer and give us the reason why, explain why, he has answered "yes" or "no."

Examiner DE BRULER. Can you answer that question? Have you a sufficient knowledge to answer that question? If you have, go on and answer it.

A. Well, Your Honor, I tell you it is a little bit difficult to answer that question, because it all depends upon what the customer comes in the yard for.

By Mr. BURR:

Q. He comes into the yard for pine, for white pine, and asks
2163 for white pine. Now then, which is the more risky, for him to sell to the customer California white pine with the word "white" in it or pondosa pine?

A. I don't think there is any risk involved in either wood.

Q. He is liable if he puts in the wrong wood on an order for white pine, isn't he?

A. I don't think so; not for the particular purpose that it is wanted. If it was wanted for some purpose that I don't exactly understand now, for instance, if a man came in for a mud sill and asked the retail dealer for white pine, the retail dealer would probably say to him, "Well now, I will give you redwood or cedar, which will be much better."

Q. Oh, if he tells him, it is all right.

Examiner DE BRULER. It seems to me the question is what wood would he give if he came in and asked for one thing.

Mr. WHEAT. That has been asked and answered three times. That has been asked and answered over and over again.

Examiner DE BRULER. You are asking about the risk?

Mr. BURR. We are talking about the retailer knowing that there is a risk in selling the wrong thing. Now, it is thoroughly pertinent here, thoroughly pertinent.

Q. Now, Mr. Witness, here is the proposition: A retailer is in a locality like New England, where he has many calls for white pine—that is true in New England, isn't it?

A. Yes, sir.

Q. The old northern white pine has a high reputation in New England for its high qualities including durability where ex-

2164 posed to the weather, isn't that true?

A. Yes.

Q. Yes.

Q. Now then, here is a dealer—furthermore there is a differential in price between old northern white pine, or old strobus, and ponderosa, whether sold as pondosa or whether sold as California white pine, there is a differential in price that the retailer has to pay for it, isn't there? Isn't that true?

A. I suppose there is; yes.

Q. Now then, if the retailer stocks with pondosa and supplies it without telling him that it is not northern white pine on orders for white pine, he has not supplied an article that comes to him marked as white pine, has he, if he supplies him pondosa?

Mr. WHEAT. Let us have that question read.

(Last question read.)

Mr. WHEAT. I submit that is a speculative question.

Mr. BURR. That is true, isn't it? I am laying the foundation here. I have got a right to the answer.

A. Would your prospective customer come to the yard and ask for northern white pine?

By Mr. BURR:

Q. He comes and asks for white pine. If the man supplies him with pondosa pine, he is not supplying him with something that comes to him marked as white pine, of course, is he?

A. No.

Q. Now then, if he supplies him California white pine on

2165 an order for white pine, he is then supplying him something that comes to him with the name "white" in it, isn't he?

A. Yes, sir.

Q. Now then, the retailer receiving those orders constantly, would he or would he not prefer to stock with wood that has the word "white" in it?

A. I don't think that he would care about the name of the wood. It is the wood that he gets that he wants, not the name. He don't care anything about it.

Q. He is selling him something that the man has not ordered when he sells him——

Mr. WHEAT. Are you making that statement for the record?

Examiner DE BRULER. He has answered it.

Mr. BURR. I am doing it in just such a manner as is necessary with this witness.

Mr. WHEAT. All I am saying is, I ask that that statement be taken out of the record. Just a moment, I want a ruling on that last point, if Mr. Burr's statement is left in the record——

Examiner DE BRULER. The things Mr. Burr said is in answer to what the witness said.

Mr. WHEAT. And may it go out? And may that statement then go out?

Examiner DE BRULER. I don't know that there is any statement in there that he made.

Mr. WHEAT. Read it.

2166 (The record was read, as follows: "He is selling him something that the man has not ordered when he sells him——")

Mr. BURR. Is he not?

Mr. Wheat. Is that a question?

Examiner DE BRULER. Is that a question?

Mr. BURR. Is he not?

The WITNESS. You have got me. I was thinking about something else entirely.

Mr. BURR. We will start again.

The WITNESS. I don't know what your question is.

Mr. BURR. I am going to get an answer to this thing. I have a right to.

Examiner DE BRULER. Well, proceed.

Mr. BURR. Well, I will proceed, if I am permitted to do so.

Q. Now, Mr. Roblin, here is a retail trade; this retail trade in New England has called for northern white pine, and the northern white pine is asked for under the simple term "white pine", is it not, in very many instances? A customer believes that he is asking for northern white pine and expresses it "white pine"? Isn't that true?

A. I presume it is in that locality.

Q. Now, then, here is a retailer. Will that retailer in many instances prefer to have in stock for this trade that is asking for white pine a wood which is marked and comes to the retailer with the word "white" in it, then, to have the same wood which is

2167 not coming to him as white pine but is coming to him as pondosa?

A. Well, now, do you mean that there would be on the lumber itself the word "white pine"?

Q. No; it is invoiced to him.

A. Or pondosa pine?

Q. No; it is invoiced to him.

A. I don't think it would make any difference.

Q. Now, if there is a flareback to the retailer on the part of the architect or upon the part of the customer because he didn't get northern white pine, do you not believe that the retailer is in better shape to be able to say to him, "Well, it came to me marked California white pine, invoiced to me", I should say, "as California white pine", as contrasted with the situation where it came to him marked as pondosa pine? Now, is that clear?

Examiner DE BRULER. Now, answer that.

A. I think that the retailer——

Mr. BURR. I want a "yes" or a "no" answer.

A. I cannot answer it "yes" or "no."

Mr. BURR. Read the question, please.

Examiner DE BRULER. He says he cannot answer it "yes" or "no."

Mr. BURR. Well, he can with an explanation. I want a "yes" or "no" first and the explanation afterwards.

Examiner DE BRULER. Can you answer that "yes" or "no"?

A. No; I cannot answer.

2168 Mr. BURR. Read the question, please.

Mr. WHEAT. Now, I ask the examiner to advise the witness that if he cannot answer it "yes" or "no" he is not forced to answer it "yes" or "no."

Mr. BURR. Let me have the question read.

(Last question read.)

By Mr. BURR:

Q. Now, you can answer that "yes" or "no" and then explain afterwards, can't you?

A. I cannot answer that question. I am not going to tell you why, but you could have asked it in a different way and I could have answered it.

Q. You could have answered it if it was asked in a different way?

A. I think so.

Q. Yes. Well, now, I will try again.

Examiner DE BRULER. Can't you answer that by "yes" or "no"?

A. No, I cannot.

By Mr. BURR:

Q. Can you answer it at all?

Examiner DE BRULER. Can you answer it at all?

A. Not in the form it is in there.

By Mr. BURR:

Q. Now, suppose a retailer with these calls for white pine sells California white pine, do you not think that it will appear to the retailer as putting him in a safer position in case of a question

2169 being raised afterwards then if he had sold him something which did not have the words "white pine" in it?

Examiner DE BRULER. You can answer that, can't you?

Mr. WHEAT. I will ask that the examiner explain to the witness that he may make any explanation he desires after he has answered.

Mr. BURR. Certainly; after he has answered it he can make an explanation.

A. Yes; I think it would make a difference.

Examiner DE BRULER. Go ahead and explain it.

By Mr. BURR:

Q. Now, what difference would it make?

A. If the customer of the retailer came in and asked for California white pine——

Q. You mean for white pine? I didn't say California white pine. I said for white pine.

Mr. WHEAT. In the first question you said northern white pine and changed to California white pine.

Examiner DE BRULER. Read the question to him again.

(Last question read.)

Examiner DE BRULER. I understood your answer to that would be "yes." Was that right?

A. That is right.

Examiner DE BRULER. Now, you explain why.

A. As I say, if the customer came in and asked for California white pine——

Examiner DE BRULER. No; he didn't say that. He asked if
2170 the customer came in and asked for white pine.

A. I cannot answer that one either exactly the way I want to.

By Mr. BURR:

Q. Why can't you answer it the way you want to?

A. Because I don't understand it exactly the way that you are asking it.

Examiner DE BRULER. Read the question again. I think you can get that question. You should get it. Hurry matters up.

(Last question re-read.)

Examiner DE BRULER. That seems a simple question.

A. Well, I would like to explain to you why it is not an easy question for me.

Examiner DE BRULER. All right.

A. If the question had read "white pine" and then said that the retailer sold white pine, instead of putting California white pine in there, then I could answer your question.

By Mr. BURR:

Q. Now let me get that a little bit clearer. Here is a retailer that knows that there are orders coming in to him for white pine, not California white pine, these orders are for white pine. Now, then, if he is going to sell something that is made from ponderosa pine on those orders for white pine, don't you think it will appeal to the retailer as safer for him to sell something that has the word "white" in it than pondosa pine which has not the word "white" in it at all?

Mr. WHEAT. Now, if Your Honor please, the question as now put I will object to on the ground that whether it will ap-
2171 peal to a retailer as safer for him is not a question pertinent to the issue in this case.

Mr. BURR. Why, it certainly is.

Examiner DE BRULER. Objection overruled. You can answer that now, I think.

Mr. WHEAT. I will ask for an exception.

Examiner DE BRULER. Exception noted.

By Mr. BURR:

Q. Now, Mr. Witness, I am entitled to a bona fide straight answer to that. Won't you please give your attention to it?

Examiner DE BRULER. Read the question.

Mr. WHEAT. I will ask that Mr. Burr's statement that he is entitled to a bona fide answer—of course he is—I ask that that be expunged from this record. That has no part in this record, Mr. Burr.

Mr. BURR. I have a right to admonish the witness, of course. Everybody knows that.

Mr. WHEAT. The examiner is the man who ought to admonish witnesses.

Mr. BURR. I have a perfect right to warn the witness that he is under oath.

(Last question read.)

A. Yes.

Mr. BURR. That is all.

2172 Redirect examination by Mr. WHEAT:

Q. I would like to ask you to explain fully the reasons for your last answer.

A. If the man knows enough about wood to come in and ask for white pine and knows the true characteristics of white pine, the retailer would feel better in handing to him a piece of wood that had "W.P." on it, or "C.W.P.", or something like that.

Q. Does this wood have those letters on it?

A. California white pine is stamped "C.W.P." as a rule, where they grade and mark it.

Q. Who does that, sir?

A. Oh, I don't know, now; I would not say. In the last year or so that may have been changed, but such mills as McCloud and Red River and Pickering, people like that, put "C.W.P." on it.

Q. Do they do that now?

A. I know that some of them do it. I don't know positively that any of those that I have named do it.

Q. When have you seen this on any wood?

A. Well, I have seen "C.W.P." on wood within the past year.

Q. Well, now, the name of California white pine is well known, isn't it, in the trade?

A. Yes.

2173 Q. Throughout the country?

A. Yes.

Q. Has been known for many years?

A. Yes.

Q. And the term "C.W.P." stands for what?

A. California white pine.

Q. Now I will ask you whether or not in your opinion the term "white pine", as such in the retail trade, has come to mean something different today from what it meant forty years ago?

A. Yes; it has.

Q. Now, will you explain what that difference is?

A. Forty years ago—well, I can't say forty years ago from my own knowledge, but I can say thirty years ago.

Q. Yes. State of your own knowledge.

A. Thirty years ago there was large stands of northern white pine, cork white pine, as you call it. It was stocked all over in the—where I was living, anyway.

Q. And where was that?

A. Well, Bay City, Michigan; later in Boston.

Mr. BURR. Does this question relate to northern white pine or California white pine?

Mr. WHEAT. The question relates, Mr. Burr, to the term "white pine."

Examiner DE BRULER. Yes; go ahead.

A. And white pine was readily available in all grades and stocked by a number of yards. Nowadays it is impossible but for a
2174 few yards to obtain white pine in the sizes and grades.

Q. And by "white pine" you are now referring to northern white pine?

A. Northern white pine, that they cut thirty years ago. And there has been a change in the general handling of the lumber business due to the rapid reduction in the amount of white pine available, genuine northern white pine.

Q. Now, during that period of years, what in your experience, has been the change in the meaning in the trade of the term "white pine"?

A. "White pine" has been made more general, I think, in the ideas of most of us in the lumber business, to embrace soft woods that are yellow or whitish in color, and to get away from the southern yellow pine—we called the yellow pine out here white pine to get away from the southern yellow pine.

Q. And does the Pinus ponderosa from this section differ markedly in its characteristics from the southern yellow pine?

A. Very much, I think. Arkansas soft pine comes much nearer to being like some pondosa grown up here, but you take southern yellow pine grown in North Carolina, South Carolina, Georgia, and in through there, it is very much different. Even the layman can see the difference.

Q. In general, are the uses to which this Pinus ponderosa is put the uses which you would consider white pine uses?

A. Yes; my trade tells me that—my factory trade tells me
2175 that they work up readily and satisfactory to them Pinus ponderosa or California white pine into sash and doors; that they are not buying white—that is, Idaho white pine species for that purpose.

Q. Why not?

A. They cannot get it when they want it, principally.

Q. I see. In your opinion can they get the old northern white pine in quantities when they want it?

A. I do not handle northern white pine, but I understand it is very hard to get it in any quantity.

Q. Now, in your opinion does the term "white pine" as used in the lumber trade today signify any particular botanical tree?

A. No.

Q. Or any particular group of botanical species?

A. No.

Q. Now, is Pinus ponderosa a satisfactory wood for its present uses?

A. It is to my trade.

Q. Yes. Now, when a customer comes in and asks for white pine in New England, does he, in your opinion; come in and ask for some particular botanical species, or, in general, does he come in and want a board?

A. Generally comes in and wants a board.

Q. Do you know any instances where, if a man came in and asked for northern white pine, he has been given other species of wood?

A. Do I know of instances?

Q. Yes.

2176 A. I cannot say that I do.

Q. But under any name which might be given to it, would Pinus ponderosa be as easily substituted on account of its appearance and color, and so forth, on an order for northern white pine, as under the name California white pine?

A. It would be just the same thing.

Mr. WHEAT. I think that is all, sir.

Recross-examination by Mr. BURR:

Q. You are not in the retail business in Boston at present, are you?

A. No, sir.

Q. You would not know much about what a man would get when he came in and asked for a board, would you, of your own knowledge?

A. Except for what my customers tell me.

Q. All hearsay with you, then, is it?

A. It would be.

Q. Yes. Now, northern white pine is still being advertised in the trade journals, isn't it?

A. To some extent.

Q. And Idaho white pine is being advertised in the trade journals, isn't it?

A. More than northern white pine.

Q. If you write to these sources, you get a price list on
2177 northern white pine and Idaho white pine, don't you?

A. On some items; not on all items.

Q. I see. And if from the items that you find they list you order northern white pine or Idaho white pine you get what you order, do you?

A. Not in all cases.

Q. It is a question of price now, isn't it? Isn't it a question of price? If you want northern white pine and are willing to pay for it you get it in the sizes and descriptions that they advertise?

A. Quite so, except that over in the northern white-pine region many of them are using Norway, and they are not getting northern white pine.

Q. Well, Norway is red pine, isn't it?

A. Well, not reddish; that is, a layman would not want to call it reddish pine.

Q. Norway pine is a variety that is interspersed with northern white pine, isn't it?

A. Yes.

Q. In the stand?

A. Yes.

Q. And it is only a small part of the total stand, isn't it?

A. Well, I don't know how it would be now.

Q. But those forests are being cut right off. Norway is getting scarce just as fast as the northern white pine, isn't it?

A. Yes; but there is more Norway available in certain
2178 sizes, in building sizes, than in northern white pine, in my opinion.

Q. You are not so sure of that?

A. I would think so from the lists that I receive.

Q. Well, then, northern white pine and Idaho white pine are in the market constantly if you are willing to pay the price, aren't they?

A. Not in all sizes.

Q. But in some sizes they are constantly?

A. Yes.

Q. And there is a price differential, of course, as contrasted with pondosa?

A. Not always.

Q. Isn't it higher than pondosa, except in the very commonest grades?

A. Well, in the very commonest grades it would be some.

Mr. BURR. I see. That is all.

Mr. WHEAT. That is all.

(Witness excused.)

(Thereupon a recess was taken until 2:30 o'clock p.m. of this day, January 23, 1930.)

AFTER RECESS

3:00 O'CLOCK P.M.

W. B. GREELEY resumed the stand, and further testified as follows:

2179 Direct examination (continued) by Mr. BURR:

Q. Colonel Greeley, there is just one question that I would like to ask to clear up a matter that I am in doubt about. Are the members of the association of which you are the secretary-manager—is that correct?

A. Yes.

Q. Of which you are secretary-manager, are some of the manufacturers of certain pine lumbers, and as such members also of some of the pine manufacturing associations?

A. You have got to break your question down into parts.

Q. Well, please give me the facts.

A. First, several firms which are members of the West Coast Lumbermen's Association as to their fir mills are also manufacturers of western pines, both the ponderosa and monticola, at other mills. That is true specifically of the Weyerhaeuser Timber Company. They don't happen to be members of the pine associations, although they are extensive manufacturers of pine. In the case of the Long Bell Lumber Company, their fir mills are in the West Coast Lumbermen's Association and their pine mill in northern California is in the California Pine Association. We have one member in southern Oregon who manufactures both pine and fir at the same mill, and he is a member of both the West Coast and the California association.

Examiner DE BRULER. What mill is that?

A. That is the mill of the Owen-Oregon Lumber Company
2180 at Medford, Oregon.

Q. Then when they are members of your association they are such in their capacity as manufacturers of fir?

A. Only on their fir production.

Mr. BURR. I think that clears it up. You may cross-examine, sir.

Cross-examination by Mr. WHEAT:

Q. I just want to get that cleared up in this way: Your association has to do largely, does it, with the production of statistics of cut and stand and of the grading and handling or grading and inspecting of lumber? Just what in general do you do?

A. It has four main divisions. First, is the statistical work, collection of statistics on production, sales, shipments, stocks, and market information. The second is the grading department, which maintains standard grades for West Coast lumber, provides mill supervision of grading practices and inspection service, either to the mills or to buyers. Our third department is traffic, dealing with rates; and our fourth department trade promotion, advertising, and market extension for the lumber produced by our member mills.

Q. And you have only to do with what is known commonly as Douglas fir?

A. Douglas fir, and its related West Coast woods, hemlock,
2181 cedar, and spruce.

Q. All right.

A. I might add, 20 or 30 of our member mills produce small quantities of Pinus monticola, named this morning west coast pine; but we have not attempted any trade promotion work in behalf of that product regarding it as the province of the pine associations.

Q. Are those mills also members of the Western Pine Manufacturers' Association?

A. Well, in one or two cases I think they are not.

Q. But one mill can just as well be a member of several organizations such as yours and not have the matters overlap?

A. Certainly.

Q. I see. Now, has Pinus ponderosa a well-defined place in the lumber trade of the United States?

A. Yes, sir.

Q. It is a well-known wood, is it, sir?

A. Yes.

Q. And has been known in the lumber trade for a good many years?

A. Yes.

Q. It enters the trade in almost all regions in the United States, does it?

A. It is very widely distributed.

Q. And over the years in which it has been going into the market throughout the United States it has been sold, has it not, under a number of trade names?

2182 A. Yes.

Q. Do you know whether it has ever been sold as yellow pine?

A. I think that small quantities have. It is my recollection that the production of this species from the Black Hills——

Q. That is in Dakota?

A. South Dakota—was marketed as western yellow pine.

Q. When was this?

A. I was in that territory in—several times from 1915 to 1917, but that would be a small percentage of the total production of the wood.

Q. Almost negligible, would it not?

A. A very small percentage.

Q. Is there much being cut there now?

A. Just very limited amounts.

Q. Is it still marketed as yellow pine?

A. I could not say as to that.

Q. Do you know of any other instance where Pinus ponderosa has been marketed as yellow pine?

A. No.

Q. I will ask you whether or not you think that would be a satisfactory and proper trade name for the wood to go into the markets of the country?

A. I think it would be an entirely proper trade name and a satisfactory one if the qualities of the wood were adequately advertised.

2183 Q. Do you think that it would cause any confusion in the lumber trade for the wood now marketed as California white pine to be marketed as yellow pine?

A. It might cause a little confusion in comparison with the yellow pine of the South, but I doubt if that would have been a serious factor.

Q. I am talking about it now.

A. It is speculative.

Q. We are talking about it now. You say you doubt whether that would have been.

A. Or would now be.

Q. Or would now be?

A. Please don't understand me as saying that I regard western yellow pine as the most desirable trade name for ponderosa.

Q. You have certain reasons why you believe it not to be the most desirable trade name, haven't you?

A. I can readily see, from the standpoint of the manufacturer and the standpoint of the trade, logical commercial reasons for making clear that the lumber of ponderosa is in no wise confused with lumber of the southern yellow pine.

Q. And does that also go to the standpoint of the consumer?

A. Yes.

Q. I see. Now, what are the uses to which Pinus ponderosa has been put in the general lumber markets of the United States?

A. It has gone largely into the manufacture of millwork and similar factory products. A good deal of it is shipped to the

2184 millwork factories of the Middle West for manufacture into sash and doors and other millwork products. The select or clear grades are manufactured to a considerable extent into siding and finished items. The lower grades are manufactured——

Q. Right there, may I ask you whether or not it is in your opinion a good wood for these high-grade uses that you have just mentioned for which clears are used?

A. Yes.

Q. May I ask you, when you say the remanufacturers and big mills in the Middle West, you mean remanufacturing mills which make sash and doors? I think you said that, but I want to be sure.

A. Sash and doors and other millwork products, moldings, balusters, and all of that type of millwork.

Q. Do you consider that a natural use of this wood?

A. Yes.

Q. Now tell us about the common lumber.

A. Well, the common lumber goes very extensively into the manufacture of box shook, and then portions of the common product are used for sheathing, subflooring, and similar forms of rough construction.

Q. This applies, does it, both to Pinus ponderosa marketed as pondosa and marketed as California white pine, trade names, as are now in use?

A. Yes. Then it also, in portions of the West, has been used quite extensively for the manufacture of railroad ties.

2185 Q. Has that been a very large use of this wood, where it has had to be shipped any distance?

A. No; particularly true in the Southwest.

Q. The reason for the use of this wood for railway ties in that region is what, sir?

A. It is the most available wood for that purpose.

Q. I see. In the eastern part of the United States, what is used mostly for railroad ties?

A. In the eastern part of the United States?

Q. Yes.

A. The standard tie is probably still oak. A great deal of southern pine is used.

Q. Is that longleaf or the short leaf?

A. Both.

Q. And a good deal of Douglas fir is now being used?

A. The development of the treating process has widely extended the species available for ties. The so-called "poor groups" of hardwoods are now being used extensively for ties after treatment.

Q. And that treatment is for what purpose, sir?

A. Preserving the life of the tie.

Q. Now what are the common and usual uses of southern yellow pine, both longleaf and short leaf?

A. Those woods produce a very large volume of boards, common boards, small dimensions, two-inch dimension sizes, entering

2186 very largely into the construction of small buildings, small timbers up to six by six; and particularly in the case of longleaf pine there has been a large production of the large structural timbers, railroad and bridge stringers and the like. They also manufactue a good deal of flooring, particularly from the longleaf pine, ceiling finish and siding. They are all-purpose woods permitting a very wide variety of products.

Q. In general are they used to any great extent except merely in the locality of growth for large millwork operations?

Mr. BURR. Southern pine?

Mr. WHEAT. Southern mill products?

Mr. BURR. I think we are going into these species that are not of interest here in greater length than necessary.

Mr. WHEAT. This is called western yellow pine, if the examiner please, by the Forest Service and I want to, as I have done with many witnesses before, show through this expert that has been produced by the Government what the general uses are for the southern yellow pine.

Examiner DE BRULER. What wood is that? I didn't catch it.

Mr. WHEAT. Southern yellow pine. I think it is perfectly proper.

Mr. BURR. What was the last question?

(Last question read.)

A. You mean millwork in the sense refabricated in the
2187 machine?

Q. That is correct; yes.

A. No; not to a large extent with the outside of local requirements, and with an exception in the instance of the so-called "Arkansas soft pine."

Q. Can you give us any approximation of the amount of Arkansas soft pine which is cut, sir?

A. Well, my recollection is that the production amounts to, perhaps, eight hundred million feet a year.

Q. Well, is that what is known as shortleaf pine?

A. It is a shortleaf pine that for climate and soil reasons apparently has an exceptionally soft texture for the southern pines.

Q. What is the botanical name of that species?

A. Pinus taeda.

Q. Now, is there any Pinus taeda, do you know, which is marketed in longleaf pine?

A. Which is marketed as longleaf pine?

Q. Yes.

A. It is very generally suspected that that has been done to a considerable degree. I am unable to answer on my own information, however.

Q. May I ask you whether Pinus palustris is the name of what you call longleaf pine?

A. Pinus palustris.

2188 Q. Longleaf pine is the common name for that?

A. Yes.

Q. Is there any Pinus palustris that is marketed as shortleaf pine?

A. Probably not.

Mr. BURR. It seems to me we are filling up the record with a lot of material that is not pertinent.

Examiner DE BRULER. I think it is not all material, but as long as it is kept within the pines I don't like——

Mr. BURR. I don't think the southern pines have anything to do with it.

The WITNESS. I consider that Pinus ponderosa is closer to the white pines than it is to the southern pine in its uses and characteristics.

Mr. BURR. Why should we go into these theories with every witness? I don't think it is justified.

Mr. WHEAT. It seems to me it is, if Your Honor please, but we will pass now to another subject.

Examiner DE BRULER. I think it has gone far enough.

Mr. WHEAT. All right.

Q. Now, you spoke this morning of pattern lumber. Was your statement based on the mere reputation of the woods for pattern lumber or any personal test that you made?

A. I cannot say that I have made any personal tests of pattern lumber except in a very limited way in domestic carpentry
2189 and cabinet work. My statement was based primarily on the information received from manufacturers of the woods.

Q. General reputation which you have obtained in your various capacities?

A. Yes.

Q. Let me ask you whether this is a good definition of the word "texture", and, if it is not, I wish you would give us one for the record here—it has been mentioned a good many times—"Texture is the size and arrangement of the structural elements in a wood considering the fibers, medullary rays, and such wood items."

A. That is all right as a technical morphological definition. It doesn't mean very much to me, because it does not tell what we have in mind, commercially speaking, by texture.

Q. Well now, what do you have in mind, commercially speaking, of texture?

A. I have in mind the qualities of a wood that determine the uniformity, regularity of the structure, the evenness and smoothness of it.

Q. Does that have anything to do with what is technically known as "grain"?

A. Yes.

Q. Now what do you mean by grain?

A. By grain we mean the element in the wood structure created by the processes of growth, the distinct annual growth and the division of that growth between the spring wood and the
2190 summer wood. Grain, in my judgment, enters into texture.

Q. I see. But you might have a wood that was fine grained and of coarse texture, might you not?

A. Yes; you might.

Q. And vice versa.

A. But a fine grained wood tends to be of fine texture, even, uniform texture. A coarse-grained wood tends to be coarser and brashier, less uniform.

Q. Now, I believe you stated that in your opinion trade names are important in the lumber industry. Do you believe that they should follow to any great extent the botany of the trees?

A. It is not necessary that they should follow botanical distinctions exactly or technically. The main point is that they should be distinctive and not subject to confusion.

Q. And if lumber were to be marketed on botanical nomenclature, would or would not the manufacturer of lumber from the species Abies have a botanical claim to the word "fir"?

Mr. BURR. Wait a minute, Your Honor. I think we are trying some possible misnomer in some other line of lumber, which is outside entirely the scope of this complaint and has nothing whatsoever to do with the possible misnomer in the pines, which is here alleged and which is here to be proved, and it seems to me, therefore, that we are, without having had any possible respondent here to defend itself, merely taking something which is of no value to us in
2191 the case and which might be detrimental to somebody in some other case.

Mr. WHEAT. Now just a moment, Mr. Examiner, before you make any ruling on this. My notes disclose that Mr. Burr on his direct examination of this witness asked a great many questions about Douglas fir and about the name under which it is sold, whether it is sometimes called Oregon pine, whether it is sold as hemlock, all about its species, and a great deal more about the sale of this wood. Now I am entitled, irrespective of any—and this was done over my serious objection, as I have in my notes—and I am entitled on cross-examination to go into these matters and to test this witness' knowledge and his opinions on these matters, and I may say that for our purposes these respondents believe that these questions are exceedingly material in this particular case. Irrespective of that, as to this particular witness I have, of course, a right to go into the matter on cross-examination. I will stand upon my rights.

Mr. BURR. Now, if the examiner please, opposing counsel and myself this morning agreed, it seemed to me, that there was nothing in the fir business or the misnaming of Oregon pine, or any other misnaming that had anything to do here, and I therefore renew my offer.

Mr. WHEAT. I did not agree to that, sir.

Mr. BURR. You objected upon that very ground. You objected upon that very ground to a question asked of this very
2192 witness, and I then made an offer that both sides stipulate in accordance with what I understood to be counsel's express view in the matter, namely, that the testimony heretofore shall be stricken, not physically, it is too late for that, but shall be agreed to be stricken; whatever of my examination of this witness was immaterial could be removed, and also——

Mr. WHEAT. One thing I want the record to show. You asked the witness a question whether he thought the naming of a tree as a fir which is not a fir tree was deceptive to the public, and I objected seriously to that and my objection was overruled. There is where I objected, sir, as to your examination. And I stand on my right to cross-examine this witness on the question of the naming of Douglas fir in every degree to which I have a right to cross-examine, sir, and I take it that this Commission will sustain me in that.

Mr. BURR. Well, if the examiner please, my original objection——

Examiner DE BRULER. Do you want all this to go in the record?

Mr. BURR. Yes; I do. My original objection in New York, when this matter came in with Mr. Lindsey and the Weyerhaeuser interests, when Professor Record, if my memory serves me correctly, went on the stand—my original objection was sweeping and was overruled. The matter went in, and it was at the instance of coun-
2193 sel and during his examination that it went in. Now this morning he indicated the fact that he thought it was immaterial when this witness was on the stand, and I put it in as defensive matter. I now say that if he is correct there I am correct in agreeing with him that this whole matter ought to be stricken out.

Examiner DE BRULER. You have stated that three or four times.

Mr. BURR. I move to strike——

Examiner DE BRULER. I want to hear what he has to say.

Mr. WHEAT. I consider this very material. We considered it so in New York, and it was ruled that we might ask these questions. This matter has been brought up; I want to go into all matters which on cross-examination are proper as to questions asked this witness on direct examination about this matter of Douglas fir and other misnomers.

Examiner DE BRULER. What was that last question? Let us go back to the last question.

(Last question read.)

Examiner DE BRULER. Objection sustained. I am not going to let that go in.

Mr. WHEAT. I shall ask a reference of this matter be taken to the Commission. We consider this to be most important, and I desire to have——

Mr. BURR. Just this witness, do you want to cross-examine—
2194 Mr. WHEAT. Mr. Burr, I am now stating what I desire to do.

Mr. BURR. Very good; pardon me; go ahead and state it. I won't interpose.

Mr. WHEAT. Now, what I want to do, if the examiner please, is to cross-question this witness regardless of anything else which might be ruled either way on any question of this sort, material or immaterial as we may consider it as to any other witness. I stand on my right to cross-examine this witness to as large a degree as may be material in this case on the matters on which he was questioned on direct examination. I shall desire to cross-examine him to some considerable degree on this point.

Mr. BURR. Just a minute, Mr. Examiner, I want to be heard on this thing. Now, then, I think the situation is this: Counsel has definitely stated that he proposes by this witness and by other witnesses——

Examiner DE BRULER. There is no other witness.

Mr. BURR. If the examiner please, I want to be heard on the subject.

Examiner DE BRULER. Well, I know, but I say there is no other witness before him.

Mr. BURR. I know, but the policy of this thing, as to whether it shall be appealed to Washington, is before this Commission.

2195 Examiner DE BRULER. All right.

Mr. BURR. All right, and I want to be heard on it. You are now setting a precedent one way or the other, Mr. Examiner, upon this entire matter, and counsel has just stated to you that he proposes to examine this witness ad libitum and introduce other witnesses with regard not only to this proposed——

Mr. WHEAT. Other witnesses are out.

Mr. BURR. Don't interpose. I just gave you a clear field and I want the same courtesy.

Mr. WHEAT. I will be courteous to you, sir.

Examiner DE BRULER. Go on.

Mr. BURR. Not only with regard to this misnaming, but also to the various other mismamings throughout the industry, and I now say that if that is to be gone into, without other manufacturers of other types of lumber being present by counsel and being heard through their witnesses, I say that there is a grave chance of the Commission in this series of hearings entering into something which are public records which the Commission has no business whatever in morals or in law to trespass upon, and that rather than have that kind of thing gone into and this record lengthened out by thousands of pages, I have a right to ask for an adjournment to find out about this.

Examiner DE BRULER. If you will let me make a ruling on that I can shorten it.

2196 Mr. WHEAT. May I just add one more word, sir? This witness also was questioned very largely on the botanical nomenclature and on the necessity for nomenclature of that type. I have long notes on this matter, and I shall stand on my right to cross examine him on all of those matters to as large a degree as may seem material, sir.

Mr. BURR. I now wish to make a motion to strike, if the Examiner please, which I want to have heard at the same time this other motion is heard.

Examiner DE BRULER. A motion to strike what?

Mr. BURR. I am outlining my motion. I wish now to strike from the record the matters which have been injected into this record over my protests and over my serious objection including in addition matters which were testified to by this witness this morning which I put in as defensive matters to the other matters which were introduced into the record over my objection. I now move to strike all of the matters which have related to the Douglas fir supposed misnomer and other misnomers in the record, and ask that that motion be granted.

Mr. WHEAT. Will you add, Mr. Burr, that the motion to strike include all testimony in this record upon your part with reference to the use of botanical names for wood species?

Mr. BURR. No, not when it relates to the use of botanical names, which we have set up in our complaint.

Mr. WHEAT. Then, if the examiner please, I shall oppose
2197 this motion to strike.

Examiner DE BRULER. Gentlemen, I have made up my mind what I am going to do. I am going to permit this witness to be cross-examined on the matter that was asked him in regard to Douglas fir this morning, but I am not going to—frankly, now, if you want to appeal to the Commission—I am not going to allow anything further here, but he may cross-examine this one witness and there the matter ends. That is my ruling.

Mr. WHEAT. And if the matter may come up on any other witness, when it comes what is your ruling?

Examiner DE BRULER. I shall overrule it from this time on. You may appeal to the Commission.

Mr. WHEAT. Then I shall have to go into it very fully with this witness.

Examiner DE BRULER. You can appeal to the Commission.

Mr. WHEAT. If it is necessary.

Examiner DE BRULER. I say, if you desire. Answer the question.

Mr. WHEAT. And my exception, please.

Examiner DE BRULER. Exception, of course.

Mr. BURR. Did you definitely rule on my motion to strike?

Examiner DE BRULER. I deny that motion.

Mr. BURR. All right.

(Last question read.)

Examiner DE BRULER. You can answer that "yes" or "no".

2198 A. Yes.

By Mr. WHEAT:

Q. Now is the lumber cut by any of the members of your association known in the trade at all as red fir?

A. I think not. There is a certain local variety of Douglas fir that is often called red fir in the log and in the timber because of certain characteristics of the grain and wood of that class of timber. It is a younger growth than the old so-called "yellow fir". The terms "yellow fir", "red fir", "bastard fir", and "second-growth fir" are used here locally in the industry, but in the marketing of lumber I think that the term "Douglas fir" is almost universally employed except where the old name of Oregon pine still persists.

Q. And where does that persist?

A. That is very common still in California.

Q. And where else?

A. I don't know of any other place where it is still common.

Q. It is used, is it not, quite largely in the export trade?

A. I presume it is in portions of the export market.

Q. Now, was or was not the wood known as "balsam fir lumber" in the trade before Douglas fir came into the trade in large quantities?

A. Meaning the same tree?

A. No; balsam fir; what has been known in the trade as balsam fir?

A. Not in this section. Balsam fir has been known to the
2199 trade of the northeastern States for many years.

Q. When did Douglas fir begin to be cut out here in large quantities and shipped East?

A. Well, the eastern shipments, the eastern shipments really began with the completion of the Northern Pacific Railroad in the late eighties.

Q. What is the wood known in the trade as white fir?

A. White fir is an entirely distinct species. It is one of the Abies family; several varieties of the Abies are known as "white fir".

Q. I will ask you perhaps this way and shorten the examination: Is that superior to Douglas fir for many uses, such as pulp, butter boxes, or any other place where a lighter colored or lighter weight wood is required?

A. It thus far has superior pulping qualities to Douglas fir, and in a very limited number of uses, where the imparting of taste or odor is an important commercial quality, it would be superior. For the great mass of lumber uses it is inferior.

Q. I think you said on direct examination that some of your members produce cedar. What is the common name of this, if it is cedar?

A. *Western red cedar.*

Q. And where is it produced?

A. It is cut throughout the West coast timber district, Oregon, up into British Columbia and cut to some extent in northern
2200 Idaho and western Montana.

Q. Does that name western red cedar conform to its botany, sir?

A. No.

Q. Do you know whether or not it is botanically known as "Thuja plicata"?

A. Yes.

Q. Is there any cedar that is cut by any of your member mills that is botanically cedar?

A. The Port Orford cedar, the white cedar, is manufactured to a limited extent.

Q. Will you tell me whether botanically that is a cedar?

A. That is botanically a cypress.

Q. Is the botanical name of that wood Chamaocyparis lawsoniana?

A. Yes.

Q. Now, Colonel Greely, do you know—and say "no" if you don't, of course—but do you know whether any true cedars botanically are produced in the United States or grown in the United States?

A. No; not to any commercial importance.

Q. Do you know whether any——

A. Let me qualify that. The term "cedar" is a term that has been broadly used to cover a considerable number of woods having common characteristics as to color and durability, and to a considerable extent, odor. Now, just which are botanically cedars and botanically not cedars I am unable to say.

2201 Q. You don't know whether any of the species of the genus Cedrus grow in the United States, do you?

A. I think there are one or two limited representatives of that genus in the country.

Q. But they are not commercially——

A. Not of commercial importance.

Q. Now, on direct examination——

A. And whether California cedar, Librocedrus decurrens, is botanically cedar or not I am not sure.

Q. Now, on direct examination, Colonel Greeley, you were asked whether or not there was in your opinion any misnomer in the lumber trade as bad—I think that was the word that was used—as the calling of California white pine by a trade name including the word "white." May I ask you to tell us, for the record, what other misnomers, botanical misnomers, you had in mind when you answered the question of counsel for the Federal Trade Commission which I have mentioned? I would like to have you list them and tell us what they were.

A. I don't recall any other misnomers.

Q. At all?

A. That, in my judgment, are serious from the standpoint of——

Q. Colonel Greeley, I am not asking you the same question that counsel for the Trade Commission asked you. I am asking you what misnomers, regardless of how you considered them, you had in mind when you answered the question put to you by coun-

2202 sel for the Federal Trade Commission. I want you to list those misnomers for me.

A. Well, there have been a very considerable number of instances where the oaks of the black oak family, of the inferior black oaks, have been sold as red oak because of the trade——

Q. I don't care; you may explain later why it was. Just list down for me the names which did not follow the botany that you had in mind in replying to the question of the Trade Commission's counsel.

A. The eastern timber sold as red cedar is a juniper.

Q. Did you have any others in mind, sir?

A. I don't recall any—of course, you could list a long string of names where the trade name is not technically in conformity with the botanical name, but I am thinking of misnomer from the standpoint of confusing the trade, failing to identify the wood properly to the trade.

Q. All right. Now, what other misnomers, according to your definition, did you have in mind when you answered the counsel for the Trade Commission?

A. Those are all.

Q. Did you have in mind, by any chance, the trade name gumwood for various botanical species?

A. I wasn't thinking of that at the time.

Q. Will you tell us now what species are marketed as gumwood?

A. The botanical tupelo is sold both as gum and in some
2203 cases as tupelo; red gum and sweet gum are sold as gum.

Q. Do these differ in qualities and characteristics?

A. To some extent.

Q. Now, the Forest Service has published, has it not, a document known as a "Check List of the Forest Trees of the United States?"

A. Yes.

Q. That document shows the Forest Service official the common name for each botanical species, doesn't it?

A. Yes.

Q. And does it show anything else for each of those species?

A. It gives a list of all the known names by which the wood or the tree is designated.

Mr. BURR. Common names?

Mr. WHEAT. And trade names?

A. And trade names.

Q. Now, you are thoroughly familiar with that volume, are you not, sir?

A. Well, I could fail to answer a good many questions on it.

Q. Let me ask you this: You had something to do with the preparation of it, did you not, of the revision of that volume?

A. Yes.

Q. That is known as "Sudworth's Check List", is it not, ordinarily?

A. Yes.

Q. In that volume are there many instances to be found
2204 where trade names do not conform either to the botanical name or to the accepted Forest Service official name?

Mr. BURR. If the examiner please, it is understood my objection goes to all of this.

Examiner DE BRULER. Of course.

A. There are many instances——

By Mr. WHEAT:

Q. You may answer that "yes" or "no" and then explain, please.

A. Yes.

Q. Now you may explain.

A. There are many instances where ten or a dozen different names have been in use for the same tree in various portions of the country, many of which names never had any connection with the botanical characteristics of the tree. Take bull pine; that is a name that has been very commonly used for ponderosa. The same term is used in the South, in portions of the South. You will hear it, I have heard it, in New England applied to the red pine or Norway pine. There are many of those common terms, lumberjack terms, local country

terms, that have been used in various parts of the country there indiscriminately. All sorts of odd and curious names got into circulation, became more or less established, many of which had absolutely no relation to the botanical characteristics of the tree.

Q. Some of those have persisted to a marked degree, have they not, sir?

2205 A. Yes. The most striking illustration of that is the common name Norway pine.

Q. And that is Pinus resinosa, is it?

A. Yes.

Q. That is pine which occurs in conjunction with and throughout the range of Pinus strobus, is it not?

A. To a considerable extent. That name came into circulation—perhaps this should not go on the record.

Q. Go ahead and explain it.

A. That name came into circulation because a shrewd Yankee in the State of Maine living at a little village called Norway saw a chance to put his home pine on the market with a name that would carry with it Norway iron, for example, so he put it on the market as Norway pine. It got into the trade in that form, and that name has stuck to the present time.

Q. That is a well-known name in the trade, isn't it?

A. Yes.

Q. Known all over the country, isn't it, wherever that is marketed?

A. Generally known wherever the wood is marketed.

Q. If one ordered Norway pine, one would know that they were getting the pine which you just mentioned?

A. Yes.

Q. Now, on what characteristics have botanists laid stress in separating the pine trees into the various classes which they have made, such as white pines as against yellow pines?

2206 A. You mean strictly botanical classifications?

Q. Exactly, yes.

A. Oh, there is a long string of botanical characteristics.

Q. Yes.

A. And botanical differences, ranging from the—beginning with the structure of the wood and running even into the chemical contents of the wood and the various secretions typical of different trees, character of the bark, character of the form of the tree, and the foliage, the blossoms, fruit, seed characteristics.

Q. Yes. Would you say that in botanical classifications the most important element is the reproductive organs in blossoms?

A. One of them.

Q. Now in making botanical classifications is lumber as lumber produced from the tree considered?

A. No, I think not. But the structure of the wood, the formation of the cells, the typical wood structure forms, which in turn

affect the character of the lumber, those things have entered extensively into botanical classifications.

Q. Do you know the number of needles in a bunch of Pinus strobus?

A. They usually run five needles to the bunch.

Q. But then there are some white pines that are not five-needle pines, are there?

A. As far as I know the white pines are all five-needle pines.

Q. You are not familiar with the Pinus monophylla, are you?

2207 A. Yes, I have seen it.

Q. Is it a white pine?

A. I would not call it white pine.

Q. Are you familiar with Pinus quadrifolia?

A. I have seen it.

Q. Would you call that a white pine?

Mr. BURR. I don't think this gentleman is qualified. Ask him whether he knows.

Examiner DE BRULER. He may answer.

Mr. WHEAT. This gentleman is one of the greatest experts in these matters in this country.

Mr. BURR. I asked him on direct examination if he was a strict technical botanist and he said no. He had gleaned a lot about it, a hundred times more than we have, perhaps, but at the same time I don't suppose he sets himself out to be a technical botanist. I think you can ask him a lot of freak questions——

Examiner DE BRULER. I am satisfied——

Mr. WHEAT. I haven't asked any freak questions.

Examiner DE BRULER. I am satisfied that this witness will only answer about things he knows, so you can proceed with the cross-examination.

By Mr. WHEAT:

Q. Let me follow this matter up just a little bit. Are there five-needle pines that you ever heard of that are not white pines?

A. You mean white pines from the standpoint of produc-

2208 ing white lumber?

Q. Oh, I don't——

A. Or botanical classifications?

Q. Colonel Greeley, when I use the term "white pine" I am using it in this cross examination, and for that purpose solely, to mean exactly what you meant, whatever you meant by it in your direct examination.

A. Well, I think there are some five needle pines that are not classed botanically as white pines because of other differences from the characteristics of the white-pine family.

Q. I see. Now, do you know of any two-needle pine grown in the western area?

A. In the West?

Q. Yes.

A. No.

Q. You are not familiar with what is commonly known as lodgepole pine?

A. Well, I will have to admit I overlooked that. That is a two-needle pine.

Q. That is grown in the western area; is it not?

A. Oh, yes.

Q. How is it marketed?

A. Marketed?

Q. Yes.

A. As far as I know lodgepole pine, or mountain pine—

2209 it is often called mountain pine.

Q. Does this blister rust that you mentioned attack all five-needle pines?

A. I don't think anyone knows yet whether it will attack all of them. We know that it will attack strobus and monticola. Whether it will actually attack the sugar pine I don't think has yet been proven, though it has been assumed and feared that it would, because of the similar twig and bark characteristics.

Q. Do you know whether any tests have been made in the laboratory to infect Pinus lambertiana with blister rust?

A. I do not know whether they have been made.

Q. You are not familiar with that?

A. No.

Q. Now, you spoke on direct examination of the matter of reforestation. Are there any other hazards of planted stock, let us say with what we have termed white pines, aside from this blister rust, that attack planted stock?

A. Yes.

Q. What are they, sir?

A. There are various hazards. Of course, the greatest hazard to all planted stock, probably, is fire.

Q. Yes.

A. Then there are various insect hazards; the pine weevil has done some damage in pine plantations.

2210 Q. Drouth, does that do any damage?

A. Occasionally.

Q. Frost, does that do any damage?

A. Occasionally.

Q. Have you noted what is commonly known as sun scald?

A. That at times does damage.

Q. Grazing on reforested areas, does that do any damage?

A. If it is very severe it may.

Q. Have you ever had any experience with direct seeding of pines for the purpose of reforestation?

A. Yes.

Q. Has it been successful?

A. Very seldom.

Q. That was while you were in the forest service, was it not?
A. Yes.
Q. It was tried to a considerable degree, was it not, sir?
A. Tried to a considerable extent.
Q. Yes. Now, take planted stock, what proportion, what percentage of survival has been your experience, planted stock that will come to maturity? Take them a thousand to an acre.
A. Well, of course, you appreciate that the conditions in that respect are variable; also that you plant a thousand or twelve hundred trees per acre desiring only to mature three or four hundred.
Q. Yes.
2211 A. The rest you expect to drop out through a process of natural thinning, so that if your losses are distributed so as not to impair a fairly uniform stand of say three hundred and fifty trees per acre, your plantation has been one hundred percent a success.
Q. What percentage of cases will produce one hundred percent success?
A. Well, there are a good many of the older plantations of white pine in New England, New York, and Pennsylvania which range from eighty-five percent up in sections. We haven't a very large number of plantations that have yet attained maturity, and in making the statement I just did I should qualify it by saying that I included plantations which have become sufficiently established to be past all the infant causes of mortality and be on the highroad of success, barring some catastrophe like a forest fire.
Q. Then there are a number of hazards that affect the reforestation of cut-over lands?
A. Just the same as pertain to any other living thing. There is nothing in the world that nature produces that is not subject to some hazards.
Q. Yes. And is reforestation subject in general to a considerable group of hazards?
A. No more serious than the hazards that a[redacted] growing crops, agricultural crops, orchard crops.
2212 Q. What would you say would be a fair [redacted] percentage of survival of planted stock that will come to [redacted]urity on a thousand-to-an-acre basis? I want to know the [redacted]
A. I cannot give you a single answer to that question, because the success of reforestation has differed materially in different sections of the country, and reforestation by planting has been attempted at various times in the past in regions where it was later decided that the climatic difficulties were too serious. But if you will take the regions where experience has shown tree planting to be practicable, take the Northeastern States, take our inland empire, take our Cascade region, I think that the average result to date would show a survival of seventy-five percent or more of the original plantation, the thousand or twelve hundred trees per acre.

Q. And that is at about what age?

A. Various ages, depending upon the date of the plantations; from more recent plantations up to those that are now fifteen, eighteen, and twenty years of age.

Q. Take Pinus strobus now, for example; how old do those trees have to be before they are at present conditions now commonly marketed?

A. Well, in the New England conditions they are cutting pine growth out from thirty-five to forty years of age, from there on up.

Q. About how many logs to the thousand board feet would
2213 those thirty-five to forty-year-old strobus produce?

A. They produce, of course, only small logs and practically only box lumber.

Q. Well, about how many logs per thousand?

A. Oh, about twenty or twenty-five logs to the thousand board feet; from that on up, depending upon the purpose of the owner. He may hold his plantation for thirty years where he can get a small yield of better grades. He may hold it for one hundred years and increase his yield of better grades, entirely a matter of individual choice.

Q. Is that being done to a large degree, however, in New England?

A. Not to a very large degree; no.

Q. Now, Colonel Greeley, do you know the average number of logs per thousand, or would you hazard an opinion as to the average number of logs per thousand board feet which are commonly used at the present time to produce lumber marketed as California white pine?

A. It would be a very wide guess.

Q. I see. Then I won't ask you that. When did you begin your first lumber experience, Colonel Greeley?

A. You understand I have never been in the lumber industry.

Q. I understand that; yes. When did you first begin your study of woods?

A. My—aside from forest-school training my work began in
2214 investigations of lumbering in 1905.

Q. Yes. Can you tell us whether or not the word "white" as applied to pine lumber meant in the general trade any different then from what it does today, talking about the general trade with which you are familiar?

A. That is, has it meant anything different to the trade?

Q. Yes.

A. No; I think the trade understanding of the term has remained about the same.

Q. Just about the same all these years, has it?

A. As far as I can answer your question.

Q. What are the qualities of the wood to which you have applied the term genuine white pine? We had, you recall, on direct examination, certain qualities as to which you said it differed in some

manner from the yellow pine. Now what are the qualities of the wood which you applied to the wood that you called genuine white pine?

A. The qualities of very uniform grain, smooth, uniform texture, softness of the wood, and ease of working, hand working or machine working.

Q. Do you include weight?

A. Yes; white pines are very light woods.

Q. It is those qualities that you have in mind, is it, when you speak of the qualities of genuine white pines?

A. I have in mind that those qualities reach their highest
2215 stage of natural development in the genuine white pines.

Q. Well, those are the qualities, are they, which you have in mind when you use the term, genuine white pine?

A. Yes.

Q. I see. Now when you are ordering lumber for your own use, Colonel Greeley, do you ever go in and ask for lumber at a retail yard by the botanical Latin name?

A. I have ordered it in a few cases on the basis of eastern white pine.

Q. I am talking about your own practice, not the Forest Service practice, but your own.

A. No; not by botanical name.

Q. Did you ever go into any lumber yard, for instance, and say, "Give me some two by fours of Pseudotsuga taxifolia?"

A. No.

Q. You would not think of doing that, would you, sir?

A. No, sir.

Q. Did you ever go in and ask for any Pinus ponderosa?

A. No.

Q. Did you ever ask for any Pinus monticola? Do you recall any instance where, as a practical matter, you yourself, in buying lumber, ever went in and asked for it under at Latin botanical name?

A. No.

Q. All right.

2216 A. That doesn't mean that I haven't laid down specifications that meant the same thing.

Q. Exactly; you have at times——

A. But I would not talk a language that the other fellow completely misunderstood.

Q. Now, when you were particular about what you wanted you have often, have you, specified wood by botanical name?

A. Not by botanical name; no.

Q. How have you specified it, then, when you have been particular in what you wanted?

A. By the common name plus the region of manufacture.

Q. I see. In other words——

A. Please understand I am no large consumer of lumber.

Q. No; I am talking about you as the ordinary Tom, Dick, or Harry who wants some lumber.

A. But being interested in woods and knowing a little of their qualities, when I wanted a particular wood I have drawn up specifications for it that I knew would bring me that identical species.

Q. If an architect desired to be certain that in a building for which he was preparing specifications any particular wood would be used, would he, in your opinion take the same precautions which you have mentioned regarding your own specifications?

A. Yes.

Q. I see. Now, is the lumber industry with which you are
2217 familiar coming into conflict or competition with anything not lumber, used for general purposes, for which lumber is used?

A. In some respects, yes; in some uses.

Q. Is that a serious problem?

A. Yes; it is.

Q. Is that in your mind—I am trying to shorten this, you can tell me if I am wrong—does that include composition boards, cement, steel sash, insulating materials, metal furniture, and the like?

A. Yes.

Q. Now, when you said that the good will of the public would be in your opinion strengthened if it were assured of exact identification of lumber, you didn't mean botanical identification, did you?

A. Not necessarily by botanical names.

Q. Or botanical identification, did you?

A. But by a common name that meant the same in all cases.

Q. I see. Now, is there much variability in Douglas fir throughout its range of growth?

A. Yes.

Q. It varies, does it not, from the soft yellow fir—I will ask you whether it varies from what is known as soft yellow fir, which almost approaches white pine in softness, to a very hard, flinty, red fir which almost approaches in surfaces and in strength the finest palustris of the South?

2218 A. Yes.

Mr. BURR. Hadn't the witness better testify as to whether they do or not?

Mr. WHEAT. I asked if it varies.

A. I would like to claim that our soft yellow fir approaches white pine in softness, but unfortunately it would not be true, and there is a wide range between the old-growth yellow fir, which is primarily a finish lumber and what we call the red-fir type of harder, flintier grain, which is primaily of the structural timber type.

Q. Have you considered that variation in Douglas fir to be a detriment to that wood, to the consumer or to the manufacturer?

A. It is a variation that should not be a detriment to the wood if the grades for different purposes and uses are properly selected. There are some purposes for which the hard-grain type is superior

to the soft yellow fir type, and vice versa. We are endeavoring to take care of that by the specifications in our grading rules.

Q. Yes. I was just going to ask you. Are you really developing a method of taking care of it?

A. We are doing it in part.

Q. And is that something which is, in your opinion, an important matter in connection with any variable wood?

A. Yes.

Q. Have you gone far in the grading of your Douglas fir as
2219 soft and hard, respectively, or how do you do it?

A. We haven't gone the complete distance. We have carried out that principle in a number of our grades, specifically in our timber grades by a close-grain specification, also a dense-grain specification.

Q. Density is the basis of——

A. Strength.

Q. And density is also the basis of differential between commercial longleaf and commercial short-leaf pine, is it not, in the South?

A. Yes.

Q. And in a variable wood such methods as you are attempting to put into force in the Douglas fir region you would think would be of value?

A. Yes.

Q. Would they eliminate to a great degree any detriment to the consuming public which now exists in Douglas fir?

A. They would remedy very largely conditions where the consumer does not get exactly the type of lumber that he desires or that he has undertaken to order. Since you are dealing with a natural product, structure is variable because it is a natural product. It is not possible to eliminate those differences altogether, but our theory in the merchandising of Douglas fir is to develop the specifications as definitely as possible for each grade, and more and more to
2220 build those specifications around the characteristic uses of that grade, and do more and more grading on a basis of use and not on general description.

Q. And as you are able to effect that method of grading, do you feel, Colonel Greeley, that that will eliminate the deteriments which this variability which you have mentioned gives to the consumer?

A. Reduce it.

Mr. WHEAT. I think that is all.

Redirect examination by Mr. BURR:

Q Just a moment. You described for counsel during your cross-examination certain characteristics and qualities that have become associated, as I understood you, with the concept of white pine. Now, among them would you include durability where exposed to weather conditions, among those characteristics that have been established in the public mind?

A. Yes.

Q. Now, do you consider—I think you did testify that you considered the calling of Pinus ponderosa as California white pine, or white pine with any other designation a misnomer. Am I correct?

A. May I ask that the question be read?

(Last question read.)

2221 A. I regard that name as confusing to the trade and as not a sufficiently exact, clear-cut, and distinct term for the wood. If that means a misnomer, why, well and good. That is my reasoning.

Q. Do you regard the public mind in connection with the word "white pine" as having associated certain species with that term?

Mr. WHEAT. Now, just a minute before that is answered. I would like to object to counsel going into the public mind in this matter.

Mr. BURR. I will make the question the repute. That is what I have in mind.

Mr. WHEAT. It is a question of whether or not he knows, himself.

Q. (By Mr. Burr.) Is there any public repute and association of the term "white pine" with characteristics and the identity of lumber made from the white-pine species?

A. Yes.

Mr. WHEAT. Just a moment. That is a double question. You said "with characteristics and the identity." I would be very glad to have those questions asked separately. I have no objection.

Mr. BURR. I am agreeable.

Q. Is there an association in the public mind of the characteristics that you have named as those of the white pines with

2222 certain species of white-pine lumber?

A. Yes.

Q. Which species are those?

A. The public conception of white pine is primarily based upon Pinus strobus, which was the ruling soft pine of this country for many years, and upon which our industries, millwork, factories, and carpentry were developed. Now, that is the conception on which the term "white pine" is based. It is the experience of our people for generations with eastern white pine.

Q. Now, secondarily, is it associated with any other genuine white pine, or any other white pine that is not a genuine white pine?

A. Well, if I may, I would like to answer this question, the purport of this question without trying to conform to too many of these technical rules.

Examiner DE BRULER. Have it your own way.

By Mr. BURR:

Q. All right. Pursue your own policy.

A. My viewpoint of the proposition is this: The term "white pine" became established through years of experience and use with the eastern white pine, white pine in New England, Pennsylvania, and the Lake States. It was our universal soft pine for a very long period of time. And the term "white pine" commercially meant to

people who bought it and used it that eastern white pine. Now, that is still standard white pine as established in the public mind.
2223 Now, when you extend the term "white" to other woods the question arises how properly do the characteristics of the wood merit that same term which has been built around the white pine of the East? Now, it is my judgment that the extension of the term "white" to these western trees of very similar characteristics, not identically the same, but very similar, like the sugar pine, Idaho white pine, is correct commercial terminology.

Q. Well, is it correct——

A. When you go beyond those trees of very similar commercial characteristics you certainly reach a point somewhere where it becomes incorrect, and I think you have reached that when you go beyond the sugar pine and Idaho white pine.

Mr. WHEAT. May I interpose a question here, Mr. Burr?

Mr. BURR. Yes; I think so.

By Mr. WHEAT:

Q. Do you base, then, your testimony on this trade name "California white pine" on the concept that you have just expressed in the answer to the previous question?

A. Yes; that is primarily my viewpoint of it.

By Mr. BURR:

Q. Now, when you go beyond, if I understand you correctly, extend the term "white pine" to any variations of Pinus ponderosa, you would say it has become incorrect rather than a correct and sound extension, would you?

A. Yes.

Q. Now, I believe you used the word, in answer to opposing counsel's last question, "primarily." Now, would a secondary
2224 consideration be the botanical relationship of the genuine white pines other than Pinus strobus to Pinus strobus? Would that be given any consideration in your mind as regards the degree of extension of the term "white pine" to other woods than Pinus strobus?

A. Botanical characteristics to the extent they were reflected in physical similarities.

Q. I see. Now do you regard the misnaming of other woods from a botanical standpoint, as to which you were examined on cross examination, do you regard them as equally flagrant, or equally undesirable, from a public standpoint, as the misnaming of California white pine?

Examiner DE BRULER. I think he answered that once.

Mr. WHEAT. Before the question is answered, of course, I want to interpose the same objection that I did before as to the degree of flagrancy from this witness.

Examiner DE BRULER. Yes; I think he answered that once, Mr. Burr.

Mr. BURR. I don't think so on direct examination.

Examiner DE BRULER. It is one of the questions that was answered on direct examination. Answer that if you can. Read the question.

Mr. WHEAT. Of course, that is going to open the door to me now on recross.

Mr. BURR. If the court please, I didn't open the door.

2225 Mr. WHEAT. Yes, it is opening the door. I did my best to close this door.

Examiner DE BRULER. Read that question once. Let us just see what it is.

Mr. WHEAT. I would be remiss if I didn't run this down further.

Examiner DE BRULER. Put it in the record.

Mr. WHEAT. Before the question is read, could I just have the record show this, Your Honor: this again goes to the precise question of law and also the precise finding of fact which this Commission will have to determine in the issues of this case, and of course questions involving the determination cannot be asked of any witness.

Examiner DE BRULER. What was that question? I don't recall it.

(Last question read.)

Examiner DE BRULER. Wait a minute. That question refers to things mentioned in the cross-examination. You may answer.

Mr. WHEAT. Let the record show that the question as to whether or not this is a flagrant misnomer, or any kind of a misnomer as to which this Commission will take cognizance, is the precise and only question as to which this Commission may or can make a finding in this case.

Examiner DE BRULER. You may answer that question, if you can.

2226 Mr. WHEAT. There has been an exception noted as to that, sir?

Examiner DE BRULER. An exception is allowed, of course.

A. I regard the use of the term "white" as applied to the lumber of Pinus ponderosa as ~~the~~ most serious instance of confusion to the buying public that now exists.

Q. In the lumber industry?

A. In the merchandising of American woods.

Q. Now, does the pine weevil, as to which you testified, attack all pine trees, so far as you know?

A. To the best of my recollection it does.

Q. It attacks pines belonging botanically to the yellow pine group as well as the white pine group, does it?

A. I think so. That is a very unexpert reply, however; you should have an entomologist to answer that question.

Q. Do you know whether blister rust attacks any of the pine trees outside of the white pine group?

A. So far as known it only attacks the white pines.

Q. Has it ever been known to attack Pinus ponderosa in this country?

A. Not to my knowledge.

Q. Have you any opinion as to whether the cell structure difference between genuine white pines and genuine yellow pines has anything to do with the susceptibility of the one and the
2227 immunity of the other?

A. It is a question of the character of the—apparently of the character of the protective bark on the small twigs.

Mr. BURR. I see. That is enough. Thank you, sir.

The WITNESS. Of course, you appreciate the precise reasons why certain pests will thrive on certain hosts and not on others is a very complicated biological question, and probably no one as yet knows the entire answer, but we only know from experience to date.

Mr. BURR. We are all beyond our depth on that topic.

The WITNESS. In regions where the blister rust is at work it so far has only attacked the five-needle pines.

Mr. BURR. That is all.

Recross-examination by Mr. WHEAT:

Q. I have just one question to clear some matters up. Did I understand you, then, Colonel Greeley, to state that in your opinion physical similarity of mechanical characteristics is more important in your opinion in connection with the use of the term "white" in referrng to pine lumber than mere botanical relationships?

A. Yes; I think so. I think that the actual characteristics and similarities of the wood is a more important factor in commercial practice than potalical distinctions.

2227a Mr. WHEAT. That is all, sir.

Mr. BURR. That is all.

(Witness excused.)

(The taking of testimony at Portland, Oregon, was completed in the afternoon of January 23, 1930, and the hearing adjourned to continue at San Francisco, California, on January 28, 1930, at room 326, U.S. Post-office Building and Courthouse.)

2228 Docket No. 1620 to 1669, inc.

SAN FRANCISCO, CALIFORNIA, *January 28, 1930.*

Met pursuant to adjournment, 10:35 o'clock a.m.

Before: Ellis De Bruler, examiner.

Appearances:

Eugene W. Burr, for the Commission.

McCutchen, Olney, Mannon & Greene (by Mr. Allen P. Matthew and Carl I. Wheat) for the respondents.

Chandler M. Wood (Albuquerque, New Mexico) for Cady Lumber Corporation, George E. Breece Lumber Company, White Pine Lumber Company, respondents.

Examiner DE BRULER. If the parties are ready, we will proceed with the hearing.

Mr. BURR. I will call Mr. Hill.

CARY LEROY HILL was thereupon called as a witness and, having been duly sworn, testified as follows:

Direct examination by Mr. BURR:

Q. Mr. Hill, what is your profession, please, sir?

A. Forester.

2229 Q. And what is your present position in that line of work?

A. I am in charge of the office of forest products in the California forest experiment station of the United States Forest Service.

Q. And that is located where?

A. 113 Hilgard Hall, University of California, Berkeley.

Q. How long have you been engaged in forestry pursuits?

A. Twenty-four years.

Q. And where have you been as regards that experience? Is that all in California?

A. No, I came to California in 1912.

Q. And where else were you engaged in forestry work?

A. Washington, D.C., the Southern States, Denver, Colorado, and my stations.

Q. How long were you in Denver, Colorado?

A. A little over two years.

Q. Were you in field work there?

A. Yes.

Q. Will you state the nature of it, please?

A. It was products work similar——

Q. (Interrupting.) What kind?

A. Forest products work in the utilization end, largely then in lumber statistics only.

Q. How much work have you done in connection with the actual study of the forests of the standing trees?

2230 A. I was for three years in charge of timber survey, out in the woods constantly here in California, and since my present connection in forest products work I get into the woods more or less.

Q. How wide has been your opportunity to observe the sugar pine, and the so-called California white pine, in the State of California?

A. In the woods?

Q. Yes, sir.

A. As they grow?

Q. Yes, sir.

A. Pretty wide. I am familiar with them. I am in the woods every summer, off and on.

Q. Is that throughout the State?

A. Rather largely; some parts of the State I haven't been in, but

A. All through the central Sierras.

Q. What?

A. All through the central Sierras.

Q. You have been?

A. Yes, sir.

Q. Will you state whether the Pinus ponderosa is a more diverse type of tree, and a more diverse type of lumber, than is the sugar pine?

Mr. MATTHEW. Would you mind breaking that question up?

2231 By Mr. BURR:

Q. Will you answer first as to the diversity of the two woods as regards the trees?

A. Pinus ponderosa shows more diversity than the sugar pine inasmuch as it will stand greater variation in conditions and still live and grow. When conditions are not happy for the sugar pine it quits.

Q. What diversity of conditions do you refer to in your last answer?

A. In the form of the tree and its habit of growth, I was thinking chiefly.

Q. I am referring to the natural conditions under which you say Pinus ponderosa is able to live as contrasted with the comparative uniformity of conditions which are required, if I understand your answer, by the sugar pine. What are the variations and conditions to which you refer when you say the Pinus ponderosa can stand variations?

A. Chiefly temperature and moisture.

Q. Will you explain that more fully, please? Does Pinus ponderosa live in conditions where it is too moist for the sugar pine, or what is the situation?

A. The variation is the other way. They occur together, but Pinus ponderosa grows under conditions of dryness and heat that sugar pine cannot endure.

A. Are there variations, as to altitude, contrasting Pinus
2232 ponderosa and sugar pine?

A. Somewhat.

Q. Will you describe that, please?

A. In the central Sierras Pinus ponderosa begins to appear as you go up towards the mountains, or into the mountains in the lower foothills say at an altitude of, in the region of which I am thinking, approximately 2,000 feet. Sugar pine does not appear until 3,000 to 3,500 feet.

Q. Then as you go up toward the higher altitudes of the range of sugar pine, does that disappear sooner, or at a later elevation, higher elevation, than does the other tree?

A. They both disappear almost simultaneously.

Q. How about diversity as regards the conditions of soil? Is there greater diversity which the sugar pine will adapt itself to, or the Pinus ponderosa?

A. I don't know that I can make any clear statement on that.

Q. Now, will you turn to the type of lumber that is produced by the sugar pine and the Pinus ponderosa. Do these variations, which you have testified about, have a reflection in a variation in the lumber that is produced by these respective varieties of trees?

A. There is a parallel difference in the range of variations of the lumber.

Q. Which has the greater variations?

A. Pinus ponderosa.

2233 Q. In what respects does it vary more than sugar pine varies, referring now to the lumber?

A. In the difference in texture.

Q. Beg pardon?

A. Difference in texture between the spring wood and the summer wood of the annual ring.

Q. Is there a difference in texture between—a greater difference in texture between the spring and summer wood in one tree than in the other? If so, which has the greater?

A. It is greater in the ponderosa.

Q. Now, what is the difference in texture in the Pinus ponderosa rings as between spring and summer wood?

A. The spring wood is always softer than the summer wood.

Q. Now, is there——

A. (Interrupting.) That is true in any tree.

Q. Yes. But it is true to a more marked extent, is it, in the Pinus ponderosa than in sugar pine?

A. In some localities ponderosa approaches lambertiana in that quality—very small summer wood, very little difference, very even texture. In other localities there is a marked difference between the summer wood and spring wood.

Q. Now, is there a greater range as regards the resinous content of ponderosa lumber than there is in the resinous content of sugar pine?

A. That would need rather careful definition. Sugar pine
2234 shows a type of resin which occasionally ponderosa does not. As to the occurrence of what is commonly called the pitch in the lumber industry, it occurs quite commonly in both species, but it is more prevalent in ponderosa.

Q. Well, now, is there a greater variation in the amount of resinous substances in Pinus ponderosa, from its freest type to its most resinous type, than there is between the freest type and the most resinous type of sugar pine?

A. I should say that there was.

Q. Which of the trees average is the largest?

A. Sugar pine.

Q. Is that noticeably so; is that quite a marked difference in the average of the two trees?

A. There is a noticeable difference in the size of the average trees.

Q. Have you had occasion to notice the merchantable character of sugar pine, where the lumber is already down before the timber is sold, as contrasted with the same situation as regards the Pinus ponderosa? Is my question clear?

A. In what respect?

Q. That is, as to its remaining merchantable, the durability of its merchantable character as wood?

A. One finds many more evidently ancient sugar pine logs, or portions of trees, in the forest than you do yellow pine, ponderosa.

2235 Q. You are referring to down trees, are you?

A. Down trees; yes.

Q. After how long a time would you estimate is a Pinus ponderosa tree merchantable after it has been lying on the ground?

Mr. MATTHEW. Is the witness qualified to answer that question? I understood you qualified him as to lumber operations.

By Mr. BURR:

Q. Do you have anything to do with the sale of the timber on the forest reservation?

A. Nothing officially.

Q. Have you had opportunity to observe the soundness of the lumber content of down trees of the Pinus ponderosa trees?

A. That is a thing which I habitually notice in the woods.

Q. For how long a period is the Pinus ponderosa tree, after it is down, how long does it remain sound and free from rot?

Mr. MATTHEW. Now, Mr. Examiner, it seems to me that that question is vague. It all depends on whether the tree which is fallen is a rotten tree or whether it is a tree that may be perfectly sound that has fallen as a result of a storm.

Mr. BURR. I think the witness can define that in his answer.

Examiner DE BRULER. With the qualifications that have been stated by the attorney for the respondents—you have that in mind—can you answer that question?

Mr. MATTHEW. I think the question should be defined

2236 more clearly by counsel.

Examiner DE BRULER. Answer the question if you can.

A. I would hesitate to specify any particular number of years for the reason that it depends to a considerable extent, even though the log is sound, or the tree is sound, when it goes down. It also depends upon where it falls, the amount of moisture in the location, to a considerable extent.

By Mr. BURR:

Q. Can't you average those conditions and made an estimate as to how long a sound tree, for example, is down, felled, or otherwise, how long, under average conditions, would such a log remain sound in character?

Mr. MATTHEW. I object to the question.

Examiner DE BRULER. Have you ever observed that in the woods? Have you had any knowledge along that line?

The WITNESS. Why, I am not so well qualified to testify on that point as a pathologist would be by considerable. That is their main business.

Examiner DE BRULER. What has been your observation along that line?

The WITNESS. Well, I have observed that in the woods.

Examiner DE BRULER. I mean how long back have you noticed that? Has it gone to any extent? In other words, that is a question that involves time.

The WITNESS. The difficulty in answering that question
2237 from my standpoint, is that one seldom knows when a tree came down.

Mr. MATTHEW. I object to the question and——

Mr. BURR. I will withdraw the question.

By Mr. BURR:

Q. Which heart wood lasts the longer on down logs, as a result of your observation and experience, the sugar pine or the Pinus ponderosa?

Mr. MATTHEW. I don't think the witness is qualified to answer that question.

Mr. BURR. He has given a lifetime to it.

Examiner DE BRULER. I will let him answer that subject to examination to decide whether or not it is based on insufficient knowledge. You may answer that.

A. My judgment would be that sugar pine will last the longer.

By Mr. BURR:

Q. Is that by a large margin longer?

A. By quite a large margin.

Mr. BURR. You may cross-examine.

Cross-examination by Mr. MATTHEW:

Q. Have you made any tests for the purpose of determining the relative life of heartwood of sugar pine and Pinus ponderosa, respectively?

2238 A. I have not.

Q. Do you know that the director of the United States Forest Products Laboratory, at Madison, Wisconsin, has testified in this proceeding that he does not know, and cannot express any opinion, as to whether the heartwood of these different species of pine varies as to durability?

Mr. BURR. I don't think he did so testify.

A. I am familiar with the work at the forest products laboratory. I do not know what has been testified to in these proceedings.

By Mr. MATTHEW:

Q. You have made no test yourself and the opinions which you have expressed, as I understand it, proceed from impressions?

A. Yes.

Q. The decay of lumber depends upon a great many conditions, such as the moisture conditions, contact with the soil, and perhaps the relative heat and cold, does it not?

A. It does.

Q. And before arriving at a scientific conclusion, or a conclusion which you think would be scientifically correct, you would naturally expect to make some rather extensive tests, I assume?

A. I would. I set this up for nothing beyond impressions.

Q. I understand. You have referred to the resin content of these two trees, and I am not sure that I got your statement as to the resinous character of sugar pine. Did you have in mind the
2239 conditions which are sometimes characterized as pitch pocket conditions?

A. Partly; yes.

Q. And what else?

A. Well, I never saw in sugar pine anything like the common Australian grade of ponderosa.

Q. What do you mean by Australian grade of ponderosa?

A. A pitchy clear.

Q. How does it come by the name of Australian grade?

A. Because that is the chief market in which they have disposed of it.

Q. That is rather an inferior type of lumber, is it?

A. Inferior for many purposes, yes; but not necessarily for certain construction use.

Q. But it is not the type of lumber which is used for shop, fine shop work?

A. Absolutely not.

Q. Or for the manufacture of sash and door and interior trim?

A. No, sir.

Q. Of course, you know the California white pine lumber is very largely used for the purposes which I have just enumerated?

A. Yes.

Q. Now, have you understood that the sugar pine lumber has frequently been found unsatisfactory for such use, because of the little bubbles of pitch or sugar, as they are sometimes termed,
2240 which come out in the wood?

Mr. BURR. I object to that, as this relates to the use, and I do not think the witness has been qualified as yet as to the uses of lumber.

Examiner DE BRULER. I think he may answer that question, if he can.

A. Why, I would not. I have had considerable acquaintance with that and I would not say that sugar pine is frequently unuseable or undesirable on that account. That is a thing which sometimes appears.

By Mr. MATTHEW:

Q. It is rather common, is it not, a common ground for complaint against the use of the wood for interior trim?

Mr. BURR. I object. I don't think he is qualified to answer. He has never been in the trade and never sold any, as far as his experience goes, and I do not think he has been qualified to testify as to the

commercial characteristics and the commercial complaints against this type of lumber.

Examiner DE BRULER. I think that is very vital. I think he is able to decide whether he can testify or not.

Mr. BURR. I object further on the ground that this is not proper cross-examination. I didn't go into the wood from the commercial standpoint on direct.

Mr. MATTHEW. I am not going into it from the commercial standpoint; I am talking about the resin content.

2241 Examiner DE BRULER. The objection is overruled.

Mr. BURR. May I have the question read?

(Whereupon the question referred to was read by the reporter.)

Examiner DE BRULER. You may answer that if you can.

A. I would not. As far as I know I would not call it a common ground.

By Mr. MATTHEW:

Q. Let me put it this way: These little bubbles, or flecks, or bags of sugar—call them what you may—appear as commonly on the California white pine as upon the sugar pine lumber?

A. No.

Mr. MATTHEW. That is all.

Redirect examination by Mr. BURR:

Q. Mr. Hill, when you spoke about the observations that you made, or rather the characteristics of the trees as being based upon impressions—I think that was the word that counsel used in which you acquiesced—those impressions of yours are based upon observations over a long period of years, are they not?

A. I would like to qualify that if I may.

Q. I wish you would.

A. To the extent—I acquiesced in the use of the word impression with respect to the durability of the wood of the tree in down logs.

2242 Q. Yes.

A. As to the variation in the appearance and characteristics of the tree and in the quality of the wood. That is my professional business and I know.

Mr. MATTHEW. I asked no question as to the subject you covered.

By Mr. BURR:

Q. With regard to the down timber, you have had opportunity to observe the characteristics of the logs after they had fallen or been felled?

A. Yes.

Q. Have you not?

A. Yes.

Q. And your testimony as to the durability is based upon your long experience and observations, is it?

A. Yes.

Mr. MATTHEW. May I ask, are you familiar with the sugar pine of the Klamath basin?

The WITNESS. Klamath basin—I am not much familiar with it.

Mr. MATTHEW. You are not familiar with the white pine of that basin either?

The WITNESS. No.

By Mr. BURR:

Q. It is out of your jurisdiction?

2243 A. No, it is within the jurisdiction of our station.

Q. The Klamath basin is—on the Oregon side?

A. No. I beg your pardon—not on the Oregon side. We have a Klamath National Forest just this side of the line and I was thinking of that.

Q. That is the part that comes in Modoc County, California?

A. Yes, sir.

Mr. MATTHEW. Have you ever been in a position to contrast the characteristics of the lumber yielded by the sugar pine of the Klamath basin in southern Oregon with lumber produced from sugar pine in California?

The WITNESS. No.

By Mr. BURR:

Q. You have had an opportunity to contrast the sugar pine with the ponderosa pine from Alturas and Modoc County sections, have you?

A. I have not been into the Modoc——

Q. (interrupting.) Beg pardon?

A. I have not been into the Warner Mountains.

Q. What mountains?

A. The Warner Mountains.

Q. How about the neighborhood of Mt. Lassen, are you familiar with the Pinus ponderosa there?

A. Yes, sir.

Mr. BURR. That is all.

2244 (Witness excused.)

Mr. BURR. Call Mr. Elliott, please.

JOSEPH C. ELLIOTT was thereupon called as a witness and, having been duly sworn, testified as follows:

Direct examination by Mr. BURR:

Q. Mr. Elliott, what is your line of work, sir?

A. I am at present with the Government, inspector of timber sales.

Q. That is with the Forestry Service of the Agricul'ural Department, is it?

A. Yes, sir.

Q. And you are located, have your headquarters, where?

A. In the Ferry Building here in the city.

Q. How long have you been in that employ?
A. I started in in 1908.
Q. And you have been there continuously ever since?
A. Yes, sir.
Q. What is the nature of your duties?
A. Well, looking after the timber sales, seeing that the contract requirements are fulfilled, and checking up the log scale.

2245 Q. How much do you have to do with the buyer; that is, do you get to see him and negotiate matters?
A. Yes; quite frequently I see the purchaser of the timber.
Q. Who does the actual work of cruising to ascertain how much standing timber should be charged for by the Government in the sale?
A. Mr. Evans' timber-survey party.
Q. You don't do that?
A. No, sir.
Q. Do you go along with him?
A. I haven't recently; I used to cruise quite a lot of timber.
Q. Prior to 1908 what were you doing?
A. I was for five years with the Department of the Interior in Minnesota in the Indian reservations and assistant superintendent of logging there. Previous to that I worked for lumber companies.
Q. What kind of logs did you have your experience with in Minnesota?
A. Norway and white pine.
Q. How much have you had to do with lumbering operations as regards the manufacturing end?
A. Why, very little.
Q. Yours relates to merely the forest end of it?
A. Yes.
Q. Together with the actual logging off of the lands—do you have to do with that?
A. Yes, sir.

2246 Q. Now, did you ever have any experience in the inland empire, so called?
A. No, sir.
Q. What is the common designation for name used for the ponderosa tree by the California residents where it grows?
A. Yellow pine.
Q. Do they ever refer to it, as far as your experience goes, as California white pine?
A. Well, the lumber manufacturers do.
Q. I am talking about the residents, the local people.
A. No; I think—I don't think I ever—I don't recall now of the local people calling it white pine.
Q. What do the loggers, the men actually felling the trees, what do they call it?
A. Yellow pine; and some of them call it bull pine.

Q. Do you ever hear them refer to it as "this is a white pine tree and that is a sugar-pine tree" in what kind of way?

A. I might have, but I don't recall it now.

Q. Have you had any opportuinty to observe whether the Pinus ponderosa tree, that is the yellow pine, as you have called it, whether that varies more in various parts of California than the sugar pine does?

A. I suspect probably it does.

Q. In what respects?

A. Why, in the size of the trees and somewhat in the tex-
2247 ture of the wood.

Q. What is the difference in the texture of the wood?

A. Well, the wood on the east slope of the Sierras, what we call the east side, is a better quality of yellow pine than we get on the west side. Where you get clear lumber out of it, it is a better lumber than the yellow pine clear on the west slope.

Q. Better in what respects?

A. Well, it hasn't got that hard grain in it so much, don't have so much of that hard, flinty grain, as it does on the west side; it is more uniform in texture.

Q. Now, have you had any opportunity to observe any difference between the sugar pine and the ponderosa tree as regard durability where standing as dead timber?

A. Yes, sir.

Q. Will you relate what your experience is? What chance do you have to reach a view as to the comparative durability of those two things?

A. Well, in the last instance that I recall now, up on the Lassen forest out from Susanville, we had a forest fire there that killed quite a lot of timber, mixed, both yellow and sugar pine and furs.

Examiner De Bruler. What year was that?

The Witness. In 1924.

By Mr. Burr:

Q. Did you have opportunity to observe later to ascertain
2248 which trees remained sound and which didn't?

A. Well, I presume both decayed about alike; that is, the sapwood, but the heartwood of the sugar pine, after it was dead three or four years, was still good enough for them to log.

Q. They did log it three or four years later?

A. Yes, sir; the sugar pine.

Q. How about the heartwood of the ponderosa tree at the same period?

A. I suspect it was sound, but somewhat checked with the drying out of the tree.

Q. Was that actually sold and charged for?

A. Yes, sir.

Q. Was the yellow pine charged for; was the heartwood charged for?

A. It was checked with cracks, dried out.

Q. Well, did the Government actually require the contractor, the buyer, to pay for that wood?

A. No, sir; the contract requires that they shall log and pay for any timber or logs that are 33⅓% sound, merchantable. There would not be a third in the yellow pine on account of the heavy sapwood. The lighter sapped sugar pine was still sound and could be utilized.

Q. The lighter sapped sugar pine?

A. Yes, sir.

Q. You don't mean that the Government makes them pay
2249 100% when there is only 33⅓%?

A. They pay 33⅓% of the volume of the log.

Q. And if there is less than 33⅓% that is sound, they get it for nothing, if they can use it?

A. They don't usually handle it at all; they are not required to.

Q. Did you observe the difference in the condition of the heartwood of each of those species as regards its durability, aside from its checking?

A. Oh, yes.

Q. Which was the more durable after that period of time, which was more in the sounder condition, I would say, after that period of time, the heartwood of sugar pine or the heartwood of ponderosa?

A. Well, I don't think there was any difference, excepting that the heartwood of the ponderosa was so small that it didn't amount to anything.

Q. Have you had an opportunity to observe the lasting qualities of the two species of trees that we have been referring to, where the timber is down over a period of years?

A. Yes, sir.

Q. Will you relate what opportunity you have had to observe that?

A. Well, I came to California about 21 or 22 years ago and was up in the Sierras working and there was a great deal of shake trees that shake makers had fallen years before that, long enough
2250 before so that the sapwood was gone off the outside, rotted.

Q. That was sugar pine, was it?

A. Yes, sir, sugar pine; and the heartwood was just the same as it always had been.

Q. When did you observe that last?

A. Well, we observe it every year now as we go into fresh cutting.

Q. Are those logs still lying there?

A. Yes, sir.

Q. What is their condition now?

A. They are all right. We log them and make lumber of them.

Q. They are still sound, you mean?

A. Yes, sir.

Q. Now, have you had an opportunity to observe correspondingly as regards the yellow pine?

A. Well, the shake makers didn't fall yellow pine. Of course, there are lots of windfalls and trees burned off. They don't last nearly so long as the sugar pine.

Mr. MATTHEW. I move that last answer be stricken out.

Examiner DE BRULER. Has that been from your observation?

The WITNESS. Yes, sir.

Mr. MATTHEW. He asked if he had had an opportunity to observe it.

Examiner DE BRULER. I think it may stand.

By Mr. BURR:

Q. How about the heartwood of ponderosa, does that last as
2251 well where the log is down, as the heartwood of sugar pine?

A. No; it will not because the seasoning of it opens up cracks in it and lets the moisture in there and when it gets moist, and then dries out, it rots faster.

Q. What differential do you make between sugar pine and yellow pine to the buyer per thousand?

A. We sell stumpage altogether and the difference in the price is from $1 to $1.50 in different localities.

Examiner DE BRULER. In favor of which wood?

The WITNESS. In favor of the sugar pine.

By Mr. BURR:

Q. That is the higher price?

A. Yes.

Q. Now, do you recall the time when the buyers objected to paying for dead and down, and dead and standing sugar pine trees?

A. We do that yet. That is part of the contract.

Q. I say, do you recall a time when the buyers objected to doing that, to paying?

A. Oh, yes. In the beginning they objected to the dead timber. They said that it was not as good as the live timber.

Q. Do they still object?

A. Oh, no; they don't object any more.

Q. Have you observed any diversity between the spring and summer wood of the Pinus ponderosa tree?

A. Yes.

2252 Q. Is it more marked than the difference between spring and summer wood in the sugar pine?

A. Much more; yes, sir.

Q. Do you find any differences in the quality of the Pinus ponderosa due to altitude—elevation?

A. I don't think so. I don't think the elevation has much to do with the quality of the wood, but it has with the size of the timber.

Q. I see. How great is the difference in the thickness of the sapwood, as an average, as near as you can reach it, of the sugar pine and the yellow pine?

Mr. MATTHEW. Are you dealing with trees or logs with equal diameter?

By Mr. BURR:

Q. Yes; of even diameter. That is a fair question. Which has the greater ring of sapwood?

A. I think it would be, in fact I know it would be, about 2 to 1; it would average 2 to 1.

Q. Which is the greater?

A. Yellow pine.

Q. Has it greater sap, you say?

A. Oh, yes.

Mr. MATTHEW. Are you talking about the depth of the sapwood in inches?

Q. (By Mr. BURR.) You are talking about the width of the
2253 sap ring in point of inches, are you?

A. Yes, sir.

Mr. BURR. You may cross-examine.

Cross-examination by Mr. MATTHEW:

Q. Is it not a fact, Mr. Elliott, that the Pinus ponderosa logs, when on the ground in the forest, are subject to the attack of a certain fungus which results in their acquiring a blue stain?

A. Yes, sir.

Q. That is quite a common thing, is it not?

A. Yes, sir.

Q. The sugar pine logs are not subject to the attack of that particular fungus, are they?

A. Yes, sir.

Q. Do they become blue in the same way?

A. Yes, sir.

Q. And just as quickly?

A. I think so; yes, sir; about the same.

Q. And is that one of the reasons why the lumber manufacturers have not always desired to take the down timber, as you described it?

A. I think so. The reason they objected to it in the beginning was on account of having to handle so much log for the small amount of scale or lumber they got out of it.

2254 Q. But that blue stain is regarded as an objection from the lumberman's point of view, is it not?

A. Oh, yes. It reduces the price and also reduces the grade the lumber goes into.

Q. You gave us an instance where some sugar-pine trees had been felled by some manufacturers of shakes, I think you said?

A. Yes, sir.

Q. And the heart of those logs, you say, is still sound?

A. Yes, sir.

Q. I think you also said, in response to a question from counsel, that yellow-pine logs had been felled in the same fashion?

A. I have never taken notice of the yellow-pine logs being used for shakes.

Q. Then you haven't a direct comparison between logs handled in a similar condition?

A. No, sir.

Mr. MATTHEW. That is all.

Redirect examination by Mr. BURR:

Q. Did I understand you to say that sugar pine is as quickly and as fully susceptible to blue stain as the Pinus ponderosa?

A. Yes, sir. You take in hot weather, in the summer, if it is down about six weeks, it starts to stain at the saw cuts in the end, the logs.

2255 Q. Does that interfere with the marketability?

A. With what?

Q. With its marketability, saleability?

A. No; they sell that blue stain until it starts to break down with rot.

Q. Does the blue stain start to break down with rot as soon in the sugar pine as it does in the ponderosa?

A. Yes; I suspect it would.

Q. Then I don't understand your testimony with regard to durability, and your comparison of durability, of the two types of down timber.

A. The blue stain only affects the sapwood of the log.

Q. I see. Does that blue stain go through into the heartwood of either species?

A. No, sir.

Mr. BURR. That is all.

Examiner DE BRULER. Any further questions by counsel for respondents?

Mr. MATTHEW. No.

(Witness excused.)

Mr. BURR. Call Mr. Kelham, please.

GEORGE W. KELHAM was thereupon called as a witness and, having been first duly sworn, testified as follows:

2256 Direct examination by Mr. BURR:

Q. You are an architect, are you, sir?

A. Yes.

Q. How long have you been practicing that profession?

A. About 30 years.

Q. Are you located in San Francisco?

A. Yes, sir.

Q. Have you been during that period, that entire period?

A. No; for 21 years—22 years, I believe.

Q. 22 years here, you say?

A. Yes.

Q. Do you have occasion to order sash for buildings upon which your professional services are engaged at various times?

A. Yes.

Q. What variety of wood do you specify for sash?
A. Not always the same.
Q. Well, please particularize a little more.
A. It is sugar pine or cedar.
Q. Do you ever specify California white pine?
A. No, sir.
Q. And why is that the case?
A. We don't think it is as good lumber for the purpose.
Q. In what respects do you regard it as inferior for that purpose?
A. We don't think it has the same strength; we don't think
2257 it has the same ability to what we call stand up in weather conditions, and it has, in our opinion, more pitch.
Q. Do you ever order ponderosa for pine doors for exterior purposes?
A. I never do.
Q. What is the reputation among your profession in the city of San Francisco of ponderosa lumber and sugar pine for purposes where the wood is to be exposed to the weather?
Mr. MATTHEW. I object to that, Mr. Examiner. I think counsel should confine himself to the facts instead of asking generally about the reputation here.
Mr. BURR. If the examiner please, witnesses for both sides in this case have been asked, and have testified, as regards the repute, particularly in Boston, witnesses for the Government particularly, testified at considerable length as to the repute of white pine there for durability, and the question was allowed, and I think objection has been made from time to time, and I trust it will be allowed here.
Mr. MATTHEW. That was predicated, Mr. Burr, as you will recall, upon the fact that there were a great many old buildings in New England made of northern white pine.
Mr. BURR. That goes to the length of time rather than the principle involved here.
Examiner DE BRULER. Are you acquainted—he used the word "reputation"—are you acquainted with that? Do you know
2258 the reputation?
The WITNESS. I can't testify to the general reputation as to what other people think. I can only testify as to what I think.
Examiner DE BRULER. That is what I want to find out.
The WITNESS. That would be merely hearsay opinion.
Mr. BURR. If the examiner please, I would like to instruct the witness as to whether or not it is hearsay; it is for the examiner to decide.

By Mr. BURR:

Q. Let me ask you again: Do you know the repute among your profession of the ability of sugar pine to stand up where exposed to the weather? Is it good or bad?
A. Good.

Q. Now, do you know the repute of western yellow pine, Pinus ponderosa, among your profession as to its ability to stand up when exposed to the weather? Is it as good as sugar pine or not?

Mr. MATTHEW. You have two questions there.

Examiner DE BRULER. I think you should first ask him if he knows the repute and let him answer, yes or no.

By Mr. BURR:

Q. Do you know the repute of western yellow pine amongst the members of your profession, of Pinus ponderosa, as to durability where exposed to the weather?

2259 A. I know what I think it is. I can't say I know the opinion of another person. Do you want to know my general belief, what my opinion is; if so, I can state that.

Q. All right, let's have that.

Mr. MATTHEW. I object to that question being answered. If you want to give any specific instances, I have no objection. He said in the first place, he doesn't know the repute. Therefore, he is not qualified to answer that question.

Mr. BURR. I think he does know the repute.

Examiner DE BRULER. Go back and ask that question that I asked to be answered by yes or no.

By Mr. BURR:

Q. Do you know the repute amongst your profession of Pinus ponderosa lumber for purposes where it is exposed to the weather?

A. I can only give you, as I have already stated, my opinion of that repute. You cannot say you know another man's opinion. I can give you the opinion of my office; I can give you my belief in the general repute. If you want that answered, I can answer that.

Mr. MATTHEW. I object to the question being answered. It has been made clear that he doesn't know the general repute.

The WITNESS. I know my opinion of the general repute.

Mr. BURR. It is only your opinion that I can ask for.

The WITNESS. I can't state facts for other people, as counsel knows.

2260 Mr. MATTHEW. I desire to press my objection. The witness is not in position to say he knows the general repute. He is not qualified.

Mr. BURR. I think the witness is conservative. He has shown by his testimony that he is able to answer the question.

Examiner DE BRULER. Do you know the general reputation of the wood among your profession?

The WITNESS. I think I do.

Examiner DE BRULER. Then you can answer what the reputation is. State what it is, if you know.

The WITNESS. What is the question?

(Whereupon the question referred to was read by the reporter.)

Examiner DE BRULER. You said you knew, so now state what the answer is.

A. My answer is: it is unsatisfactory under those conditions, and that would be the general opinion of the architects that I know.

By Mr. BURR:

Q. And for what reason is it unsatisfactory?

A. It doesn't, in our opinion, last well. It decays more rapidly than other wood.

Q. Were you the architect for the Russ Building here in town?

A. Yes, sir.

Q. That is one of the largest in the city, is it?

A. I think so.

2261 Q. What variety of sash did you use in that building?

A. I cannot tell you. It's sugar pine or cedar. I would have to check that up. We had estimates for both woods and I am not positive which was taken. It was a question of price.

Mr. BURR. That is all. You may cross-examine.

Cross-examination by Mr. MATTHEW:

Q. Where you speak of cedar, what wood do you mean?

A. Well, we mean what is called in our business Port Orford cedar.

Q. Do you specify it as cedar or as Port Orford cedar?

A. I couldn't answer that question. We might specify it both ways. I am not sure. It is a question I would have to refer to the specifications before I could answer it. I think it is referred to as Port Orford cedar.

Q. But is it sometimes found in orders, architects' specifications, simply as cedar?

A. That I cannot tell; it might be.

Q. Does the term "cedar" cover that for your office means?

A. In our office, it does.

Q. Is that the general practice among architects. or do you know?

A. That depends entirely on the class of work which is being specified. You will understand in our profession everything is

2262 specified, from good timber to chewing gum, and depends on the class of work entirely as to what wood we specify. I would say, generally. it would mean Port Orford cedar.

Q. You don't know, I assume, whether Port Orford cedar is botanically a true cedar or not?

A. No, sir; I don't.

Q. You are not interested in the botanical nomenclature of woods in any event?

A. No, sir.

Q. Your interest is solely in their quality and utility for specified uses?

A. Entirely in their results. In our work that is the only interest we have in them.

Q. You stated that you quite commonly, you said, almost uniformly, specified either sugar pine or cedar for the construction of window sash?

A. Yes.

Q. You have never specified California white pine?

A. No, sir.

Q. Then you are not personally familiar with California white pine; that is, with respect to its adequacy or sufficiency for this purpose?

A. I have used it in some small pieces.

Q. And specified it for that purpose?

A. No, never specified it, but have taken it under questions of price.

2263 Q. How long since?

A. It would be so long ago—it has been a matter of some years since we have used any.

Q. Ten years?

A. I can't remember.

Q. Fifteen years, approximately?

A. I don't suppose there has been a piece used out of our office for ten years.

Q. Then your personal familiarity with the use of California white pine for sash and door purposes has been very limited?

A. Very limited.

Q. And when you testified as to its repute you were simply expressing what you understand to be the general consensus of opinion, and not undertaking to convey an impression based upon specific instances?

A. Well, in my estimation of the wood, and my knowledge of its general action, that has been my personal conclusion that I didn't care to use it for that purpose.

Q. Where has that experience been?

A. In various instances, in various mills, and in examining various grades of it, and the finished products of it.

Q. Do you know that California white pine is very commonly used in this territory for sash and door purposes?

A. Yes, sir. And I know it is commonly used where sugar pine is specified also.

2264 Mr. MATTHEW. I move to strike out the latter part of that answer.

Examiner DE BRULER. You needn't answer that.

By Mr. MATTHEW:

Q. Do you know whether the relative use of California white pine is increasing?

A. I have no idea.

Q. Have you had any experience with these little pitch pockets, or sugar pockets, in the sugar pine when used for sash and door purposes, or interior trim?

A. We have used very, very little sugar pine for doors or interior trim.

Q. What do you use for doors and interior trim?

A. Cedar. In some instances, Oregon pine, on a cheap grade of wood, and in some instances redwood.

Q. By Oregon pine, you really mean Douglas fir.
A. Yes.
Q. Do you know it is not a pine tree?
Mr. BURR. I object to the question and——
A. (Interrupting.) I make no pretense of technical knowledge.
Mr. BURR. May I interpose an objection first. I object to the question with regard to the supposed misnaming of Oregon pine on the ground that it is immaterial to this issue.

Examiner DE BRULER. That would be true, but in this ques-
2265 tion, as I understand his answer, it was a certain kind of a pine.

Mr. BURR. I want to object to the introduction of the answer. I want to move that it be stricken. I tried to make my objection timely and I now make a motion, which I believe is timely, that that be stricken from the record.

Mr. MATTHEW. I cannot see the basis for the motion.

Examiner DE BRULER. We are not going into the confusion of the other woods. That has been ruled out. It is the pine that we are going to consider and I think it may stand as to that extent.

Mr. BURR. But that has nothing to do with this case. I desire to strike the answer.

May we hear the answer read?

(Whereupon the answer referred to was read by the reporter.)

Mr. BURR. I will withdraw the motion.

By Mr. MATTHEW:

Q. I assume that you are not familiar with governmental reports which reflect the results of tests of various pine lumbers?
A. No.
Q. I have in mind such a bulletin as "Monthly Bulletin No. 556 of the Department of Agriculture."
A. No.
Q. Now, Mr. Kelham, I don't want to press you to the point of seeming to be annoying, but I wish you would give your com-
2266 plete personal experience with California white pine, if you will, because you stated that you had accepted some of it in particular instances, but that in recent years you had not specified it, and that you have used it to a verly little extent. Could you give your complete experience with it?
A. No; that is impossible. I used California white pine on a house which I built for myself at Lake Tahoe some four or five years ago. I used white pine to some extent throughout that house. That is the only specific instance that I recall now of having used it for many years; that is, any white pine, so-called California white pine lumber.

To go back over a period of years, in a practice like mine, and tell you when I actually used a sash, and what kind of lumber was used—it couldn't be done.

Q. That is the only instance which you can specifically recall now where you have used California white pine?

A. Yes, sir. As I stated, we do not use it in our office.

Mr. MATTHEW. That is all.

Redirect examination by Mr. BURR:

Q. That California white pine, in the place at Tahoe, was that used for interior purposes?

A. Yes.

Q. Did you use it for exterior work?

2267 A. No, sir.

Q. Now, is California white pine used where sugar pine is specified, on occasions here in San Francisco?

A. I don't wish to make that as a positive statement, but it is a popular belief among all of us that it is.

Examiner DE BRULER. That wouldn't be proper evidence.

Mr. MATTHEW. I move it be stricken.

Examiner DE BRULER. It may be stricken. There is no use to encumber the record with something that is of no use in this issue.

By Mr. BURR:

Q. Have you at any time specified sugar pine and had California white pine delivered on the job for you?

A. From my own knowledge, I cannot say.

Q. Beg pardon?

A. Of my own personal knowledge, I cannot state that we have.

Q. Referring to the work that your firm has done?

A. It has been reported to our office that that had occurred, and it had been rejected, but of my own personal knowledge I cannot say.

Q. Was that report made to you in the scope of the business of some employee of your office?

A. Yes; it was.

Mr. BURR. That is all.

Mr. MATTHEW. That is all.

2268 Examiner DE BRULER. That is all. You may be excused.

(Witness excused.)

Mr. BURR. Call Mr. Taylor, please.

Examiner DE BRULER. Is Mr. Charles L. Taylor here?

(No response.)

Mr. BURR. I though he was here. I don't know him when I see him.

It is my error. He is called for the 29th.

Call Mr. Hughes.

WILLIAM HUGHES was thereupon called as a witness and, having been first duly sworn, testified as follows:

Direct examination by Mr. BURR:

Q. Mr. Hughes, when did you come to California?

A. July '59.

Q. Have you been here ever since?

A. I have.

Q. What part of the State do you live in?

A. Just a moment—from '13 to '18 I was in the cow business in Arizona. I moved back to Madera to my home in the fall of '18. Outside of those five years I have been here ever since.

I was a "covered wagon baby." I was born in February
2269 '58 and arrived here in '59.

Q. You were born en route out here?

A. No; born in February and started in March.

Q. Well, now, in what part of the State have you lived in?

A. I have lived in Fresno from '79 to '93; and I have lived in Madera ever since, with the exception of five years when I was in the cow business in Arizona.

Q. Now, have you had any opportunity to observe the forests in that length of time? Just what contacts have you had?

A. If everybody loved the forests like I do, there wouldn't be anybody in the city and on the plains.

Q. Are you familiar with the so-called ponderosa tree?

A. That is the sugar pine, is it?

Q. No; that is the tree. Do you know a tree known as the yellow pine here?

A. Yes, sir.

Q. Do you know also a tree known as sugar pine?

A. Yes, sir. I don't know the botanical names.

Q. You don't care about botanical names?

A. No.

Q. Do you know how the yellow pine has sold, what they call it in the form of lumber?

A. Yes, sir.

Q. What is it?

A. What is it called?

2269a Q. Yes, sir.

A. They call it yellow pine down in my country.

Q. Well, when it is lumber is it sold as California white pine, if you know?

A. Sold as California white pine?

Q. Yes, sir.

A. I never heard of that term used for it.

Mr. MATTHEW. There is a part of his answer that isn't responsive and it should be stricken out.

Mr. BURR. Which part?

Mr. MATTHEW. His last answer is not responsive.

Mr. BURR. I won't object to the objection. Let it go.

By Mr. BURR:

Q. Have you had any opportunity to observe the durability of sugar pine when used for building purposes?

Mr. MATTHEW. I don't think this witness has been qualified yet for an answer of that kind.

Mr. BURR. I think it is a qualifying question.

Examiner DE BRULER. He is asking if he had any opportunity.

Mr. BURR. Then I am going to ask—I will qualify him before I am done.

Examiner DE BRULER. I think that is all right. Answer the question.

2270 A. About 47 years.

By Mr. BURR:

Q. You have had opportunity?

A. I have.

Q. What is that opportunity, what chance have you had to know whether it lasts well?

A. About 47 years of building. I have built three homes. My father and I built the Hughes Hotel at Fresno, the Hughes block, quite a structure, and seven or eight other store buildings there. We used all kinds of lumber in those buildings, and especially sugar pine for finishing and casings and door casings, window casings; and especially if they were strip casings and moldings, and that sort of thing, we used sugar pine.

Q. Have you had an opportunity to observe how those buildings lasted from the time they were erected down to the present time?

A. I am living in my home now. That was built in the early '80's—I think it was '81. Those strip casings are just as perfect as when put in.

Examiner DE BRULER. What kind of wood was that?

The WITNESS. Sugar pine. The rustic was made out of sugar pine, and the northwest side is exposed to the afternoon sun. Three years ago the underpinning rotted out, the upper part where it rests on the two mud sills, and it settled about an inch and a quarter, or a half. You can see, by looking around the rustic, that the

2271 outside covering of the house that is made of sugar pine, when I had it jacked up and put in position, that sugar-pine rustic came right back into position without a crack or split in it, without marring the paint even.

By Mr. BURR:

Q. That sill, you say, had rotted?

A. What?

Q. The mud sill.

A. The mud sills, they were of redwood.

Q. And they rotted out, had they?

A. The uprights from the mud sill to the frame was mixed sugar pine and yellow pine; four of the yellow pine pieces had rotted out about four feet apart, and that allowed the building to settle. Rotted out at the bottom, I suppose, and they settled about an inch and a quarter. Those were removed by myself, with two of my sons to help me.

Q. How much of that had been exposed to water?

A. The underpinning on the north side was exposed to water just once. My daughter allowed the hose to run and flood the mud sill,

let it run all night; and the building is well ventilated underneath, but the underpinning never had been wet before, I don't think, in the whole 50 years it has been built, but it got wet that time and the yellow pine studding uprights rotted off at the bottom. The sugar pine didn't.

Q. Those were put in at the same time when the house was originally built?

2272 A. Yes, sir.

There is a house that was built by the first sheriff of Madera County before he was sheriff.

Q. You are county treasurer out there?

A. Yes, sir.

Q. How long have you held that position?

A. Since March '24.

Q. Have you had any chance to observe the durability of sugar pine from a warehouse that you have constructed there? I think you mentioned such a building.

A. I have a picture in my pocket that was taken of a little warehouse on my daughter's property four or five days ago.

Q. When was that warehouse constructed?

A. That building was built by Mr. Thurman, the first sheriff of Madera County, when he was manager for either the California Lumber Company, or the first manager of the Madera Flume and Trading Company—I don't know which—but it was built in the early '80's. I know it was built before '88 because that is the year I went operating in real estate in Madera and put on the Hughes and Chapman colony, and the Hughes addition. The courthouse stands on the Hughes addition.

Q. How carefully was that painted?

A. Beg your pardon?

Q. How carefully was that warehouse painted?

A. It never had any paint.

2273 Q. No paint at all?

A. No; never had.

Q. What is the condition of it today?

A. Good.

Q. Is it constructed entirely of sugar pine, or only in part?

A. I know the roof is sugar pine split shake. The walls, I am satisfied, are sugar pine no. 3 common rough. That was sold in those days for no. 3 common rough.

Q. You say you have some pictures of that warehouse?

A. I have.

Q. Will you be kind enough to produce them?

A. Yes, sir. [Witness produces two photographs.]

Q. Did you take these photographs?

A. I had them taken.

Q. And you know those to be photographs of the warehouse you referred to.

A. Absolutely. There is one hole there that one of my boys punched through to kill an owl about fifteen years ago.

Q. That is toward the right-hand side of the picture?

A. Yes, sir. Last week I made an estimate of what the cost would be to repair that roof. Seven shingles would make it good to last 25 years longer.

Q. There are a few of the shingles that are showing signs of decay, are there?

A. Yes, sir.

2274 Q. What are the shingles, what are they made out of?

A. Sugar pine.

Mr. BURR. If the examiner please, I desire to offer these two photographs as Commission's exhibits for the record and ask that they be received.

Examiner DE BRULER. They will be received as Commission's exhibit no. 44-A and 44-B.

(Whereupon the two photographs referred to were thereupon received in evidence and marked "Commission's Exhibit No. 44-A and 44-B.")

By Mr. BURR:

Q. Have you had an opportunity to observe any other sugar pine structures up in that neighborhood?

A. I have; yes, sir.

Q. Will you name some of them?

A. The Chowchilla Warehouse right by the side of the Golden State Highway at Chowchilla, built in the early '80's.

Q. Is the exterior of sugar pine?

A. The roof is all sugar pine shingles.

Q. Do you have any snowfall up in that country?

A. We had some a few days ago.

Q. Do you have quite a good deal of snow?

A. No, sir; not in the valley.

Q. Not much?

A. No, sir.

2275 Q. Do you happen to know what the rainfall there is in inches?

A. It averages along from 10 to 14 inches a year.

Q. What sort of condition is this building in that you last mentioned?

A. It is in very good condition.

Q. Is that a painted building?

A. No, sir.

Q. Unpainted?

A. Never has been painted.

Q. Do you know of any other building of long standing made of sugar pine there?

A. There are a number of other buildings there. I could drive out in my machine and in 20 minutes find 40 buildings, but I can't remember any that I would testify that I have known that long.

Q. Have you had a chance to notice whether the yellow pine or the sugar pine, when it is down in the forests will last longer?

A. That is the down timber in the forest?

Q. Yes.

A. Oh, Lord, yes. I have had a lot of experience in that line.

Q. Will you outline that for the examiner, please, as to your experience?

A. The yellow pine, fir, falls to pieces and rots and sugar pine stays solid.

Q. Will you go into particulars a little more and tell how
2276 you happen to have reached that view, what experience have you had that leads you to that testimony?

A. I have been camping up through the mountains, taking a pack horse and putting blankets on and a cooking outfit, and travel through the mountains. That has been my experience. I know sugar pine, I know fir, and I know yellow pine, and I know cedar, and I know Sequoia gigantica, the Big Trees. It is one of the pleasures of my life to get into those hills and study those things.

When I want to fish for big trout that long [indicating] I go to a fir log and kick it apart and take out a grub worm. If I can't find a fir log I will find a yellow pine log, but I never look for sugar pine when I want to get a grub worm for fishing.

Mr. MATTHEW. Just a moment: I dislike to interrupt the witness, for obvious reasons, but I don't think the witness should be allowed to go on in this fashion.

Mr. BURR. If the examiner please——

Mr. MATTHEW. Let me enter my objection. We are getting nothing that is definite, nothing upon which the examiner could possibly predicate findings, and I move to strike out the witness' answer.

Examiner DE BRULER. I want to make this statement to the witness: Don't say anything about any other wood except the wood in issue here.

2277 Mr. BURR. Then, Mr. Hughes, will you be kind enough to omit references to fir, cedar, or other woods than the two pines that we are interested in here. We are not trying to prove anything with regard to any other type of lumber.

The WITNESS. I am not trying to degrade any of those.

Mr. BURR. Not at all, sir.

The WITNESS. I don't want to.

Mr. MATTHEW. May it be understood I don't want to be in position to be required to make a timely objection——

Examiner DE BRULER (interrupting). As to what?

Mr. MATTHEW. I want to preserve my objection and motion to strike out this witness' testimony without being in the position of being required to making a timely objection each time.

Mr. BURR. I have not been unreasonable on that, and I shan't here.

Examiner DE BRULER. Very well.

The WITNESS. I will give you time to object before I answer.

By Mr. BURR:

Q. Have you had an opportunity to observe the lasting qualities of timber that has been killed while standing and was not down?

A. To observe any particular kind or all kinds?

Q. Yes; referring to the pine timber.

A. To the pine timber?

Q. Sometimes it is killed by fire or some other reason, is it not, and still stands?

2278

A. Yes.

Q. Have you noticed any difference in the durability of the sugar pine and the yellow pine when standing but not living?

A. I have.

Q. Will you state what experience you have had along that line?

A. Forty-odd years' travel in pretty near every year in the sugar-pine and yellow-pine belts, camping among those trees and observing the logging crews taking out standing and felled dead timber, observing whether or not the yellow pine and fir was decayed.

Q. Never mind the fir.

Examiner DE BRULER. That can be stricken out.

The WITNESS. Am I to mention sugar pine? You asked the question about sugar pine.

By Mr. BURR:

Q. Sugar and yellow pine only.

A. Observing whether there was more of the sugar pine in good condition and logged out after being dead or more of the yellow pine.

Q. Will you tell which has the greater durability, in your experience, under those circumstances?

Mr. MATTHEW. I object on the ground that the witness hasn't been qualified. This isn't the nature of a test; merely going to the forest and getting an impression of certain standing timber and thus determine whether one variety has greater durability than the other. I think it is not possible.

2279

Mr. BURR. If the examiner please, the use of the word "impression" begs the question. The man has had many years of experience on that and it seems to me that the fact that he isn't able to give exact figures merely goes to the weight of the proposition.

Mr. MATTHEW. If the examiner please, how could anybody intelligently make a finding upon such testimony? The testimony we have in this record already, the testimony of the scientific men of the Forestry Department admit they don't know the relative durability of these woods.

Mr. BURR. They don't know the relative durability of the woods, but one testified in Madison as to which wood, in his opinion, was the more durable. It is not going to rest solely upon the experience

of experts. The practical man in the woods who knows the forest is just about as well qualified and as competent as the Forestry people, and they haven't got exact figures. Then we, therefore, must rely on the testimony of practical men.

Examiner DE BRULER. Let me ask the witness one question: Do you recall any forest where the timber was all dead about the same time that you can make a comparison by?

The WITNESS. Yes, sir.

Examiner DE BRULER. Go ahead, if you can name the
2280 forest where it was.

Mr. MATTHEW. How can the witness know that the timber of different trees, or the different trees, died at the same time? It is a speculative element.

Mr. BURR. It might have been a fire that kills the forest all at once.

Examiner DE BRULER. That is what I mean, if he knows they died at about the same time. Do you know of such instances?

The WITNESS. I can go further than that.

Examiner DE BRULER. Go ahead; let's see.

Mr. MATTHEW. I want the record to show that I object to this whole line of testimony on the ground that it is speculative, indefinite, and unreliable.

Examiner DE BRULER. Very well.

The WITNESS. I was an employee of the Minarets & Western Railroad Company when building the line into the Fresno Sugar Pine Company's mill at Central Camp. There was a great acreage there that had been burned over before. I was taking care of the I.W.W. situation in the strike there and——

Mr. BURR (interrupting). Never mind that.

The WITNESS. And I got a good idea of the ratio of sugar pine and yellow pine logged that was taken in after a fire and formed my opinion as to whether or not the timbers were equal or unequal.

Examiner DE BRULER. How did you get that impression?
2281 On what did you base it?

The WITNESS. By the rotten logs laying on the ground left and the other logs taken off.

Mr. MATTHEW. The question has to do with standing timber.

By Mr. BURR:

Q. Was there sugar pine and yellow pine both among those logs?
A. Yes, sir.
Q. Which of them was in the better condition as regards decay?
Mr. MATTHEW. You are talking about standing timber?
Mr. BURR. I am talking about the logs.
Examiner DE BRULER. The dead timber, I suppose.
Mr. BURR. Yes; he testified it is dead.

By Mr. BURR:

Q. Now, which was in the better condition as regards the decay?
A. Sugar pine.

Q. The sugar pine was not so much decayed?
A. No.
Q. Now, what kind of condition were the yellow-pine logs in?
A. As compared to the sugar pine?
Q. Yes.
A. Rotten.
Q. Down?
A. Not all of them.

Q. Do you know how long a period had elapsed?

2282 A. I camped at that camp in '77. That burn hadn't went through there then, and it was in '24—yes, '24; the early part of '24, that this ground was logged over—and I mean it was logged. Everything was taken.

Q. Beg pardon?

A. I mean that was logged. Everything that was solid was taken off that ground.

Q. Now, returning to the standing timber, standing but dead, can you give any experience specifically with regard to the durability under such conditions of those two types of pine?

A. The standing timber——

Mr. MATTHEW (interrupting). The examiner understands that my objection runs through all this testimony on the ground that it is speculative.

Examiner DE BRULER. Yes; and the exception allowed.

A. The standing timber that is dead I would consider of the same ratio, of destroyed from rotting, that I would if it was down.

By Mr. BURR. Q. It wouldn't rot as fast?

Mr. MATTHEW. I move to strike the answer out as not responsive. He said that it would be his opinion. That isn't responsive.

Examiner DE BRULER. That may be restricted. Was that your observation?

2283 The WITNESS. That is my observation.

Examiner DE BRULER. That is a different question—a different answer.

By Mr. BURR:

Q. Can you mention any specific instance where you have had a chance to observe standing dead timber as to the durability of those two species?

Examiner DE BRULER. I think he has just gone into that and answered the question.

The WITNESS. My answer to these previous questions has been based on one specific burn on the White and Friant lumber tract in Madera County.

By Mr. BURR:

Q. In that case it was both down timber and standing timber?
A. Yes; both down and standing.
Mr. BURR. That is all.

(Whereupon followed remarks off the record.)

Examiner DE BRULER. We will take an adjournment now until 2:00 o'clock.

(Whereupon, at 12:20 o'clock p.m., a recess was taken until 2:00 o'clock p.m.)

2284 AFTER RECESS

2:00 P.M.

Examiner DE BRULER. The witness may take the chair again.

WILLIAM HUGHES resumed the stand, and further testified as follows:

Cross-examination by Mr. MATTHEW:

Q. What is your business, Mr. Hughes?

A. County treasurer of Madera County, California.

Q. Have you at any time been in the employ of any of these lumber companies?

A. Beg pardon?

Q. Have you at any time been in the employ of any of these lumber companies in the Madera section or elsewhere?

A. For a very short time; yes.

Q. An employee of what company?

A. Employee of the Fresno Sugar Pine Company and the Madera Sugar Pine Company at the same time.

Q. During what period?

A. The early part of '24.

Q. And what was the nature of your employment?

A. I was deputy sheriff, taking care of a strike situation up there on the Minarets & Western Railroad, that runs up to the
2285 central camp of the Fresno Sugar Pine Company. There was a strike of about 2,800 or 2,900 I.W.W.

Q. And that is the same employment which you referred to on your direct examination?

A. That was the employment I spoke of in the direct examination.

Q. You recall that you referred to employment by the Minarets & Western Railway?

A. Right at that time I did some work for the Madera Sugar Pine Company in my capacity as deputy sheriff.

Q. And that is your sole connection with the lumber industry?

A. Absolutely.

Q. And you are not financially interested in the lumber industry at all, I take it?

A. No; I am not.

Q. To make this clear, then, when you stated in your direct examination that you were employed by the Minarets & Western Railway Company you had in mind an employment by these two sugar-pine companies in connection with the strike situation?

A. Perhaps I am wrong. I should have said the contractor that was building the railroad, doing the work for the Minarets & Western.

Q. The Minarets & Western Railway is controlled by one of these sugar-pine companies?

A. I understand that it is; that is, from a certain point up in the mountains, not the whole railroad.

2286 Q. Upon whose request did you take the photographs of that barn which you offered in evidence here?

A. Mr. Hemphill.

Q. Mr. Hemphill, of what company?

A. Of the Madera Sugar Pine Company.

Q. Do you have any difficulty in distinguishing between sugar-pine lumber and California white-pine lumber, or yellow-pine lumber, as you term it?

A. Do I have what?

Q. Do you have any difficulty in distinguishing between these two lumbers?

A. No, sir.

Q. Irrespective of age or condition, you can readily determine whether a given piece of lumber is sugar pine or yellow pine?

A. I never have.

Q. You have no difficulty?

A. No difficulty; but, at the same time, I never had a critic determine whether I was right at all times or not.

Q. You simply satisfied yourself that you knew the difference?

A. Yes.

Q. You referred to your home, which I think you said was built in 1881?

A. In the early '80's.

Q. And you stated that a portion of the underpinning had decayed?

A. Yes, sir.

2287 Q. In recent years?

A. Yes.

Q. And you added that some four pieces, which you said were of yellow pine, had decayed?

A. Yes.

Q. How did you determine whether or not those pieces were yellow pine or sugar pine?

A. By the thick, flinty yearly growths on yellow pine which doesn't occur in sugar pine.

Q. How many pieces of yellow pine were there in this underpinning in your house?

A. I think four or five; that is, on the north side.

Q. And all the rest were of sugar pine?

A. No; I didn't say that.

Q. I am asking you now.

A. The balance on that side was sugar pine.

Q. All of the balance on that side were of sugar pine?
A. Yes, sir.
Q. You are certain of that?
A. I think I am certain of that.
Q. Did you inspect each one?
A. Well, I couldn't say that I have inspected the corner pole, because the corner post was in the corner, and it is kind of dark, but they were intact and solid. They may have been some other kind besides sugar pine, but I know that two underpinnings
2288 that was solid next to those that had decayed and sank down were sugar pine.
Q. Then you inspected closely only six pieces of this underpinning?
A. Eight. Six pieces had decayed, and five or six have two sections to it.
Q. I thought you said only four had decayed. Am I wrong in that?
A. I wouldn't say for sure whether it was four or six. It took across a stretch of about 24 feet in the building and it settled down. I wouldn't say positive whether it was four or not. I think there were more than four; I don't think there was any more than six. That has been three years ago.
Q. Three years ago?
A. Yes.
Q. And you don't know to what extent the remainder of underpinning of this house is a sugar pine, and to what extent it is of yellow pine?
A. I have removed several of the pieces of yellow pine on the south side; I think four or five pieces.
Q. Any pieces of sugar pine?
A. I haven't removed any sugar pine.
Q. They just appear at random in the structure?
A. Yes; at random in the structure, yellow and sugar pine.
Q. Are they of sapwood or of heartwood?
2289 A. Well, some of them would be of sapwood, I suppose, and some of heartwood.
Q. Did you notice particularly?
A. No; I noticed for decay, for the decay only.
Q. You didn't notice whether the sugar pine was all of heartwood or not?
A. No; I didn't.
Q. And you didn't notice whether the yellow pine was all of heartwood or part sapwood?
A. No.
Q. You stated, Mr. Hughes, that the sapwood ring on the yellow pine trees is ordinarily considerably thicker than the sapwood ring of sugar pine trees?
A. Yes.

Q. Can you give me the approximate width of the sapwood rings of the two varieties of trees, taking logs of corresponding size?

A. No; I couldn't. That is, the rings are of such a small dimension that I couldn't give you the thickness of it, but of the sugar pine there is sometimes merely a mere trace, a yellow trace, and sometimes you don't see the sap, the rings at all, the same color the whole board.

Q. Let's get your best impression though, and let's take a log, if you will, that is 24 inches in diameter. Can you tell me what would be the approximate width of the sap ring on the sugar pine log of that size?

2290 A. No; I could not. They don't cut 24-inch logs down there.

Q. What size do they cut?

A. Four feet.

Q. Let's take a representative log. Would 36 inches be fair, or 40 inches?

A. I couldn't give the thickness of those rings. Some of them were as thick as that blotting paper [indicating blotter] and some thicker.

Q. Can't you give your best judgment of what is representative?

A. That is my best judgment; that is, the thickness of that blotting paper.

Examiner DE BRULER. Tell the reporter how thick the blotting paper is in order to get that in the record.

Mr. BURR. Are you talking about annual rings or sap rings?

The WITNESS. I am talking of the sap ring, or the flinty rings.

By Mr. MATTHEW:

Q. My question had to do with the depth, or width of the sap ring. I understood you to say——

A. (Interrupting.) The sap ring is thicker than that; the flinty ring is sometimes as thick as the blotting paper there [indicating blotter] and sometimes thicker.

Examiner DE BRULER. Tell the reported, for the record, how thick the blotting paper is. Tell the reporter how wide the

2291 blotting paper is.

Mr. MATTHEW. I am going to move to strike out the witness' answer as to this flinty ring, because it is not responsive to the question.

Mr. BURR. I think the witness is talking about a part of the annual ring and the question has to do with the width of the sap.

Examiner DE BRULER. He moved to strike out the answer about the flinty ring. I don't think it amounts to anything and it can go out.

By Mr. MATTHEW:

Q. I understood you to say, on your direct examination, that the width of the ring of sapwood as in the sugar pine tree is somewhat less than the width of the ring of sapwood on a yellow pine tree?

A. That is all wrong.

Q. Let's get it straight.

A. My idea was to describe the flinty, hard part of the wood, instead of the sap or soft part of the wood.

Q. Then you were talking about the annual ring?

A. Yes; the annual ring.

Q. Then, we are not to understand that you have given any testimony as to the relative width of the quantity of sapwood in these trees?

A. If what you mean by sapwood is the soft fibrous part of
2292 it, for I have been trying to describe the hard, flinty part. If you have misunderstood me I don't want you to.

Q. I think counsel for the Commission misunderstood you. You understand the difference, of course, between sapwood and heartwood of the tree?

A. Yes, sir. The sap I consider the soft part of it, and the flinty part is the heart part. The ring I have always considered it as the hard part, the yearly ring.

Q. Let's forget the yearly ring. In the center of the tree we find ordinarily the heartwood, that is true, is it not?

A. Yes.

Q. And ordinarily the outer portion of the tree we find the sapwood, is that true?

A. Yes.

Q. And is there ordinarily a marked difference between the appearance, and likewise the texture, of the heartwood and the sapwood?

Mr. BURR. Which tree; any tree?

Mr. MATTHEW. Either.

The WITNESS. I would like to understand what you mean by the heartwood. Is it the yearly ring?

By Mr. MATTHEW:

Q. No.

A. Is it the hard part or the soft part?

Q. I have tried to make it clear, I am not talking about the
2293 yearly ring at all. I am talking about the entire tree. You and I agreed a moment ago that there is a heart of the tree, and likewise we have the sapwood around the heartwood. Is that right?

A. Well, the flinty part commences at the middle of the tree and works out. I never have distinguished any difference between the heart of the tree growing out and any other part of the tree.

Q. Then you don't make any distinction between the heartwood and the sapwood in the way that I have described it?

A. If it is a Sequoia it is easy enough for me to distinguish between the heart of the tree and the sap of the tree, but in sugar pine and yellow pine I don't know where you commence, where the heart

of the tree begins and when the sap begins. My idea is that it commences at the center and runs to the outside.

Q. All right. That is your conception of it?

A. Yes, sir.

Q. I think the record ought to be a little clearer about the climatic conditions in Madera County. Now, Mr. Hughes, you didn't intend to convey the impression that snow conditions are characteristic of the climate of Madera?

A. No, sir.

Q. In fact, snowfall is a rare thing in Madera?

A. It is in the mountains every year.

Q. I am talking about the community of Madera.

A. Of Madera City?

Q. Yes.

2294 A. Very, very rare.

Q. In fact, Madera has the characteristic climate of the San Joaquin Valley, being quite hot in the summertime and dry?

A. Just comfortably warm.

Q. Rather dry?

A. Rather dry.

Q. The best climate in the State, of course, but rather a hot, dry climate?

A. Yes. It is the geographic center of the State.

Q. And the best climate, but rather hot and dry in the summer?

A. It is real hot in the San Joaquin Valley.

Q. And in the wintertime it is characterized by an average rainfall of from 10 to 15 inches?

A. Yes, sir.

Q. The altitude is 200 or 300 feet, the elevation above sea?

A. 196 feet, I believe is on our depot there.

Mr. MATTHEW. That is all. Thank you.

Mr. BURR. That is all.

Examiner DE BRULER. That is all.

(Witness excused.)

Mr. BURR. Call Mr. Cox, please.

E. H. Cox was thereupon called as a witness and, having been first duly sworn, testified as follows:

2295 Direct examination by Mr. BURR:

Q. Now, Mr. Cox, your business is what, sir?

A. Well, among other things I am a manufacturer of lumber.

Q. And what lumber company are you in?

A. Madera Sugar Pine Company, as wholesalers and manufacturers.

Q. How long have you been connected with that company?

A. I built the plant in 1899.

Q. And you have been connected with it ever since?

A. Yes, sir.

Q. You have been president of that company ever since?
A. Not ever since, but I am now.
Q. Are you the largest stockholder in that concern, Mr. Cox?
A. What?
Q. Are you the principal stockholder in that concern?
A. No, sir; I am not.
Q. You are the largest?
A. Largest individual.
Q. Now, you happen to be director of the Federal Reserve bank, do you?
A. Yes, sir; I am director of the Federal Reserve Bank of San Francisco.
Q. Have you been connected with a building committee of that organization?
A. Yes, sir; I have been chairman of the building committee.
2296 Q. What other lumber companies have you been connected with besides the Madera Sugar Pine Company?
A. Quite a number. I directed the operation of the Weed Lumber Company for seven years.
Examiner DE BRULER. How long ago?
The WITNESS. I guess I got through there perhaps eight or nine years ago.

By Mr. BURR:

Q. Is that the concern which is now the Long-Bell Lumber Company?
A. Yes; that is part of the Long-Bell operation. It is merged with the Long-Bell.
Q. And you have been connected with the manufacture of California white pine, so called, and sugar pine for 45 years, have you?
A. Yes, sir; for 44 years, or approximately that—since I was a boy.
Q. Now, how much experience have you had in the actual study of these two types of timber in the woods themselves; right in the forest?
A. Well, I don't know how to describe that fully. I know the woods, at least I think I know the woods, from the timber out. I have directed and managed and operated every department of the manufacture of sugar and yellow pine.
Q. And how long have you been, rather, how widely have you been familiar with these two types of timber in the State of California?
A. Well, I bought timber from one end of the State to the
2297 other. I bought most of the timber that the Weed Lumber Company bought, which is largely a ponderosa, or yellow pine. I bought all of the timber that the Yosemite Lumber Company is operating on for the owners and sold it to the Yosemite Lumber Company. I bought all the privately owned timber for the Sugar Pine Lumber Company at Fresno, which is the largest pine manu-

facturing plant, I think, in California. I bought 87,000 acres of ponderosa pine for the Long-Bell Company in eastern Oregon. I bought 14,000 acres that is owned by the Weyerhaeuser people near Klamath Falls.

Q. For the Weyerhaeuser interests you say?

A. No; I bought that from the Western Pacific Lumber Company, and that is now owned and operated by the Weyerhaeuser people. I made the selection for the Long-Bell plant at Longview. I bought from the Weyerhaeuser Timber Company, and bought the first three billion five hundred million feet from them. In fact, I have been in this lumber game from Mexico to British Columbia. Year before last I sold to Bloedel, Stewart & Welch, I sold them one half million dollars worth of timber from private owners.

And then there are a lot of other little tracts that came in, but those are the largest.

Examiner DE BRULER. That was pine timber?

The WITNESS. Pine and fir both.

Examined DE BRULER. We are only engaged in considering pine timber now.

2298 The WITNESS. He asked what my general experience was.

By Mr. BURR:

Q. That was pine in that transaction, you say?

A. What?

Q. There was pine timber in that transaction?

A. Not in the last transaction. There was some white pine in the tracts, but——

Q. (interrupting.) What do you regard as genuine white pine?

A. The eastern pine and sugar pine.

Mr. MATTHEW. Would you mind if I had the last few questions and answers read?

Mr. BURR. No, indeed.

(Whereupon the last three questions and answers were read by the reporter.)

By Mr. BURR:

Q. You referred a moment ago, Mr. Cox, to a transaction which was partly pine and partly fir; did you not?

A. Yes.

Q. What transaction was that?

A. The last one referred to was on Vancouver Island—Bloedel, Stewart & Welch.

Q. Will you state whether or not there is a diversity in the characteristics of the timber of the western yellow pine, or Pinus ponderosa, in different parts of its range, which is greater than the characteristics of the sugar pine?

2299 A. Yes, sir; I am sure of that.

Q. Well, in what respect does Pinus ponderosa differ?

A. I think the Pinus pondosa——

Q. (Interrupting.) You mean you are referring now to ponderosa?

A. Well, yellow pine—the ponderosa is a very much more—it varies very much more than the sugar pine in that it grows at different elevations, elevations that are impossible for sugar pine. In the lower hills we call it a bull pine. And in the south, we will say south of Sacramento, and the further you get south the poorer it gets. The further you get north, with exceptions, the better it seems to grow. For instance, the ponderosa at Klamath Falls is a very much better quality than what grows at Madera. The same thing holds at McCloud and eastern Oregon. The knot defects are less apparent; they are solid in that country.

In our sugar pine, only it doesn't vary so much as you go north—it is a sugar pine just the same—there is a difference in the texture. The Government says that the finest sugar pine grows in Tuolumne and Mariposa and Madera, and a part of Fresno County. There is a more uniform weight wherever it grows.

Q. In what wood, the sugar pine?

A. Yes; the sugar pine weighs more evenly. I recall an examination that I made for some eastern people at La Moine, that yellow pine, or ponderosa, weighed as much as the fir in the north, weighed over 3,000 pounds.

2300 Q. How much over?

A. That is that tract right there in that old district—that box shook and everything they made.

Q. Do you remember the average figure it reached for weight?

A. Did I have that?

Q. Do you know how much over 3,000 pounds it weighed?

A. It weighed over 3,000 pounds, because fir in the rough weighed 3,300.

Examiner De Bruler. We are not making a comparison with fir wood. It is between the two woods in question.

Mr. Burr. He is trying to identify what it did weigh. He said it weighed more than fir, and I asked him how much the fir weighed, and so I don't think that is an objectionable method of ascertaining the weight.

The Witness. It is an unusual weight, but I mention it to show that the variation, the weight is greater in that than it is in sugar pine.

By Mr. Burr:

Q. Was that green or dry weight?

A. That was shipping weight.

Q. After drying?

A. Well, it might not have been 100% dry, but it was in shipping condition.

Q. Well, it weighed over 3,300 pounds?

A. About 3,000 pounds.

2301 Q. About 3,000 pounds?

A. Yes, sir.

Q. Now, then, did you observe the weight of the ponderosa anywhere else in that same general vicinity?

A. Well, I know what it weighed north of there of my own experience.

Q. What does it weigh there?

A. About 2,250 or 2,400.

Q. For a dry shipping weight?

A. Under similar conditions.

Q. Are you familiar with the reputation of sugar pine for durability?

A. For what work?

Q. Reputation for durability of sugar pine.

A. Durability?

Q. Yes, sir.

A. I think so, sir; yes, sir.

Q. What is that reputation?

A. I would hardly know how to say that, to describe that.

Q. Is it a durable wood?

A. It is. I believe it to be the most durable of all pine.

Q. You think it is more durable than the old northern white pine?

A. I think the hearts are.

Q. You do?

A. Yes, sir.

2302 Q. Now, are you familiar with the reputation of Pinus ponderosa for durability where exposed to the weather?

A. Yes; it doesn't——

Mr. MATTHEW. I think the answer should not go beyond the question.

By Mr. BURR:

Q. You said you were familiar with it?

A. I said I am.

Q. What is that reputation, sir, for durability where exposed to the weather?

A. You are speaking now relatively?

Q. Yes; relatively to sugar pine.

A. It hasn't the durability that sugar pine has.

Q. That is, the reputation that sugar pine has for durability?

A. No; it has not.

Q. Have you any experience as to the durability of those two woods individually, any experience from which you can compare the durability of the two?

A. Yes. You take it in the woods the logs themselves——

Q. All right, compare them.

A. For durability——

Mr. MATTHEW (interrupting). Perhaps you will allow me, before you continue, to make a rather belated objection in the record.

Mr. BURR. I am not objecting.

2303 Mr. MATTHEW. I think counsel will recall that earlier in the proceedings I offered a general objection to testimony as to

relative durability of woods, and it was understood that that objection would continue throughout the proceedings. The objection that I made was overruled, but I don't want to repeat it.

Mr. BURR. It is agreeable, let the record so show. I think it is only fair.

Examiner DE BRULER. I think the questions of that kind should be asked of the witness as to whether or not the trees died about the same time; that is, what his knowledge is as to that.

By Mr. BURR:

Q. Will you compare the logs of the two species as to durability, based upon your experience?

A. Certainly. The yellow pine will be of small, or of little value in five or six years from the time that it is down. And I have taken sugar-pine logs that have been partly used for shake timbers and brought them in and cut them up in the mill, that were cut a long time before we owned the timber, and that is more than 30 years.

Q. What kind of condition were they in?

A. They were in merchantable condition. The sap would be gone, just the outer ring would be gone, but all the balance of the log would be perfect.

Q. How about the yellow pine under the same conditions; will the heartwood of that last?

2304 A. You don't find it—it is gone by that time.

Q. Is sugar pine good for pattern purposes?

A. It is, sir.

Q. Is it preferable for pattern purposes to ponderosa?

A. Very much so, sir.

Q. What characteristics of the sugar pine is it that makes it better than ponderosa for those purposes?

A. It has less shrinkage and less warp; it is softer and easier worked.

Q. Is it more uniform in texture?

A. Yes; it is.

Q. Is that important for pattern purposes?

A. Very.

Q. Which of the two woods, two varieties of lumber, I should say, is preferable for sash work?

A. Both are used.

Q. Which is preferable?

A. Sugar pine is preferable.

Q. For what reason?

A. For the same reason that I replied in the pattern lumber, that it has less shrinkage, it holds the shape better, and less pull and twist to it.

Q. Is it more desirable on account of its superiority in durability where exposed to the weather?

Mr. MATTHEW. I suggest the question is leading.

2305 Mr. BURR. I think it is leading.

Examiner DE BRULER. You may answer if you know.

Mr. MATTHEW. I think counsel knows it is leading.

Mr. BURR. I think it is leading. I think the question is subject to objection. I will put it another way.

By Mr. BURR:

Q. Do you regard the question of durability as one of importance as regards sash where exposed to the weather?

A. Well, it is important, but I don't think it is taken into consideration.

Q. You don't think it is?

A. No. But if you asked a customer, "Would you prefer sugar or ponderosa?" it is almost a sure thing he would say "sugar pine", but there is very little of that cut into sash on account of higher value.

Q. Higher value?

A. Yes.

Q. Well, now, as a matter of fact, do you know whether there are architects who order white-pine sash?

A. That will order that?

Q. Or don't you know as to that?

A. I know they order white-pine sash, but I don't——

Mr. MATTHEW. I object to the witness volunteering.

By Mr. BURR:

Q. You say you know there are architects that order white
2306 pine sash, do you?

A. Well, they make white-pine sash all through the East there in the white-pine country. I suppose the question is general?

Q. Yes. Now, in ordering white-pine sash, there are certain varieties of pine that are known as white pine, are there not?

A. Yes, sir.

Q. Which are they?

A. Well, for instance, you see when they make sash they make it generally in connection with the making of doors. Just to make sash itself, it can't be made at a profit. To go into a plank and cut out sash, it can be made at a profit. As I said, they make doors out of ponderosa, and the side cutting into sash, and then they fill out, match it up, by taking other lumber to match it up. That is the way sash is made in this country.

Q. In this country?

A. Yes, sir.

Q. Are you familiar with the practice in Iowa in that respect, in the Central States, and Iowa and districts there?

A. I was familiar with conditions in Michigan when I went there every year, but I don't know what it is nowadays.

Q. Well, do you know whether or not there are, or are not, concerns that specialize on white-pine sash?

A. I know that there have been specifications for sugar-pine sash that called distinctly for sugar pine.

Q. You don't know as to the other?

2307 A. No; only in sending in an order for sash, they don't say whether it is sugar pine or white pine, or what it is. The mills that make sash and doors get their orders and they fill it out of the material that they make that they produce.

Q. But there are certain millwork people that specialize on certain varieties of sash and door, are there not?

A. Yes; there are people that use very little other than sugar pine in the manufacture of door frames, door and window frames.

Mr. MATTHEW. I am going to suggest again that counsel is leading. I don't like to interrupt you, but I don't think you ought to suggest the answer to the witness.

By Mr. BURR:

Q. Is the type of sash made from sugar pine a higher priced article, if you know, than the sash made from the ponderosa?

A. Yes, sir.

Q. Does it have a higher standing on the markets for sale purposes?

A. Yes, sir. I will say that I only know of one institution that has sugar pine that can make sash, but I made sash and doors a few years ago, and we differentiated between sugar pine and ponderosa.

Q. You sold sash of both kinds?

A. Yes, sir.

Q. Did you have orders and specifications for white pine or sugar pine sash?

2308 A. We would sell it that way, quote it that way.

Q. And you called those sugar-pine sash, did you?

A. Yes, sir; sugar-pine sash, or billing it otherwise as white-pine sash, which was the name in vogue.

Q. Which did you sell as white-pine sash, the California white pine or sugar pine?

A. The California white pine, so-called.

Q. That was sold by you as white-pine sash, was it?

A. Yes, sir.

Q. How were orders received for sugar sash, as sugar pine?

A. That would be on quotation. You would quote and they would order whether they wanted the sugar pine or the other.

Q. And you invoiced your sugar-pine sash as sugar-pine sash, did you?

A. Yes, sir; we billed it that way for many years.

Q. What are you designating your ponderosa products at the present time, how are you designating them for invoicing and advertising purposes?

A. The difference in price?

Q. No. What do you call your stock? Are you calling it California white pine at the present time?

A. No; we have changed that.

Q. What are you calling it now?

A. Pondosa—I think that is it.

Q. And the change was made when?

2309 A. Yes.

Q. When was it made?

A. Well, it was made when we began using our efforts to get all others to adopt the true name.

Mr. MATTHEW. I move the answer be stricken.

Mr. BURR. I shan't object to the motion.

Examiner DE BRULER. It may be stricken.

By Mr. BURR:

Q. Can you tell me approximately how long ago that change was made?

A. It must have been above about three years ago, I think, when we started it.

Q. About three years ago, you say?

A. About three years ago.

Q. And did you make that decision for the Madera Sugar Pine Company?

A. Yes; we talked it over and we decided that it was the true name of the wood and we have been hurting our sugar pine.

Q. Let me ask another question: For what reason did you make the change in name?

A. Because it was hurting the sale of sugar pine.

Mr. MATTHEW. I object to that as immaterial.

Examiner DE BRULER. You may answer that.

A. (Continuing.) We changed because we believed that the use of white pine was hurting the sale of sugar pine.

By Mr. BURR:

Q. In what respect?

2310 A. In that manufacturers of white pine had been not overly careful in representing their pine. They had sold it to pattern manufacturers for pattern purposes when, in our judgment, it was unsuited for it. That had been going on for a considerable number of years, from the reports of our sales managers, and we felt it time to adopt the true name, so we adopted it.

Mr. MATTHEW. I don't want to interrupt the witness continuously, but I am going to object to hearsay and I shall move to strike out that part of the witness' answer which relates to reports received from the sales managers.

Mr. BURR. If the examiner please, that is a means of knowing the facts underlying a man's business and if he testifies as to what an individual salesman at some time or other says to him I think it is objectionable, but his knowledge, his information as to this business, is based upon the pulse of the trade, and his arms are the salesmen and the various other people who are connected with the business, and it seems to me that what he knows as the result of reports of salesmen, and contacts that he has made of that kind, is not subject to the hearsay rule.

Examiner DE BRULER. Let me hear the question.

Mr. BURR. It is the answer.

Mr. MATTHEW. I have no objection to him giving his information, but I don't think that I should be in a position of having to accept testimony as to what his salesmen report to him, unless I asked on cross.

2311 Mr. BURR. He said he knew partly as the results of the reports made. He didn't say what they were, but he said his experience and information was such.

Mr. MATTHEW. I shall object to that.

Examiner DE BRULER. The objection is noted and exception allowed.

Please confine the matters to things you know as nearly as possible. I like to grant latitude, but not too much, in these matters.

(Whereupon followed remarks off the record.)

By Mr. BURR:

Q. Now, Mr. Cox, a moment ago you testified that one of the reasons why you made the change in the name of the Pinus ponderosa products of your company was that the white-pine manufacturers had not been as careful as they should be, in your judgment, as to the way in which they had advertised their products. Will you tell me something about the so-called "California white pine" manufacturers?

Mr. MATTHEW. I don't believe he said anything about advertising his products. As I understand it, he testified that they had sold California white pine for pattern purposes. I don't think there is anything about advertising.

By Mr. BURR:

Q. You said "representing", did you not?

A. What?

2312 Q. You said they had not been overly careful in representing their goods?

A. Yes.

Q. You meant by advertising, and other ways, did you?

Mr. MATTHEW. I object to that question.

Examiner DE BRULER. How did you mean that?

The WITNESS. Well, I meant that——

Mr. MATTHEW. (Interrupting.) I object to that question.

Examiner DE BRULER. Let us hear what he has to say.

The WITNESS. I meant we found from our representatives' reports that pattern makers had purchased California white pine for pattern purposes thinking it was sugar pine, and my own experience of a good many years ago in that connection was that I went into a pattern maker's shop and he said he didn't want any more of our wood; that it wasn't suitable for pattern purposes.

Examiner DE BRULER. Where was that?

The WITNESS. That was back in Cleveland when I was quite young in the business, many years ago, and our lumber was just commenc-

ing to go on there. And I went out and looked at that lumber with the pattern maker and I found it was white pine, ponderosa, and not the sugar pine.

I have heard that complaint many times from our representatives.

By Mr. BURR:

Q. What is the effect upon sugar pine, if you know, of sell-
2313 ing Pinus ponderosa as California or other white pine?

A. Misrepresentation certainly don't do the sugar pine business any good.

Mr. MATTHEW. May I have the question read?

The WITNESS. My judgment is that——

Examiner DE BRULER (interrupting). Wait a minute!

(Whereupon the question referred to was read by the reporter.)

Mr. BURR. I think that was a good question.

Examiner DE BRULER. You may answer.

A. If white pine is sold for pattern purposes, a purpose for which it is not useful, it certainly injures sugar pine, which is the proper wood for that purpose.

By Mr. BURR:

Q. Are there certain woods that are known on the market as genuine white pine?

A. Yes, sir.

Q. Which are they?

A. That is the Michigan pines and sugar pine.

Q. Is the Idaho white pine known as a genuine white pine?

A. What?

Q. Is the Idaho white pine known as a genuine white pine?

A. There are some, there are portions of Idaho that have genuine white pine.

Q. Well, now, are the white pines in general good for pat-
2314 tern purposes, would you say?

A. The Idaho pine is, and the Michigan pines are; those northern pines are the genuine white pine. Any genuine white pine is good for pattern purposes.

Q. Well, now, the advertising of California white pine under that name, including the words "white pine", what effect, in your judgment, has that had upon the use of genuine white pine for pattern purposes?

A. It is misleading and if it follows it discredits the sugar pine.

Mr. MATTHEW. I object and I move to strike out the first part of that answer. He said it is misleading, and that is not responsive.

Mr. BURR. That is thoroughly responsive, if Your Honor please.

Mr. MATTHEW. I would like to have the answer read.

Mr. BURR. I asked what the effect was, and he said it was misleading.

Mr. MATTHEW. That isn't the effect; the effect came later. The rest of his answer is responsive. I have no objection to that.

Mr. BURR. I think counsel is getting a little captious.

Mr. MATTHEW. No; I am not.

Examiner DE BRULER. Let it stand, and you can cross-examine on that.

2315 Mr. MATTHEW. Very well.

By Mr. BURR:

Q. Now, I think you testified a moment ago, while the examiner was asking you a question or two, as to one instance of that character. Have you had any others in your experience as to the misleading character of that trade term for pattern purposes?

A. I don't understand that question.

Q. You testified a little while ago as to one particular case that you narrated to the examiner, when he asked you, and I was wondering if there were any other cases of that kind in the pattern trade that you would actually come in contact with yourself.

A. I only know from reports we get.

Q. I see.

A. Reports from our sales managers.

Q. That is the only instance that you have come in contact with personally?

A. That is my personal experience.

Q. Has the same thing occurred to you on other occasions?

A. Beg pardon?

Q. Without asking you for specific instances any further, has the same thing occurred to you on several occasions when you called on pattern men?

A. Not when I personally called; only through reports that come to headquarters.

2316 Mr. BURR. That is all. You may cross-examine.

Cross-examination by Mr. MATTHEW:

Q. Mr. Cox, when did you first become familiar with the term "California white pine"?

A. In 1899.

Q. Has the term been used substantially continuously since that date to characterize the lumber manufactured from the Pinus ponderosa tree?

A. In California?

Q. Yes.

A. Yes.

Q. When did your company first employ the term "California white pine" to describe this lumber?

A. When the plant was built, in 1899 and 1900.

Q. Where did you get the name?

A. Well, as I recall it, at a meeting of manufacturers at that time the name was adopted to show the difference between—you asked when and how—to show the difference between southern pine and this, the ponderosa, because there were certain characteristics of ponderosa that were very difficult to distinguish from southern pine.

Q. That represents, roughly, relatively a small proportion of the total cut of ponderosa in California?

2317 A. I think that depends altogether where it comes from.

Q. Well, it represents the cut around in the Madera section quite largely, does it not?

A. The southern section and the lower foothills.

Q. And that is relatively a minor part of the total cut of ponderosa lumber in California?

A. It is at this time. At that time there was no other manufacturers excepting in that section of the country.

Q. At that time you were with the Madera Sugar Pine Company?

A. I was what?

Q. You were at that time connected with the Madera Sugar Pine Company?

A. Yes; I was connected with them as general manager.

Q. You stated you had been in the lumber business for 45 years?

A. Forty-odd years; yes, sir.

Q. Prior to 1899 with what companies were you identified?

A. I was with the Madera Flume and Trading Company quite a number of years.

Q. Any others?

A. Yes; I bought lumber up in the Sierras for various people and handled cuts of small mills up in Fresno and Tulare Counties.

Q. In general, was your employment with companies which were interested in the lumber industry around in the Madera section, ordinarily termed "the southern Sierra section"?

A. Yes; up to that time; recently it has been other than that.

2318 Q. The first time that you recall using the term "California white pine" was in the year 1899?

A. Yes.

Q. And the term was adopted in part to distinguish this lumber from the southern yellow pine?

A. Yes; that was my memory.

Q. And you participated in the discussions which led to the adoption of that term?

A. Yes, sir.

Q. And your company has used it continuously from 1899 to about 1927?

A. About that time; yes, sir.

Q. During that period you advertised your lumber and offered it to the trade as California white pine?

A. Yes, sir.

Q. At the present time is the bulk of your cut sugar pine or ponderosa pine?

A. At the present time, sugar pine.

Q. Has that always been the case?

A. Well, it would be pretty close to an even division on several occasions, according to the country we were logging in.

Q. In your particular period of your operation was the majority of your cut California white pine or ponderosa pine?

A. What?

(Whereupon the question was read by the reporter.)

2319 A. I said that it was on a few occasions; it was about equal.

Q. That was occasionally?

A. Yes.

Q. For the most part your cut has been predominately sugar pine, and is today?

A. Yes, sir.

Q. How long have you been familiar with the term sugar pine, or California sugar pine, to represent the lumber obtained from Pinus lambertiana, if you please?

A. I would think about 1885 or 1886.

Q. That is approximately the time when you entered the lumber industry?

A. That is the first time that I ever went into the woods; that is what it was called then, and it has been called that ever since.

Q. That has been the name for this lumber in the market during this entire period of 45 years?

A. Sugar pine.

Q. Has it ever been marketed under the name of California white pine, to your knowledge?

A. Sugar pine?

Q. Yes.

A. No.

Q. Your company has never offered it to the trade under the name of California white pine?

A. Sugar pine?

2320 Q. Yes.

A. Not to my knowledge.

Q. I assume that you have no desire to market sugar pine under the name California white pine?

A. No, sir; none whatever.

I have done this way: That when I was operating the Weed plant we would get an occasional sugar pine tree that would come in, and didn't pay us to separate the woods, and we run it in with the other.

Q. When you ran the sugar pine in with the other how did you classify or name the lumber which came from the mill?

A. It was called white pine for what we called and sold—it wasn't called anything—the footage went in with the white pine.

Q. At the present time what name do you use in marketing your common grades of lumber?

A. Marketing the what?

Q. Common grades of lumber?

A. You don't unless you get an order. It is called common; that is all. We don't bill it common sugar pine unless it is a special order.

for a sugar pine. We bill it common lumber, and we bill white fir the same way that comes along with the timber.

Q. Do you mix your fir with the sugar pine?

A. In the common grades, yes; we do to a certain extent, a certain percentage.

Q. And the ponderosa pine as well?

2321 A. Surely, it all goes into the same pot of common lumber.

Q. So you have the three varieties of wood?

A. In the common.

Q. You have the three varieties of wood obtained from the ponderosa tree, the lambertiana tree, and from the fir, which are thrown together into common grades?

A. Yes.

Q. Is the product sold as pine lumber, or as fir lumber, or as what?

A. Sold as common lumber.

Q. You don't use the word pine or fir?

A. We don't bill it that way, unless you get some special order for sugar pine boards, or sugar pine this or that or the other thing, and then you give them that, but they pay more for the separation.

Q. Do you ever get an order for California white pine common?

A. No, I don't recall them ordering that way; they order common.

Q. And you think an order never comes in for California white pine common?

A. An order will come in for a car of so and so of common; they take it for granted that it is pine. It is the only stuff you will ship.

Q. Even in that instance, whenever an order comes in for pine common, you feel justified in supplying lumber which includes some white fir?

2322 A. No, we wouldn't do that because the trade don't take it. We use it locally and in smaller quantities, mix the fir in with the pines.

Q. Do you throw any other variety of lumber into your commons?

A. Cedar—incense cedar.

Q. How about red fir?

A. We don't have that in the Madera forests.

Q. Silver fir?

A. The silver fir is what I am talking about—white fir.

Q. You throw the cedar into the common grades as well?

A. Just occasionally.

Q. Do you sell any lumber as box lumber?

A. Yes.

Q. That is represented by the common grades?

A. Box grade.

Q. Under what name is it sold?

A. Box lumber. In certain places we get more for our sugar pine than we do for the ponderosa.

Mr. MATTHEW. I move to strike out the last sentence. I am asking——

Examiner DE BRULER (interrupting). Let the answer be responsive to the question.

By Mr. MATTHEW:

Q. In selling your pine box lumber do you include any of the cedar in it?

2323 A. No, sir.

Q. By cedar, by the way, you mean the incense cedar?

A. What?

Q. By cedar you mean the incense cedar of the Sierras?

A. Yes.

Q. When did you first learn the botanical name for sugar pine?

A. I couldn't tell you.

Q. When did you first hear of the ponderosa pine by that name?

Mr. BURR. I object.

Examiner DE BRULER. I think he can answer that if he can.

Mr. MATTHEW. You went into that on direct.

A. I don't remember when.

By Mr. MATTHEW:

Q. Recently?

A. Some time ago.

Q. In 1899 when you participated in selecting the name California white pine, did you know anything about the term ponderosa pine?

A. No; or sugar pine either, Pinus lambertiana either.

Q. You weren't told until a good many years after that when you heard of the botanical nomenclature, is that true?

A. Yes.

Q. You simply knew the trees by their conventional local names?

A. Yes, sir.

Q. And when did you first hear of the term pondosa pine?

2324 A. I think I saw it advertised in one of the trade journals from the Idaho district.

Q. My question was when.

A. I don't know when.

Q. Just a few years back, is it not?

A. It might be.

Q. Well, you know that that is the name which has been coined as a trade name within the last few years, from the botanical name Pinus ponderosa?

A. I know that it has been coined. It isn't the true name of it; it isn't generally used.

Q. Then you never heard of it until the last four or five years?

A. I think that is about it; it is a name not in general use.

Q. It certainly didn't exist in 1899?

A. No.

Q. You have testified, Mr. Cox, that in that portion of the Sierra Nevada Range extending southerly from Sacramento the ponderosa lumber is poorer than from lumber obtained in areas lying to the north. Do you recall your testimony to that effect?

A. As a general rule that is true; there are exceptions.

Q. Of course, but generally speaking, that has been your observation?

A. Yes, sir.

Q. I think you said that the further south you get the poorer it gets, generally speaking?

2325 A. Yes, sir.

Q. And the further north, the better it gets, for some distance; is that right?

A. Yes; but there are some exceptions.

Q. You include the Klamath Falls Basin of southern Oregon within the area of which the superior type of California white pine is obtained, do you not?

A. Yes.

Q. Generally speaking, the Pinus ponderosa lumber obtained in the vicinity of Madera is harder and flintier than the lumber obtained in the Klamath Falls area, and likewise in the Westwood section?

A. You take the production as a whole; yes. There are exceptions, of course.

Q. Well, we will have exceptions to all of these cases, Mr. Cox. Now, you testified that you have changed your name to pondosa pine, and that that change was made about 1927. Is that what you said?

A. Yes, sir.

Q. Do you think there is any significance in the circumstance that the lumber which is yielded in the Madera section——

A. What?

Q. Yielded in the Madera section from the ponderosa tree is generally inferior to the lumber produced from the same tree in the northern part of the Sierra Nevada Range?

2326 A. Yes; I would regard it as quite as good. It is the same species.

Q. Isn't it quite probably, Mr. Cox, that if you were obtaining as high a grade of lumber from your ponderosa pine as is obtained in the Klamath Basin, or in the Westwood area, that you would still be enthusiastic about the name California white pine?

Mr. BURR. I think that is objectionable.

Examiner DE BRULER. It is cross-examination. He may answer that if he can.

A. I certainly would not.

By Mr. MATTHEW:

Q. You think it is not a fair inference that you have changed the name of your lumber because of the rather inferior grade which you generally obtain?

A. No, sir.

Q. From ponderosa?

A. No, sir.

Q. It comes from circumstances other than the relative inferior grade of your lumber?

A. Yes, sir.

Q. You spoke of the relatively heavy weight of the lumber from the yellow pine, or ponderosa pine, in the vicinity of La Moine, somewhat in excess of 3,000 pounds per thousand feet. That, you say, was determined with reference to shipping weight?

A. Yes, sir.

2327 Q. Could you tell us the character of that lumber; whether it is surface or rough-dry lumber, or what it was?

A. As I recall it, that is the weight the manager gave me for his average shipments.

Q. That is, shipments made from La Moine?

A. Yes, sir.

Q. And the lumber obtained in that immediate area is grown at a relatively low elevation, is it not?

A. No; that is not a low elevation.

Q. La Moine itself is less than 2,000 feet in elevation, is it not?

A. Less than what?

Q. 2,000 feet.

A. I don't think so. I don't know what the elevation is there, but back of the town of La Moine there is a very considerable mountain, of which these logs were coming from—a very rough mountainous country.

Q. You couldn't tell the average elevation that the lumber was obtained?

A. These logs were coming from near the top of this ridge.

Q. You can't give the average elevation?

A. No. Might I explain that?

Q. I don't care to have you do so. I am satisfied with your answer.

A. I want to show that the location wasn't all in connection
2328 with that. In other words, that that is—let me see—that would be about 400 miles, I guess—300—it would be about 400 miles north of us, and that stuff wasn't as good as ours. The mere fact that it is further north didn't make it good.

Q. That was in the lower reaches of the Sacramento River Canyon, is it not?

A. Yes.

Q. Now, the superior grades of California white-pine lumber, as you have known it for at least 31 years, comes from the Klamath Basin and from the upper reaches of the Sierra and what we term the Westwood region, and perhaps around the Lake Tahoe section?

A. The best of it, I think, comes from Oregon.

Q. That is the Klamath Basin?

A. Yes.

Q. Southern Oregon?

A. Yes, sir.

Q. And they likewise obtain a very high grade of lumber from the area around Westwood, do they not?

A. A high grade of lumber.

Q. A very high grade of California white-pine lumber, as you have known it for over 31 years?

A. I would say a high-grade lumber.

Q. Are you familiar with the lumber that is obtained upon the eastern flank of the Sierras?

A. What?

2329 Q. The eastern flank of the Sierras, around Truckee, the Hobart Mills lumber, as an illustration?

A. When I talk about the superior quality of that—there are logs that come out from that district producing nothing but common lumber, absolutely nothing else but common lumber, and it is sold as common lumber, or box lumber, but the type is that the knots are small and they are hard and they finish good into common lumber. They may have a very, very small, or practically no percentage, produce no percentage of lumber better than common.

Q. Let's not deal with the exceptions. Let's deal with the general grade.

A. I am saying that the percentage of shopping, better lumber, in that district is very small.

Q. You are referring now to the Truckee section?

A. About the Klamath Falls section.

Q. I thought you testified a moment ago that in your opinion the highest grade of California white-pine lumber comes from the Klamath Basin?

A. Yes; I did, but I don't—I mean this way: I mean by that that it is a better relative grade. Their common is better than our common.

Q. That was my understanding of your testimony.

A. Their common lumber is better than our common, but their percentage of clear is very small, relatively, to what ours is.

2330 Q. How is it in the area around in Plumas County and in western Lassen and Modoc?

A. They have some very fine sugar pine in Plumas County.

Q. I am talking about California white pine—I move to strike out the answer about the sugar pine—I am asking about California white pine.

A. I don't think that in that country they would not produce the sound knotted common they do further up north, but they would produce a higher and better quality of clears, shops, and better.

Mr. BURR. That is Modoc County, around Alturas?

The WITNESS. Yes; I am speaking south of the Klamath Basin and Plumas County.

By Mr. MATTHEW:

Q. My question related to Plumas, western Lassen, and Modoc. I have been talking about common grades heretofore in dealing with these comparisons of lumber.

A. Yes; that is what I have been talking about.

Q. Let's get into the clears. We find that the clear lumber produced in this territory, in the Sierra Nevada Range lying north from Sacramento, is generally better than the clears produced in the territory lying southerly from Sacramento, and particularly in the Madera region?

A. Yes.

Q. Is that likewise true as to the shop lumber?

A. Well, there is less difference in the clears, but there is
2331 more difference in the shops.

Q. Has there been something of a price differential in favor of the Klamath lumber against the Madera lumber of equal grades?

A. There would be if they went into the same market, I think.

Q. What?

A. If they went into the same market that we go into they would, but we pick out the best of our stuff that compares with theirs in the north, and we ship that east in competition with them and the poorer stuff we market locally where they are not used to the other grade.

Q. Then is the greater proportion of your product marketed locally?

A. Locally?

Q. Yes.

A. Yes; I would say that it would be.

Mr. BURR. Referring only to Pinus ponderosa?

The WITNESS. About 46%, I think.

Mr. BURR. Ask him that.

By Mr. MATTHEW:

Q. Of your ponderosa pine?

A. Yes; about 40%, about like that.

Mr. BURR. You are not referring to sugar pine now are you?

The WITNESS. No; I am speaking of ponderosa, selling it locally.

2332 By Mr. MATTHEW:

Q. Does the same proportion hold good for your sugar pine?

A. I couldn't tell you offhand; it varies, you know.

Q. I am not sure whether this was covered in your direct examination or not. If not, counsel can stop me, of course. Did you testify that there has been ordinarily a price differential between the California white pine and the sugar pine, of corresponding grades?

A. Yes; I said that there had been.

A. And did that price differential persist throughout a long period of time?

A. We have always tried to make it so in certain grades where we have had to compete.

Q. Now, in what grades has sugar pine normally enjoyed a price differential above California white pine?

A. Well, from B select and better. There has been times when we have had to meet the ponderosa pine on our shops.

Q. I don't quite get the meaning of your answer. Explain a little more fully what you mean by grades you have had to compete with.

A. With competition.

Q. You mean on equality of price?

A. Yes; meet price at times.

Q. For example, in marketing your product at the Mississippi River mills?

A. We have marketed there.

2333 Q. When you said that there are times when you have had to meet the California white pine in the equality of price, did you refer, for example, to Mississippi River mills?

A. Never; if we could move it at any other place.

Q. Why?

A. We don't meet that price ever if there is a market of lesser resistance.

Q. Have you usually enjoyed a price differential above California white pine in the shop grades at the Mississippi River mills?

A. That is generally so.

Q. You say ordinarily you try to market your sugar pine elsewhere than the Mississippi River mills. Did I get that impression?

A. No.

Q. I understood you to say that you tried to avoid marketing your sugar pine to the Mississippi River mills?

A. I didn't say that.

Q. I didn't get your answer.

A. I say that we wouldn't meet the competition of yellow pine if we could find a market of lesser resistance.

Q. In other words, you try to reach a market where your price differential is more favorable to you when it comes to that?

A. Always.

Q. Now, when you changed the market name of your product from the ponderosa pine tree to pondosa pine, was there any change in your price differential?

2334 A. Was there any change, you say?

Q. Yes.

A. Not that I know of. We changed as they changed. We endeavor to keep a spread between the two woods and we keep that spread as long as we can until such time as the pondosa people force us to meet that price and not until.

Q. Then I understand that you try at all times to get a higher price for your sugar pine than for the ponderosa pine?

A. Yes.

Q. You say you keep that as long as you can until the pondosa people compel you to change. What do you mean by that?

A. I mean by that that our lumber don't move against theirs, or we haven't a surplus that we can't find, for which we can't find a market of lesser resistance.

Q. Then the market conditions sometimes compel you to accept a parity of prices; is that it?

A. Not very often, but that has been done.

Q. Then, as I understand it, your change in trade name, to ponderosa pine, was not reflected in the change in price or in price differential?

A. No. I believe this: That if the white pine men——

Q. (Interrupting.) Just a moment—I think you are not answering my question.

Mr. BURR. Read the question.

(Whereupon the question referred to was read by the
2335 reporter.)

The WITNESS. I would like to explain about that.

Mr. MATTHEW. You answer the question first and then if you want to explain to make it clear I have no objection.

A. The mere change at that time didn't influence it, because the great majority of them were using the word white pine.

By Mr. MATTHEW:

Q. And still are?

A. I presume.

Q. And about the only companies that have made a change to ponderosa pine are those which have a predominating interest in sugar pine; isn't that true?

A. I wouldn't say that; probably that is the case, but the mere fact that we have sugar pine isn't the influencing factor. The influencing factor is that the white pine people are misrepresenting that wood and attempting to sell it for sugar pine.

Mr. MATTHEW. I move the answer be stricken out as not responsive.

Mr. BURR. That is responsive. You invited him to make an explanation, because he couldn't answer yes or no without an explanation, and when the explanation comes you object to it.

Mr. MATTHEW. It hasn't the remotest bearing upon my question.

Examiner DE BRULER. Read the question and answer.

(Whereupon the question and answer referred to were read
2336 by the reporter.)

Examiner DE BRULER. That last part of the answer may be stricken.

Mr. BURR. Can't I be heard? Wait a minute! The whole purpose of this question is to show that the reason why this witness changed the name was because he was interested in a competitive product; namely, the sugar pine. Now, if he isn't privileged, as part of his answer, to show why he did change, it seems to me it is a very peculiar ruling and I think that that question and answer should stand as they are presented.

Mr. MATTHEW. If the examiner please, if I may in turn be heard.

(Whereupon followed remarks off the record.)

Mr. MATTHEW. As I understand it, counsel's statement is on the record?

Examiner DE BRULER. Yes.

Mr. MATTHEW. I want to ask a simple question: Is it not a fact that the only lumber companies which have changed this name to

pondosa pine are those predominately interested in sugar pine? And that calls for a simple and direct answer, either yes or no. There is no possible occasion for anything being introduced of an argumentative character as to whether this name is misleading or otherwise. Finally, that is the question for the Commission, the ultimate question involved. It is a fact, which we may get
2337 before the Commission, that the companies which have made the change are those interested in the sugar pine predominately.

Mr. BURR. The question was directed to the reason for the change.

Mr. MATTHEW. Not at all.

Mr. BURR. I submit that it was.

(Whereupon followed remarks off the record.)

Examiner DE BRULER. The answer may stand.

Mr. MATTHEW. May I have my exception noted on the ground that obviously that part of the answer is in no respect responsive to my question and purely argumentative?

Examiner DE BRULER. Exception allowed.

By Mr. MATTHEW:

Q. Has your ponderosa lumber, which you now market under the name pondosa pine gone into the same uses and into the same trade which it entered when you sold it under the name of California white pine?

A. Of my own knowledge, I don't know.

Q. As far as you know there has been no change in its uses or in the method of its introduction to the trade?

A. I know nothing about that at all. I couldn't answer that.

Q. Aren't you interested at all in the marketing of your pondosa lumber?

A. Yes, sir; but not particularly in the direction of which it goes, so long as it goes.

2338 Q. And have you continued shipping to markets outside of the State?

A. Yes, sir.

Q. Do you market your commons in area lying outside of the State to any extent?

A. Very little.

Q. Most all your shop grades and clears, is it not?

A. Shop and better; yes, sir.

Q. And the bulk of that is evidently shop lumber, is it not?

A. Shop lumber.

Q. The bulk of your eastern shipments is represented by shop lumber?

A. Yes; probably it is.

Q. And you are still shipping shop lumber under the name pondosa pine?

A. Where we ship it, yes, sir; we ship it as pondosa pine.

Q. You are not conscious of any change in practice or condition?
A. Not conscious of any change——
Q. (interrupting). Let me state that again. You still ship to remanufacturers, do you not, in the Central States and in the East?
A. Yes.
Q. You ship to manufacturers of sash and doors?
A. No; we ship to wholesalers generally; occasionally we ship to manufacturers of sash and doors.

2339 Q. Now, when you do ship to manufacturers of sash and doors, you have no doubt that it is manufactured into sash and doors, have you?
A. We bill it just as it is.
Q. Would you mind answering the question?
(Whereupon the question referred to was read by the reported.)
A. I don't know anything about that.
Q. You haven't any impression or conception of what may happen to it?
A. No.
Q. What other use could be made of it by the sash and door manufacturers?
A. Put into molding boxes.
Q. Do the sash and door manufacturers, to a large extent, make boxes?
A. Some of them do. We have made it and Pickering makes it in large quantities.
Q. You understand that I am talking about your purchasers in the East, sash and door manufacturers.
A. I don't know at all.
Q. What is your best impression?
A. I don't come in contact with them; I haven't come in contact with them in years; I don't know what they do.

2340 Q. Then you can't enlighten the examiner at all as to whether or not your lumber of the shop grades, shipped to the sash and door manufacturers in the Central States and the East, is used for the manufacture of sash and doors?
A. You are speaking now of ponderosa?
Q. Yes.
A. Yes; I presume that it is.
Q. You presume likewise that prior to 1927, when you changed the trade name of your product, it was used for the same purposes?
A. Yes, sir.
Q. Does the lumber which you market as pondosa pine compete with lumber which is marketed as California white pine?
A. Yes, sir.
Q. Do you ever receive any orders for California white pine under that term?
A. I don't know.

Q. For what uses is California white pine, as you have known it for these many years, best adapted?

A. It depends upon the grade—common lumber for building and local purposes, for manufacture of box shook, for sash and doors, finish—it is like any other wood, they are all used for the same purpose. Fir is used that way, too.

Q. Northern white pine is used for about the same purposes?

A. Absolutely, yes; and so is Oregon pine, and so is fir.

Q. What is Oregon pine?

A. What?

2341 Q. What is Oregon pine?

A. I am speaking about red and yellow fir. They are used for the same purpose.

Q. What are red and yellow fir?

A. The difference in the age of the trees.

Examiner DE BRULER. I wish the witness would not go into anything excepting the pine trees in his answers. Confine your answers to the pines.

By Mr. MATTHEW:

Q. When you referred to Oregon pine, you had in mind just the trade name for lumber that comes from Douglas fir?

A. Yes.

Q. Douglas fir, you know, is not a true botanical name of the tree, do you?

A. Yes.

Q. You said northern white pine is used generally for the same purposes as California white pine?

A. Yes.

Q. And is Idaho white pine used generally for the same purposes as well?

A. I think so.

Q. Are the southern yellow pines used generally for the same purposes?

A. Not generally.

Q. The southern yellow pine is more particularly a struc-

2342 tural timber, is it not?

A. Yes.

Q. Then the competitive pines, the direct competitive pines are more approximately the California white pine, as we have termed it, northern white, Idaho white, and sugar pine.

A. Yes, they are; yes, that is all the pines.

Q. Those four pines are quite directly in competition and, to a large extent, used for similar purposes?

A. Yes.

Q. They are all used in sash and door trade, are they not?

A. Not confined to that alone.

Q. I mean, for example?

A. Well, for building purposes too.

Q. But not for structural timber?

A. No.

Q. All used for interior trim?

A. In a small way for structural timber.

Q. Let's again rule out the exceptions and let's take their primary uses. They are used for sash and door manufacturing purposes, used for interior trim, and to some extent for outside trim; is that true?

A. Yes.

Q. Now, in your direct examination you referred to the manufacturing processes in the sash and door plants, and pointed out that the pieces which are used in making sash are, in a sense, the
2343 by-product of the manufacture of doors?

A. Yes.

Q. Have I stated it about right?

A. That is about it.

Q. Now, in manufacturing doors and sash in these big plants, do you know whether or not the sugar pine, California white pine, and perhaps other woods, are employed indiscriminately in making a door, or even a sash?

A. A door-and-sash maker buys what he can sell. Ad if he buys white pine he cuts it up into door stock and that portion of the stock that he buys that wouldn't go into doors, he cuts up into sash, or if it is a long board he makes a molding strip out of it.

Q. I doubt if you got my question, Mr. Cox. Perhaps I can make it a little clearer.

Let us take one of the larger operators at any point, we will say some Mississippi River town, such as Dubuque, if you will: You would expect such a manufacturer to have in stock California white pine, sugar pine, perhaps Idaho white pine, and also some lumber purchased under the name of pondosa pine?

A. Yes.

Q. Now, in the manufacturing process, is it customary to make a door out of a single variety of lumber, or will we find in the same door pieces of sugar pine, pieces of California white pine, and pieces of Idaho white pine, for example?

2344 Mr. BURR. I don't think the witness is qualified on processes.

Examiner DE BRULER. If he isn't, he can state so. I think that is a legitimate question.

Mr. BURR. I object to it on the ground that no foundation has been laid.

Examiner DE BRULER. Objection is overruled.

A. I don't know what they do.

By Mr. MATTHEW:

Q. You don't know whether the varieties of wood are mixed up in the manufacturing processes or not?

A. No; I don't know. I don't know what they are buying and what they use.

Q. Do you know whether any doors are made of straight northern white pine, for example?

A. A door made out of northern white pine is a better door than made of pondosa.

Mr. MATTHEW. I move the answer be stricken out.

Examiner DE BRULER. It may be stricken.

By Mr. MATTHEW:

Q. I asked you if you know of any doors that are straight northern white pine?

A. Sure.

Q. That is the common thing?

A. No; right now it is very scarce, but I have seen them
2345 made for years and years.

Q. I don't doubt that, Mr. Cox, but at the present time?

A. I don't know anything about it.

Q. So you don't know whether there are any doors at the present time made of straight northern white pine?

A. No, sir; I don't know anything about it. I haven't been there and haven't seen it.

Q. During the period of some 28 years in which you offered your ponderosa pine lumber to the trade as California white pine, I take it you felt it was an appropriate name?

A. It was the competitive name.

Q. Well, I take it you felt that it was an appropriate name, or you wouldn't have adopted it?

A. Yes, sir.

Examiner DE BRULER. We will take a five-minute recess.

(Whereupon a five-minute recess was taken.)

Examiner DE BRULER. We will proceed, if the parties are ready.

By Mr. MATTHEW:

Q. Now, Mr. Cox, if you will pardon one or two more questions about the origin of the term California white pine, have you no knowledge of the use of that term prior to 1899?

A. No; I haven't.

Q. As I understand it, you participated in the conference of lumber manufacturers at which that term was adopted?

2346 A. That is my memory.

Q. In what year did you definitely determine to abandon the term California white pine?

A. I think three years ago.

Q. Was that decision influenced at all by the fate of the Sugar Pine Sales Company?

A. By what?—I didn't get you.

Q. By the fate of the Sugar Pine Sales Company?

A. No; I don't think so.

Q. Was your company a member of that organization?

A. Yes, sir.

Q. When was it formed?
A. I think possibly four years ago.
Q. Wasn't the firm formed in the latter part of 1926 or early in 1927?
A. I think something about that time. I don't recall definitely.
Q. And your company withdrew about November of 1927?
A. We withdrew when they all went out.
Q. You think it was a general withdrawal?
A. Yes, sir.
Q. You don't recall whether your company was the first to announce its withdrawal?
A. It was not.
Q. Which company was the first to announce its withdrawal, do you recall?

2347 A. I don't recall.

Q. Wasn't it after the break-up of the Sugar Pine Sales Company that you decided to change the name of California white pine to pondosa pine, as far as your company is concerned?
A. I think so.
Q. Does any lumber producer in California, at the present time, sell ponderosa pine lumber under the name of yellow pine?
A. I don't know.
Q. Have you had a grade of lumber which you market locally in the San Joaquin Valley under the name of mountain pine?
A. Of what?
Q. Mountain pine?
A. That is a term used for all grades of common lumber.
Q. That is used by your company?
A. Yes, sir; used by other manufacturers.
Q. In the Madera district.
A. Yes.
Q And this common lumber is the common lumber which you previously described as including the ponderosa pine, sugar pine, and white fir, and even some cedar?
A. Yes, sir. We ship that as mountain pine.
Q. And you invoice it as such?
A. Mountain pine, yes.
Q Are there any complaints from your trade as to the use of the term mountain pine to describe that lumber?

2348 A. That term has been used for, I guess, 30 years.

Q. Any complaint from your trade about the use of that term?
A. What?
Q. Any complaint from your trade as to the use of that term?
A. No; the grade is different and the lumber was different and the trade was educated to what that meant.
Q. The trade has been educated for about 30 years as to what that name means?

A. The companies—they come one after the other.

Mr. MATTHEW. That is all.

Redirect examination by Mr. BURR:

Q. Is there such an organization as the Mountain Pine Sales Agency; do you know?

A. What?

Q. Is there such an organization as the Mountain Pine Sales Agency?

A. Yes, sir.

Q. What is that?

A. Just a selling agency.

Q. Are there certain concerns that are members of that agency, or employ that agency, or how does it work?

A. This sales agency sells the lumber for others, distributes it through the valley.

Q. And how many concerns are there that distribute their
2349 common grades through that sales agency, do you know?

A. Yes, sir; there are five altogether.

Q. How long have they been distributing in that fashion?

A. More than 15 years, I guess.

Q. Is that distribution local or——

A. Local entirely.

Q. It isn't shipped outside of the State; is that right?

A. No.

Q. Now, that is only in the common grades, did you testify?

A. That is all; yes.

Q. What are those common grades used for in this local distribution?

A. For building material.

Q. What kind of building material?

A. What?

Q. What kind of building material?

A. Common building material like form stock for a concrete work and rafters and studding, and floor joists, plates, siding.

Q. Is it used for box material at all?

A. Yes; but they don't handle that.

Q. Now, I believe you testified on cross-examination that you were in attendance at certain of these conferences when the name California white pine was decided upon?

A. Yes.

Q. Where were those conferences held, if you recall?

2350 A. In San Francisco, as I recall.

Q. Now, was one of the reasons for the adoption of the word California white pine that those who conferred desired to indicate to the public that their product resembled the white pine to the east?

A. Well——

Mr. MATTHEW. I object to leading questions from counsel.

Examiner DE BRULER. Let him state the reason of the change.

By Mr. BURR:

Q. What were the reasons for the change?

A. The name was adopted to distinguish it from southern pine or yellow pine.

Q. Yes.

A. It wasn't called yellow pine because it was different. If we called it yellow pine, we thought that it would be mixed or be confused with the product of the South.

Q. Well, why call it white?

A. I don't know—just because it was whiter than yellow pine; that was all.

Q. Well, the northern white pine has a high reputation for various characteristics and qualities, does it not?

Mr. MATTHEW. I object to the question as leading and suggestive.

2351 Examiner DE BRULER. The objection is sustained. Let him state the reasons.

By Mr. BURR:

Q. Are you sure that in that debate there was no other reason given for the use of the word "white" in connection with it?

A. That is my memory.

Q. Are there certain purposes for which genuine white pine is more suitable than Pinus ponderosa?

A. Yes, sir.

Q. What are those purposes, briefly?

A. I think the wood is superior for any purpose that ponderosa is used for, for any and every purpose.

Q. You think it is superior for inside-finish work?

A. Yes. I would say that certain pine is superior for any uses for which ponderosa can be used for.

Mr. BURR. That is all.

Recross-examination by Mr. MATTHEW:

Q. Would you mind naming the different mills who are members of this Mountain Pine Sales Agency?

A. There is the Pickering Lumber Company, representing the Standard and the West Side Lumber Company; there is the Yosemite Lumber Company, the Sugar Pine Lumber Company, the Madera Sugar Pine Company.

2352 Q. How are the sales distributed among the mills when an order is obtained by the Mountain Pine Sales Agency?

A. How are they distributed?

Mr. BURR. I think that is immaterial.

Mr. MATTHEW. I will withdraw that. I don't think it is material.

Examiner DE BRULER. Is that all, Mr. Matthew?

Mr. MATTHEW. Yes.

Examiner DE BRULER. You may be excused.

(Witness excused.)

Mr. BURR. Call Mr. Stevens, please.

JOHN W. STEVENS was thereupon called as a witness and, having been first duly sworn, testified as follows:

Direct examination by Mr. BURR:

Q. Mr. Stevens, what is your line of work, occupation?

A. I am supervising the grading and the shipping of the Madera Sugar Pine Company.

Q. How long have you held that position?

A. About five years.

Q. What were you doing prior to that?

A. I was about nine years, or ten years, with the California
2353 White and Sugar Pine Manufacturers Association as inspector and chief inspector.

Q. Did you have men under you as chief inspector?

A. Yes, sir.

Q. How many?

A. I think about the time I left there were six or seven.

Q. Have you men under you in your present line of work?

A. Yes, sir.

Q. How many men have you there?

A. About 10 or 12; something like that.

Q. They are engaged in grading and estimating, are they?

A. In grading the lumber; yes.

Q. Before you were chief inspector of the California White Pine and Sugar Pine Manufacturers Association what was your line of work?

A. I was inspecting lumber.

Q. For whom?

A. Well, that was before I came to this country, in the East, in the Great Lakes region, in the pine region.

Q. How long were you back there?

A. Fifteen or seventeen years; something like that.

Q. Have you been asked to furnish a couple of samples of sugar pine and ponderosa of the softest texture and highest type to be selected and better?

A. Yes, sir.

Q. Were those to be absolutely clear?

A. Yes, sir.

2354 Q. Will you produce them here in the court room?

A. Yes. (Witness produces samples as indicated.)

Q. Those are the two pieces, are they?

A. Yes.

Q. One is sugar pine and the other is——

A. (Interrupting.) One is ponderosa pine and the other is sugar pine.

Q. Will you kindly pick out the sugar-pine piece?

A. There is the sugar pine. [Indicating.]

Mr. BURR. I request that the one referred to as sugar pine be marked for identification merely as "Commission exhibit for the record no. 45."

I will ask that the other exhibit, which he has stated to be of Pinus ponderosa be marked as "Commission's Exhibit for the record No. 46" for identification.

Examiner DE BRULER. They may be so marked for identification.

(Whereupon the two samples of pine were thereupon marked as "Commission's Exhibit No. 45 and 46, Respectively", for identification.)

By Mr. BURR:

Q. Would you say those are typical pieces, or better than typical pieces?

A. I would say they are better than typical.

Q. Referring to Commission's exhibit no. 46 for identification?

2355 A. Particularly in our region; yes.

Q. Particularly in your region?

A. Yes.

Q. There are regions in the State of California where the so-called California white pine, or ponderosa, is of softer texture?

A. Yes.

Q. Than in the stand you are engaged in cutting?

A. I would say it is softer in some regions than it is in our region.

Q. Now, in connection with your inspection work for the California White and Sugar Pine Manufacturers Association, did you have occasion to travel over the State of California considerably?

A. Yes, sir.

Q. And study the forest products and the timber?

A. I had nothing whatever to do with the timber.

Q. Pardon?

A. I had nothing to do with the timber.

Q. Did you have an opportunity to observe the sugar pine and the Pinus ponderosa as regards the character of lumber?

A. Yes, sir.

Q. Did you have experience in the State of Oregon in that connection?

A. Southern Oregon; yes.

Q. What part?

A. Klamath Falls region.

2356 Q. Have you any experience in studying lumber that is produced by these two species, or, rather, by the Pinus ponderosa in Arizona and New Mexico?

A. No, sir.

Q. None down there?

A. No, sir.

Q. Will you state which type of lumber varies in characteristics and qualities the more of those two?

A. I would say Pinus ponderosa.

Q. Is that a markedly greater variation?

A. Yes, sir.

Q. In what respects is that variation greater than the sugar pine?
A. Mostly in texture.
Q. Well, will you describe that, please?
A. Well, in some regions, of course, it is a good deal softer than others. In the Klamath Falls region, over in the region east of the east slope of the Sierras, it is much softer than it is on the west slope.
Q. Do you think of any other variations in different localities?
A. Not insofar as texture is concerned. Of course, that includes, when we are speaking of the east slope, that means over on clear up into Oregon.
Q. Does altitude have any effect upon the character of lumber produced by the Pinus ponderosa tree?
2357 A. Well, they say it has; but I can't prove it.
Q. How about the character of soil; does that have an effect on the softness and the texture, as far as your experience goes?
A. I am not prepared to verify that.
Q. How about the northern white pine; have you had an opportunity to observe that, did you say?
A. You mean the eastern pine?
Q. Yes; the northern white pine, the Michigan pine.
A. Yes; I worked in it many years.
Q. Where did you work?
A. All the way from Duluth over into through Michigan, Wisconsin, and over into Canada, over in Ontario, Canada.
Q. How about that in diversity and variability; is that more variable or less variable than the Pinus ponderosa?
A. In texture it doesn't vary so much.
Q. Is there any difference in the percentages of heart and sapwood between Pinus ponderosa and the sugar pine?
A. Yes, sir; there is.
Q. Will you describe that, please, sir?
A. Well, I couldn't very well tell you; as far as the percentage is concerned, I couldn't say as to that.
Q. Pardon?
A. I couldn't say what the percentage is between the heart and sap.
Q. Is there a marked difference between the heart content
2358 of the two woods, would you say?
A. Yes; there is.
Q. Which is the greater?
A. There is more heartwood in the sugar pine.
Q. Would that be true of timber of the same size of the two trees?
A. Yes; I think so.
Q. Referring to Commission's exhibit no. 45, for identification merely, will you state whether it is heartwood or sapwood, please, sir?
A. That is sapwood [indicating]. This is heartwood [indicating].

Q. That is exhibit no. 45?

A. This [indicating] is sugar pine. This [indicating] is heartwood. That [indicating] is sapwood.

Q. Referring now to Commission's exhibit no. 45, marked for identification, you say it is which?

A. It is sapwood.

Q. Then, referring to Commission's exhibit for identification no. 46, what is that?

A. I said that is heartwood.

Mr. MATTHEW. Now you have said it both ways.

Examiner DE BRULER. Let's get it straight for the record.

By Mr. BURR:

Q. I think the record is confused now.

2359 Mr. Stevens, I am handing you Commission's exhibit no. 45 for identification and will you kindly state whether it is heartwood or sapwood?

A. That is heartwood.

Q. Then referring to Commission's exhibit no. 46 for identification, would you state whether that is heartwood or sapwood?

A. That is sapwood.

Q. Is there any difference between the two types of lumber, the ponderosa and the sugar pine, as regards the variability in the pitch, or resinous content of the two woods?

A. Yes; I think there is.

Q. Well, which varies the most?

A. Well, I think there is more pitch on the whole in the ponderosa.

Q. Which varies the most?

Mr. MATTHEW. I think the last answer should be stricken as not responsive.

Mr. BURR. I think that is true, technically speaking. I deny the motion that it be stricken for the purpose of getting along.

By Mr. BURR:

Q. What I am trying to ask you, Mr. Stevens—perhaps I am not quite clear, but will try to make it so—which varies the most? I am not asking you which has the most pitch, but which varies the most between the extreme of freedom from pitch on the one

2360 hand and greater pitch content on the other hand, which has the greatest durability?

A. Do you mean by that the difference between the amount of wood that has no sap and pitch?

Q. Which varies the most as to how much pitch is to be found?

A. That would be hard to say.

Q. Is there some of the Pinus ponderosa that is quite free from pitch, would you say; is that true?

A. Yes, sir.

Q. Are there certain specimens of ponderosa that are quite pitchy, or wouldn't you say that?

A. Yes, sir.

Q. Is the same thing true of sugar pine, or isn't there so wide a range in the resinous content of the two?

A. That practically applies to both woods.

Q. Then, on the average, which has the more resinous content, the ponderosa or the sugar pine; is that question clear?

A. Yes. On the whole, I would say there is more pitch in the ponderosa.

Q. How about the grain? Which, on the average, has the softer grain?

A. Well, as a whole, sugar pine.

Q. Which varies most as to grain?

A. Ponderosa.

Q. Do you know anything about the Australian grade, so called?

2361 A. I know what they call it; yes, sir.

Q. What is that?

A. Well, as a rule, it is made up of a hard, flinty, pitchy grain type of lumber.

Q. Which has the most of the Australian grade, ponderosa or sugar pine?

A. Ponderosa.

Q. Is there any sugar pine in that grade?

A. I have heard of cases where they made it, but I don't know—we never made it.

Q. Which varies most in color, the ponderosa or the sugar pine?

A. I think there is more in ponderosa.

Q. Is that true generally or nearly in your part of the country, of the State?

A. In our section.

Q. Well, is that true generally?

A. Well, I guess it is. I would say it is generally true.

Q. Is there more difference in color between the heartwood and the sapwood of ponderosa than there is between the heartwood and sapwood of sugar pine?

A. Yes, sir; as a rule.

Examiner DE BRULER. Which carries the greatest difference?

The WITNESS. What is that?

Examiner DE BRULER. Which carries the greatest difference

2362 between the two woods, between the heart and the sap?

The WITNESS. I would say ponderosa.

By Mr. BURR:

Q. Which is the darker of the ponderosa, the sap or the heart?

A. The heartwood is the darker.

Q. Is there a marked difference in color?

A. In some cases, and in other cases there is no great difference.

Q. Are you familiar with the southern pines of the South?

A. Not very familiar; no, sir.

Q. How much have you been down there?

A. What is that?

Q. How much have you been in that part of the country observing?

A. I have never worked there; I have been through the country, but I have come in contact with it around in various distributing centers.

Mr. BURR. You may cross examine.

Cross examination by Mr. MATTHEW:

Q. Mr. Stevens, referring to your samples of lumber marked for identification Commission's exhibit no. 45 and no. 46, may I ask you whether either of these samples have been sandpapered?

A. No, sir.

Q. Are you quite sure?

A. Not that I know of; not to my knowledge.

2363 Q. Did you select them?

A. Yes.

Q. Where?

A. At the Madera Sugar Pine Company.

Q. Could you tell on inspection whether either of these samples has been sandpapered or not?

A. No; I couldn't.

Q. Looking at them in the light of the window?

A. I couldn't tell.

Q. You couldn't observe the marks of sandpaper on either one of these exhibits?

A. There are some peculiar marks, but I don't know whether they are sandpaper marks or what it is.

Q. Isn't it quite clear, looking at this exhibit no. 45 in the light, that it has been sandpapered?

A. No. The lumber that is properly surfaced is always as smooth as that is.

Q. I am not referring to smoothness. I am referring to marks which apparently indicate the results of sandpapering.

A. Well, I say there are some peculiar marks on there, but I don't know what they are.

Q. As far as you know neither was sandpapered?

A. Not to my knowledge.

Q. Do you ever have any difficulty in distinguishing between the sugar pine and ponderosa pine?

2364 A. Yes, sir.

Q. You find some boards hard to identify, do you not?

A. Yes, sir.

Q. Some pieces of ponderosa lumber very closely resemble the sugar-pine lumber?

A. Particularly where it is in the sapwood.

Q. And sometimes you find it difficult to distinguish between certain pieces of heartwood of the two varieties, do you not?

A. I have seen cases of that kind too; yes, sir.

Q. I think you stated that better and softer texter ponderosa lumber comes from the Klamath Falls section of southern Oregon and from what you termed eastern slope of the Sierras?

A. Yes, sir.

Q. Would you identify a little more definitely the boundaries of the region which you have in mind? We will take the Klamath Basin on the north for a starting point, and will you describe the remaining boundaries of that section?

A. Well, we will start in the south part of the State here, and when I speak about the east slope, that is on the other side of the highest point of the mountain. All the white ponderosa pine growing in that section is all softer and, you might say, that extends up into Oregon.

Q. Let's take it in a commercial way, because I understand there is a relatively small production on the east slope of the southern Sierras; that is true, is it not?

2365 A. Yes, sir.

Q. Let's take the lumber-producing areas on a substantial scale. Will you give us the boundaries of this soft-textured ponderosa belt, just roughly?

A. Well, I don't exactly know where it begins. In fact, for that matter, that belt runs the whole length of California up into Oregon.

Q. As far as the quality of the lumber is concerned?

A. Yes, sir; I think so.

Q. Is there any substantial lumbering operation on the east slope of the Sierra Nevadas southerly from Lake Tahoe?

A. Southerly?

Q. Yes.

A. Not that I know of, not on the east slope.

Q. Then the substantial lumbering operations, as far as the east slopes are concerned, are situated from Lake Tahoe to the north?

A. Yes, sir.

Q. Then may we take Lake Tahoe perhaps as marking the southerly limits of this area?

A. Yes, sir.

Q. And the northerly end of the Klamath Basin as marking the northern limit?

A. Yes, sir.

Q. And this will include, of course, such mills as the Hobart mills in the vicinity of Truckee?

A. Yes, sir.

2366 Q. And mills in the upper Feather River Canyon section?

A. Yes, sir.

Q. And around Westwood?

A. Yes, sir.

Q. And extending up to Klamath Falls?

A. Yes, sir.

Q. We have approximately defined the belt from which we obtain this softer-textured ponderosa pine lumber.

A. Yes, sir.

Q. And is it from this section that is shipped the bulk of the ponderosa-pine lumber which is marketed outside the State of California under the name of California white pine?

A. Yes, sir.

Q. You stated, Mr. Stevens, upon your direct examination that the northern white pine of the East, or Middle Western States, does not vary much in texture throughout its range?

A. Yes, sir.

Q. Does it vary in other respects?

A. Yes.

Q. What?

A. In some respects; yes.

Q. What are those respects?

A. In some sections of the country the conditions under which it grows are different. The result is that some sections they get more shake; the shake is a serious defect in that timber. Some sections get more black knots and those are the principal
2367 variations. Those are the principal causes for variation, either shake or black knots.

Q. Do you think of any other particular elements of variation throughout the range?

A. No; I can't think of anything.

Q. Do you know in general whether the northern pine lumber which is now obtained in the East or Northern States, is smaller as to size of boards?

Mr. BURR. I object to that question. I would like to know what he means by northern pine. Are you talking about it in the narrow way, or not? Are you talking about northern white pine?

Mr. MATTHEW. Yes.

Mr. BURR. Let's have it so designated in the question and not talk about northern pine.

Mr. MATTHEW. I think the question is perfectly clear. If I inadvertently left out the word "white" I will be very glad to accommodate counsel by interpolating that.

Mr. BURR. All right; that is all I asked for. Why so many words?

By Mr. MATTHEW:

Q. The witness understands I was talking about northern white pine; did you not?

A. Yes, sir.

Q. Exactly; and so did I and I think everybody else in the room did.

2368 Are there any other elements that you have in mind with respect to which Pinus strobus varies materially throughout its range?

A. I can't think of any.

Q. Does it differ much as to the size of the board which is cut from the timber in particular areas?

A. I can't answer that. It has been ten or fifteen years since I have seen much of that lumber, but there was a considerable variation in the time I was in that section of the country.

Q. In general, the boards were getting smaller?

A. In some sections the timber was smaller than in other sections.

Q. Some second growth was being cut?

A. Not in my time; no, sir.

Q. Do you know now whether any second growth is being cut?

A. I understand so, but I don't know anything about it.

Q. Do you know whether sap was regarded as a defect in the grading rules for northern white pine when you were familiar with the industry in that territory?

A. Yes, sir.

Mr. BURR. I object. That is not proper cross-examination, going into the grades of northern white pine.

Examiner DE BRULER. He may answer if he knows.

By Mr. MATTHEW:

Q. Do you know whether it is so regarded now?

A. I can't answer as to what it is at the present time.

2369 Q. You stated that there is relatively more heartwood in sugar pine than in the ponderosa pine trees?

A. Yes, sir.

Q. Let us take a typical log, both sugar pine and ponderosa pine trees, and can you state what the approximate depth of that log would be?

A. No; I could not.

Q. Would a typical log about 30 inches, could we take that as representative?

A. How many inches?

Q. 30 inches or 36 inches.

A. Yes, sir; that is all right.

Q. A typical log?

A. That is all right.

Q. Would you accept 36 inches?

A. Yes.

Q. As typical?

A. Yes.

Q. What is the ordinary width of the sap ring of a sugar-pine log of that size?

A. Well, that is pretty hard to say; that varies.

Q. Let's get something that is typical, and we will take a ponderosa log which you——

A. (Interrupting.) You are talking about ponderosa?

Q. Both; I want to contrast the two.

2370 A. Well, about eight inches.

Q. That is the width of the sap ring for the sugar pine or ponderosa?

A. That is ponderosa.

Q. All right.
A. That is only approximate; I wouldn't go any further.
Q. Leaving about 24 inches for the heartwood?
A. Yes.
Mr. BURR. That isn't fair. How big is the width?
Mr. MATTHEW. Thirty-six inches.
Mr. BURR. The sap appears on both ends of the diameter—let's straighten that out.

By Mr. MATTHEW:

Q. Leaving 20 inches for the distance through the heartwood section?
Examiner DE BRULER. Is that your answer?
The WITNESS. You mean there would be 20 inches of heartwood. I said in 36 inches that perhaps it would be about 8 inches of sap ring.

By Mr. MATTHEW:

Q. Exactly. Which means, of course, on each side, leaving 20 inches of heartwood?
A. Yes, sir.
Q. Let's take a sugar-pine log of the same dimensions and give us the figures of the width of the sap ring?
2371 A. I don't think it would be over 4 or 5 inches.
Q. Which, what is your best judgment?
A. One is as close as another.
Q. Well, we will take 4½ inches—is that fair?
A. Yes.
Q. Leaving then about 27 inches as the width of the heartwood of that section of log?
A. Yes.
Q. Those figures, you think, are typical?
A. As near as I can remember it.
Q. You were asked about the grain of these different varieties of lumber. What did you mean by grain?
A. Grain?
Q. Yes. I understand counsel to speak of grain. Am I right?
Mr. BURR. Yes, he testified as to grain, if I understood him correctly.
The WITNESS. I had reference to texture.
Mr. BURR. I think that is it.

By Mr. MATTHEW:

Q. You mean relative softness or hardness?
A. Yes, sir.
Mr. MATTHEW. I think that that is all.

Redirect examination by Mr. BURR:

Q. Mr. Stevens, have your got any sander in your mill?
2372 A. No, sir.
Q. A sander is a machine for what purpose?

A. For smoothing off the lumber, smoothing off where it is rough.

Q. These samples that you referred in your testimony, Commission's exhibits for identification nos. 45 and 46, where have they been since they were cut?

A. Well, they were left with a couple of men to nail up and put into a package and box them up.

Q. When were they cut?

A. Well, I don't know, but it is nearly a week ago, I guess, about a week ago.

Q. And when were they boxed?

A. About the same day, probably a day or so afterwards.

Q. Where were they during the interval?

A. Stored in a shed.

Q. Would there be any way to sandpaper those by hand?

A. Oh, yes.

Q. It could be done?

A. Yes, with a piece of sandpaper.

Q. Did you give any instructions with regard to sandpapering them?

A. No, sir. I haven't paid any attention to it. In fact, I didn't consider it was necessary to sand them.

Q. Your instructions weren't to have either or both of them sanded?

2373 A. No, sir.

Q. I think you testified in your cross-examination, and also in your direct examination, to certain questions where the average of the ponderosa is of a softer texture as contrasted with other sections?

A. Yes.

Q. Are there variations in those same localities where the softer texture of ponderosa is found?

A. Yes, sir; there is in all pine lumber.

Q. There is in all pine?

A. Apparently.

Q. Is there a greater variation in these sections in the Pinus ponderosa belt—that is, the highest type you have testified to—is there a greater variation than there is in the sugar pine in those sections?

A. No; I don't believe there is.

Q. You don't believe there is?

A. No.

Q. Is a 36-inch-in-diameter sugar pine a typical one in your section? What is the size in diameter of the sugar pine in your section?

A. Why, I think in the sugar pine it would average larger than that.

Q. How much would it average?

A. Well, probably it would average 40 inches, anyway.

2374 Q. Forty inches?

A. Forty or forty-two inches.

Q. Have you noticed as to whether the depth or width of sap ring is greater in the larger logs than in those of smaller size?

A. Yes, sir.

Q. How is it?

A. As a rule it is greater in a smaller size.

Q. In the smaller size?

A. Yes, sir.

Q. You mean a greater percentage of what?

A. Greater percentage of sapwood in the smaller log.

Q. How about the percentage of sapwood in a smaller ponderosa log, is it greater or less than the larger one?

A. I would say it is greater.

Q. Is 36 inches a typical ponderosa log in your territory; is it larger or smaller than the average, I mean?

A. Well, it strikes me that it runs—I think 36 or 38 inches would be a fair average.

Mr. BURR. That is all, sir.

Recross-examination by Mr. MATTHEW:

Q. Mr. Stevens, does the width of the sap ring in inches vary with the size of the log?

A. In the log you mean?

2375 Q. Yes; for example, to make it clear, you said in answer to a question of counsel that the percentage relation between the sapwood and heartwood varied with the side of the log, which would seem to be obvious, and I am asking whether the actual width of the sap ring varies materially with the size of the log?

A. Well, that would be pretty hard to answer. I know the sap ring varies all right, but as to how much the size of the log would have to do with it, I am not prepared to say.

Q. You have no impression then as to whether there is a difference?

A. No.

Q. You have no impression as to whether there is a difference in the size of the sap ring which varies with the size of the log?

A. No.

Mr. MATTHEW. That is all.

Mr. BURR. That is all.

(Witness excused.)

Mr. BURR. I move we adjourn until 10:00 o'clock tomorrow morning.

(Whereupon followed remarks off the record.)

Examiner DE BRULER. We will take an adjournment until

2376 10:00 o'clock tomorrow morning, which will be January 29, 1930.

(Whereupon, at 5:05 o'clock p.m., an adjournment was taken until Wednesday, January 29, 1930, at 10:00 o'clock a.m.)

2377 Docket No. 1620 to 1689, inc.

SAN FRANCISCO, CALIFORNIA, *January 29, 1930.*

Met pursuant to adjournment, 10:00 a.m.

Before Ellis De Bruler, examiner.

Appearances:

Eugene W. Burr, for the Commission.

McCutchen, Olney, Mannon & Greene (by Mr. Allen P. Matthew and Carl I. Wheat) for the respondents.

Chandler M. Wood (Albuquerque, New Mexico) for Cady Lumber Corporation, George E. Breece Lumber Company, White Pine Lumber Company, respondents.

Examiner DE BRULER. If the parties are ready we might as well begin the hearing.

Mr. BURR. I will call Mr. E. M. Prescott.

E. M. PRESCOTT was thereupon called as a witness and, having been duly sworn, testified as follows:

Direct examination by Mr. BURR:

Q. Mr. Prescott, your business is what, sir?

A. I am in the retail lumber business at Sanger, California.

Q. And how long have you been in that business?

2378 A. Two years, at that particular point, and for twenty-five years preceding that at another point.

Q. Have you ever been in the wholesaling of lumber?

A. Yes, sir.

Q. Where and when was that?

A. I operated a mill at Basin, Fresno, California, for eight years; and during the past season I also operated a mill at Hume, California.

Q. Hume is in what county?

A. Fresno County.

Q. Have you ever had any experience in the manufacture of lumber?

A. Yes, sir.

Q. And when was that?

A. I worked in the woods in the spring of 1900 for the Pine Ridge Lumber Company. I was in their employ for two years. Subsequent to that I entered business for myself and have been continuously connected with the lumber industries.

Q. Have you been continuously connected with the manufacture?

A. No, sir; I have been in and out of the manufacture.

Q. When was your last experience in the manufacture of lumber?

A. During the past season.

Q. And how much lumber did you manufacture at that time?

A. Four million feet.

Q. What class of lumber was that?

A. I bought four million feet of logs in the pond at Hume
2379 from the Sanger Lumber Company. They were, roughly, two million feet of redwood, Sequoia gigantia, and the balance that they brought equally divided in sugar and Pinus ponderosa, white pine.

Q. How long had that lumber been in the pond?

A. The logs in the pond had been there continuously since the season of 1918; some of them many years prior to that.

Q. Now, what kind of condition were the sugar-pine logs in as regards their soundness?

Mr. MATTHEW. It is understood, Mr. Examiner, that my objection runs to all of this line of testimony.

Examiner DE BRULER. I understand that, and the exception is allowed.

The WITNESS. Shall I answer the question?

Examiner DE BRULER. Yes.

A. The sugar-pine logs were in very good condition, fit for manufacture into lumber.

By Mr. BURR:

Q. Had the sapwood disappeared—the outside disappeared from those logs?

A. No, sir; the sugar-pine sap was in good condition, excepting a little stain—a blue stain.

Q. What was the condition of the ponderosa logs?

A. The sap was rotten and the hearts were in fair condition for manufacture into common lumber.

Q. Did you say you had experience in the retail business anywhere else than at Sanger?

2380 A. Yes, sir. I had connections with retail business in Visalia and also at Fresno.

Q. Now, in your experience as a retailer, did you find that your purchasers were well informed as to the difference between the "California white pine", so called, and the sugar pine?

Mr. MATTHEW. May I ask if counsel is dealing with interstate transactions now?

Mr. BURR. If the examiner please, it seems that evidence of confusion ought not be confined necessarily to interstate transactions. It seems to me part of the case as regards the public knowledge of these varieties of wood. We are not now talking about the sale in interstate commerce; we are talking about the public state of information.

Mr. MATTHEW. I think it must be so confined, under the law, as interstate matter.

Examiner DE BRULER. I think, when it comes to a matter of confusion, it may be shown in any State. Objection overruled and exception allowed.

Mr. BURR. Read the question.

(Whereupon the question referred to was read by the reporter.)

A. No, sir. Nearly all of our customers are recently from the East, and their idea of white pine is based on their experience in the eastern markets of the northern white pine.

By Mr. BURR:

2381 Q. Did you have customers, in connection with your retail sales, who were managers of power projects in any case?

A. Yes, sir. In our operation at Basin we sold a very large amount of lumber to the Southern California Edison Company and to the San Joaquin Light & Power Corporation.

Q. Now, what types or grades of lumber went to those purchasers?

A. Largely common lumber.

Q. Was that sugar pine or so-called "California white pine"?

A. That was so-called "California white pine."

Q. Have you had occasion to observe the characteristics of either of these two types of wood as regards dam construction work by power projects or by any other projects?

A. Yes, sir.

Q. Where was that?

A. Well, more recently I had charge of the Sequoia Lake Dam in Fresno County, or on the Fresno County-Tulare County line, wherein the face of that dam, a rubbled dam, was faced with sugar-pine planking. This planking required attention in the fall of 1928; and, as chairman of the Sequoia Camp of the Y.M.C.A., I was charged with the reconstruction of that dam, and it gave me a very good opportunity to look into the lasting qualities of sugar pine.

Q. When had that dam been constructed?

A. In 1888.

Q. When was your first personal knowledge of it?

A. In the 90's, sometime.

2382 Q. In the 90's?

A. Yes, sir.

Q. Can you designate about when the first lumber came, as a result of that dam, to the town of Sanger?

A. Yes, sir; in 1889 the first lumber was flumed from Sequoia Lake, or Millwood, to Sanger.

Q. Did your knowledge go back to that extent, to the year 1889?

A. Yes, sir; it does.

Q. Now, when you were called upon to do some repair work on that dam, had it begun to leak?

A. Yes, sir.

Q. Just what did you find to be the situation there?

A. Well, I called on my friend, Harold B. Fox, chief engineer of the San Joaquin Light & Power Corporation. We went up and inspected the dam. The dam, as I said, was a rubbled dam, faced with wood decking, two layers of 3 by 12, laid on 6 by 6 purlines about 3 or 4 feet apart. This dam had been subject to a change in water level varying probably 25 to 30 feet. The water would be up

and then down, up and down; and over that period of years above the average water line rot had taken place. We found spots where probably the float of the lake—the lake was used for logging purposes in or about '90 for 2 or 3 years, and the chute came out of the lake about 100 feet north of the dam, and very likely, or, the action of the logs could be traced on the face of the dam.

2383 We removed the decking in order to find the spots where the rot was causing the trouble. We took off about 30 feet of the decking from the top of the dam down and across the face, and found that the timber was absolutely sound below the average water line. We made our joint there, put in new purlines and new sugar-pine decking over the entire face.

Examiner DE BRULER. What was the character of the wood that had rotted?

The WITNESS. Sugar pine. I would say that the entire purlines and decking were sugar pine.

By Mr. BURR:

Q. Did you leave any part of that structure intact?

A. Yes, sir; the lower half is just as it was put in in '88.

Q. What kind of wood did you use for your repair?

A. No. 1 common sugar pine surface side and edge 2 by 12.

Q. Do you know when that began to leak?

A. Yes, sir; it began to leak in along in '27, and in '28 it increased.

Q. How general over the space exposed to the water was that condition of rot?

A. Well, the face of the dam is approximately 400 feet horizontally, and there were probably half a dozen spots as large as the table you are sitting at, that showed considerable signs of rot decay.

Q. How long a dam was that, approximately? What are the dimensions of that dam?

A. I said approximately 400 feet along the top, and a maximum depth of 55 feet.

2384 Q. Have you had any similar tests under conditions of alternate wet and dry in the case of ponderosa pine?

A. Yes, sir. My experience at Basin, California, was not satisfactory to Pinus ponderosa.

Q. Narrate what has been your information and experience at Basin.

A. When we started that plant we moved into a virgin forest. That was, I might say, an almost pure stand of Pinus ponderosa that I was operating then. We cut our construction material, as the mill was built, our pile bottoms——

Examiner DE BRULER. (Interrupting.) About what year was that?

The WITNESS. I started operations there in the spring of 1916. And proceeding with our construction work it was necessary to build pile bottoms and we paid no attention to what we picked. We picked the wood that we had, which was white pine, or Pinus

ponderosa, and built our foundations in the usual manner of a piece of 2 by 12 blocking about 18 inches long, crossed by a piece of 2 by 6 and 4 by 4 posts thereon in the usual manner of constructing pile bottoms. Two years later we had two or three piles fall down, and on investigation we found that the yellow-pine foundation planks were entirely rotted and we had to put in new foundations under the entire yard the following winter.

By Mr. BURR:

Q. What was the condition as to moisture coming in contact with the Pinus ponderosa, to which you have testified? Was that
2385 a condition of alternate wetting and drying?

A. Yes, sir; it was.

Q. Was any of that submerged during the entire time?

A. No, sir.

Q. Is it a situation of wetting and drying alternately?

A. Yes, sir. Some of the foundations were in a little creek that ran part of the season.

Q. Do you regard a condition of submergence in water, or a condition of alternate dry and wet [illegible]s, as the more trying to lumber in the matter of durability? Is that clear?

A. You are asking my knowledge as from experience, are you?

Q. Yes; which is harder on lumber, to be wet all the while, submerged all the while in water, or be alternately submerged and then dry out?

A. During the past season——

Mr. MATTHEW. (Interrupting.) Now, just answer the question.

By Mr. BURR:

Q. Can you answer yes or no?

The WITNESS. Read the question.

(Whereupon the reporter read the question referred to.)

Examiner DE BRULER. Answer the question yes or no.

Mr. BURR. He can't.

Examiner DE BRULER. I thought that was a request.

2386 Mr. BURR. That was my request, and we were both wrong, and it can't be answered that way.

Examiner DE BRULER. I see.

By Mr. BURR:

Q. Make a categorical answer and then explain it, if you can.

A. Wood that is entirely submerged in water is hermetically sealed and will last indefinitely.

Q. Will you contrast with that the test that wood is put to by having an alternative condition of drying out and then being wet again and then drying out, etc.? Is that a hard test for lumber as regards its decay resistance?

A. I think it would be conceded the hardest test known.

Q. Did this dam feed a flume, or what was the purpose of it?

A. It feed the original Sanger Lumber Company's flume used for transporting lumber from Millwood to Sanger.

Q. Was that flume in use certain hours of the day or in use continuously day and night?

A. Yes, sir; used for six to ten hours a day.

Q. When not in use was the water being stored or wasted?

A. It was being stored.

Q. Would the dam be rising during that period of storage?

A. Yes, sir; that is, the water level in the dam would be rising.

Q. Now, do you know whether that was sugar pine, of your own knowledge?

A. Yes, sir.

Q. How do you know?

2387 A. Well, I have handled it for thirty years, and to the best of my knowledge and belief it is sugar pine.

Q. Have you had an opportunity to observe how both logs last when submerged in water, as Pinus ponderosa and sugar pine contrasted?

A. Yes, sir.

Q. Where was that?

A. At Hume, Fresno County, California.

Q. How long ago?

A. During the past season.

Q. Will you describe what you found the condition to be as regards those two types of lumber?

A. The logs that I cut, or largely the logs that I cut last summer, were logs that had been put in the pond prior to 1918. In that vicinity there are a large amount of the sugar pine that are sinkers—that is, they have a greater specific gravity than water and they sink when they hit the lake. My predecessors never made any effort to raise the sinkers or bring them out. Last summer I bought that timber and went in and cut it into lumber. I found the condition of the sinkers that had been submerged to be absolutely perfect in every way. They were sound; they were free absolutely from any blue stain or rot.

Q. Were they Pinus ponderosa or sugar pine?

A. Sugar pine. Pinus ponderosa doesn't sink.

Q. Pinus ponderosa has no sinkers; is that right?

A. Very nearly, sir; yes, sir.

2388 Q. Were any of these logs of lighter specific gravity, so they floated?

A. The Pinus ponderosa were; yes, sir.

Q. Did any of the sugar pine logs float?

A. Sir?

Q. Did any of the sugar pine logs float?

A. Oh, yes.

Q. Some of the sugar pine and all of the Pinus ponderosa floated; is that true?

A. Yes, sir; very nearly true; there might have been an exceptional sinker in the yellow pine, but very, very seldom does it sink in that locality.

Q. Now, what was your observation as to the condition of the sugar pine logs that were floaters rather than sinkers?

A. The sugar pine logs that were floaters were in good condition, with the exception that the sap rings carried some blue stain. The heart of the sugar pine floaters was entirely white and sound.

Q. Was any of the sapwood of the sugar pine merchantable?

A. Yes, sir.

Q. Would you say that fifty percent of it was merchantable, or what?

Mr. MATTHEW. I object to that question.

Examiner DE BRULER. Ask him what percentage.

Mr. BURR. I don't know what he was going to say.

Q. What percentage do you estimate of the sapwood of the
2389 sugar pine floaters was merchantable?

A. Practically all of it, sir.

Q. In other words, the blue stain didn't damage it much; is that true?

A. Not for common lumber construction grades.

Q. What was the condition of the floaters of the Pinus ponderosa?

A. The sapwood was rotten.

Q. How was the heartwood?

A. In rather poor condition.

Q. Well, just what had happened?

A. Well, some of the larger Pinus ponderosa logs, after we got them into the mill, they were entirely rotten and went into the slab burner at once.

Q. Now, have you recently had any occasion to cut Pinus ponderosa and sugar pine lumber from old slashings?

A. Yes.

Q. When were those slashings made?

A. In 1918 my predecessor cut some timber land belonging to one Anderson and became involved in litigation, and the court stopped the proceedings and there was a large amount of logs lying on the ground and considerable spar trees, known in the vernacular of the woods, standing in this area. I bought that lumber and cut about 600,000 feet of it.

Q. Before you go further will you be kind enough to explain for the Commission what you mean by slashing?

A. Why the Sanger Lumber Company had gone into a
2390 virgin forest and had felled and bucked, crosscut—excuse me—about 400,000 feet; and probably as much as two or three hundred thousand feet had simply been felled and not limbed, and not crosscut or bucked.

Q. What was the species of timber?

A. Well, it was an average sugar- and yellow-pine stand.

Q. Will you describe what kind of condition you found the felled sugar pine to be in?

A. We brought in all the felled sugar pine and it made good lumber. We brought in—did you want——

Q. (Interrupting.) I wanted to ask you this: Did the sapwood still make good lumber, or was the sapwood largely gone?

A. The sapwood was stained on the sugar pine but was still sound. It made good common lumber.

Q. Merchantable as such, was it?

A. Yes, sir.

Q. Now, what was the condition of the ponderosa down timber?

A. The logs looked pretty good where they were laying, and I had about twenty of them taken into the mill. We sawed, I think, a dozen of them, and they were so nearly all rotten that we didn't bring in any more. There was such a small portion of the heartwood that was suitable for the manufacture of common lumber that we didn't bring in any more yellow pine.

Q. Now, referring to the standing timber, I think you referred to some of them, perhaps all of them, as being spar timber as left standing. What do you mean, briefly, by spar timber?

2391 A. Well, a spar tree is used for high lead logging.

Examiner DE BRULER. What is that?

The WITNESS. In this case, Mr. Commissioner, they go into the forest and pick out a tree located at an advantageous point in the area, where the donkey is going to be located for pulling the logs in, and they limb this tree up anywhere from 100 to 160 feet high, take off all the limbs, and cut off the top. Naturally that kills the tree. There were several of those trees in the area.

By Mr. BURR:

Q. What variety of timber were those trees?

A. They were sugar pine.

Q. Were any of them Pinus ponderosa at all?

A. Yes, sir.

Q. The condition of the spar timbers you found to be what, did you use those?

A. Perfect, perfect.

Q. You mean to say the sap was still in good condition?

A. Absolutely, as bright as any that we cut.

Q. You say that cutting was made in what year? I mean the cutting of the forest surrounding these spar timbers.

A. In 1918, possibly a little in 1919, but none after that.

Q. Have you had the opportunity to observe the variability of ponderosa and sugar pine as to the range over which their characteristic quality as lumber varies?

2392 A. Yes, sir.

Q. How did you get that experience?

A. Well, as I told you, I manufactured there for about eight years in practically a pure stand of yellow pine; and that area varied in elevation from about 3,300 feet to approximately 4,500 feet, and on that area there was a very great diversion in the quality of the yellow pine.

Q. In what respects do the qualities of yellow pine, ponderosa, vary?

The WITNESS. Read the question.

(Whereupon the reporter read the question referred to.)

By Mr. BURR:

Q. What characteristics are you referring to when you say there is a variation in this wood?

A. Well, as to the texture and as to the weight there is a great variation.

Q. Referring to weight, what variation have you found as regards weight?

A. Our shipments of yellow pine, shop and better, that went out of Basin, averaged around 2,200 pounds to the thousand. I shipped three carloads of Australian clear, which is a grade of yellow pine, to this city, and it was exported to Australia, that weighed 3,300 pounds to the thousand. So you can see there is a great difference in the weight. This was on dry lumber in shipping condition.

2393 Q. What content in the wood is it that gives it greater or less weight?

A. Well, I am not a scientist, but I would say it is the pitch.

Q. The more pitch the lighter the wood, or the heavier the wood?

A. The more pitch the heavier; absence of pitch tends to lighten it.

Q. Have you had opportunity to observe, in various parts of the State, the Pinus ponderosa and the sugar pine?

A. I have been in a large number of the operations from Fresno north to Klamath Falls.

Q. Including both ends of that territory, including Klamath Falls also?

A. Yes, sir.

Q. Is there diversity in the weight and characteristics of ponderosa timber and ponderosa lumber over that area?

A. Yes, sir.

Q. Will you describe that a little in detail as to what your experience and observation has been?

A. Well, I purchased lumber from Klamath Falls that was very light lumber; and I have also had some shipments from Klamath Falls that were heavy, pitchy content.

Q. Now, any other localities with which you are familiar?

A. Yes, sir; I bought some lumber from Col. Cox at Weed when he was up there.

Q. Was that sugar pine or ponderosa?

2394 A. Ponderosa.

Q. Well, now, was that uniform or was that diverse in its character?

A. You ought to ask the Colonel.

Examiner DE BRULER. Answer if you know.

A. Yes, sir.

By Mr. BURR:

Q. It was which—diverse or uniform?

A. Both.

Q. Parts of it were uniform and parts were diverse; is that the idea?

A. Yes, sir.

Q. Well, now, that was bought at what point, did you say?

A. It came from Weed.

Q. That is in the northern end of California, is it?

A. Yes, sir.

Q. Have you bought on the west side?

A. Sir?

Q. Have you bought on the west side of the Sierras?

A. Well, that is all the westerly slope; I have bought lumber from the Yosemite Lumber Company and from the Pickering people, and some from the Michigan people.

Q. Michigan, California Sugar Pine Company?

A. Yes; Michigan-California people.

2395 Q. Will you state whether there is a diversity in each given locality or, if not, what is the situation in the Pinus ponderosa lumber?

A. Well, from my observation, yellow pine diverges in its natural condition entirely due upon the land upon which it grows. Now, there may be in the stand, in a pure stand of Pinus ponderosa, trees that are growing on hard, rocky points or on wind-exposed positions, and those trees will be hard and flinty and pitchy. It seems as if it is the nature of the tree to protect itself and to strengthen itself against the elements.

Q. Is that true in various localities or are you referring to just certain localities only?

A. I would say that that was a general condition.

Q. What is the condition as to variability of sugar pine, in contrast with the testimony you have just given as to ponderosa?

A. From observation I would say that sugar pine grows naturally on the best lands. It is generally found in the best soil. It is not as hardy a tree as the yellow-pine tree, and therefore it is naturally—that is, naturally it grows in the protected or better-soil conditions in the forest.

Q. What result does that have upon uniformity or lack of uniformity of the type of lumber produced by sugar pine?

A. Well, that result would naturally follow, sir, that trees growing in better soil and better conditions would naturally have a softer, evener grain.

2396 Mr. MATTHEW. I don't want to appear to be captious at all, but I think the witness ought to confine himself to his observation as to trees and lumbers, and not speculate as to soil conditions, as he is not qualified to speak as a dendrologist.

Examiner DE BRULER. I think he stated that had been his observation.

Mr. MATTHEW. I have no objection, but I think he ought not speculate as to what makes the tree pitchy or makes it soft. I don't think he is qualified along that line.

Mr. BURR. I think he is thoroughly qualified.

Mr. MATTHEW. He is not qualified scientifically at all.

Mr. BURR. I think his observations are as good as those of an expert.

Mr. MATTHEW. As to his observation; yes.

Mr. BURR. That is what I asked him for.

Mr. MATTHEW. I am talking about his answer. I think he ought not go into the discussion of soil conditions.

Examiner DE BRULER. State what your experience has been, what you have observed.

By Mr. BURR:

Q. State what your experience has been in retailing of Pinus ponderosa lumber.

A. Why, I have had a great deal of experience in retailing lumber.

2397 Q. Which type of lumber do you find the more desirable to move through your retail establishment rapidly—Pinus ponderosa or sugar pine?

Mr. MATTHEW. I don't understand that question. Will you clarify it a little bit?

Mr. BURR. Read the question.

(Whereupon the reporter read the question referred to.)

Mr. MATTHEW. Desirable for what reason?

Mr. BURR. From the standpoint of profit to the retail lumberman's office. He is not in business for his health, of course.

Mr. MATTHEW. Never mind, go ahead.

A. Sugar pine in the retail establishment stands well, and white pine is better kept in the shade and sold quickly.

By Mr. BURR:

Q. What do you mean by white pine?

A. Pondosa pine.

Q. Why do you say if kept in the shade and sold quickly?

A. The yellow pine board, if it is exposed to the sun, immediately starts back to the stump from which it came. It will curl up and twist and become wholly unfit for the purpose for which it was manufactured.

Q. Is heartwood or sapwood the typically California white pine lumber?

Mr. MATTHEW. The question is leading.

2398 By Mr. BURR:

Q. Which is the typical form of the so-called "California white pine" lumber; is it heartwood or sapwood?

A. Sapwood.

Mr. MATTHEW. Just a moment, please! I want to object to the question and move that the answer be stricken out. The question isn't clear. What does he mean by "typical form"?

Mr. BURR. I don't know of any better choice of English than "typical form."

Examiner DE BRULER. I think you can bring that out on cross-examination.

Mr. MATTHEW. I can't see how the witness can say heartwood or sapwood is typical. Sapwood is typical of sapwood and heartwood is typical of heartwood.

The WITNESS. Are you talking about the upper grades?

By Mr. BURR:

Q. I was talking about lumber in general. If the differentiation should be made, let's talk about the upper grades first and the common afterwards. Which is the typical upper-grade piece of lumber? Is it the heartwood or sapwood, or what is it?

A. In the Pinus ponderosa the upper grades are largely sapwood.

Q. And by upper grades you are referring to what grades technically?

A. From B select up.

Q. What is the typical grade of common lumber of ponderosa?

2399 A. Well, the commons are generally the heartwood. There is considerable shop in yellow pine hearts.

Q. Which is the greater in shop lumber on an average—heartwood or sapwood in the case of ponderosa?

A. Sapwood.

Q. Now, then, I wish you would state what the situation is as regards the upper grades of the sugar pine; are they typical heartwood or typical sapwood?

A. The sap ring on a sugar pine tree is much less on the same sized log than that of a Pinus ponderosa.

Mr. MATTHEW. He has not answered the question yet.

By Mr. BURR:

Q. That is not quite responsive. After the slab is taken off, is there an edging that is taken off also?

A. Yes, sir.

Q. Now, the edging of the sugar pine—is that heart or sap?

A. Sap.

Q. Then, after the slab is taken off and the edging is taken off, the grades of B select and better, are they largely heartwood or sapwood in the case of sugar pine?

A. Well, your sawmill training and mine are a little different. I don't get your idea.

Q. Well, I am afraid my education is a little deficient. Do the better grades of sugar pine come from the heart or sap?

A. The sap generally yields more clear than the heart, but

2400 often sugar pine logs will yield clear almost to the heart of the log. Is that your question?

Mr. BURR. I think so.

You may cross-examine.

Cross-examination by Mr. MATTHEW:

Q. Mr. Prescott, you have been in the retail lumber business for how many years?

A. Actively more than twenty-five years.

Q. What varieties of lumber do you carry in your retail yard?

A. Sugar pine and Pinus ponderosa.

Q. Anything else?

A. Yes.

Q. What?

A. Redwood, Douglas fir, white fur, cedar, and hardwoods of all descriptions.

Q. Do you carry a miscellaneous stock of lumber of various kinds?

A. Yes, sir.

Q. You spoke of Douglas fir. Do you sell it as Douglas fir?

Mr. BURR. I object to that line of questioning.

Mr. MATTHEW. I stand upon my right to——

Examiner DE BRULER (interrupting). Did he speak of Douglas fir?

Mr. BURR. He said he carries it in his yard.

Examiner DE BRULER. What was the next question?

2401 (Whereupon the question referred to was read by the reporter.)

Examiner DE BBULER. I don't think we should go into any other woods except the pines.

Mr. MATTHEW. You have to go into other woods if we have an intelligent picture of it. May I suggest to the examiner that there isn't a jury here that is going to be confused or misled by any question or answer that goes into the record.

Mr. BURR. May I ask counsel what this is leading up to? I have no great objection to this particular answer, or this question, but I think it is leading up to an effort on the part of counsel to show that there are other misnomers in this trade and that has been ruled on.

Examiner DE BRULER. If that is the intention, I would rule it out.

Mr. MATTHEW. I think I shouldn't always be required to expose the purpose of the questions on cross-examination.

Examiner DE BRULER. Go ahead and let's see what it leads to.

Mr. BURR. I withdraw my objection if it doesn't lead further, but if it does, and I think it is so intended, I shall object.

Examiner DE BRULER. Go ahead.

Mr. BURR. Read the last question.

2402 (Whereupon the question referred to was read by the reporter.)

A. No, sir.

By Mr. MATTHEW:

Q. Under what name do you sell it?

A. Oregon pine, a trade name.

Q. You have sold it under that name continuously?

A. Yes, sir.

Q. For what period have you been familiar with the term "California white pine"?

Mr. BURR. Read the question.

(Whereupon the reporter read the question referred to.)

A. About fifteen years.

By Mr. MATTHEW:

Q. Do you sell Pinus ponderosa lumber under the name of California white pine?

A. No, sir.

Q. Have you ever sold it under the name of California white pine?

A. Yes, sir.

Q. During what period?

A. During—I would like to withdraw that answer; it is not strictly true.

Examiner DE BRULER. All right; you may answer any way you like.

A. The previous question you asked me was whether I had ever sold it as white pine?

2403 By Mr. MATTHEW:

Q. As California white pine?

A. My sales, when I operated a white-pine mill at Basin, were handled by a broker in San Francisco by the name of Frank B. Doe, who came to the plant and bought the upper grades, and he attended to the billing. I don't know.

Q. Pardon me, I am inquiring as to your present retail operations.

A. I answered that question; we don't in the retail business differentiate as to California white pine.

Q. Well, let's get this clear. Under what name do you sell at retail the lumber which is yielded by the Pinus ponderosa?

A. Yellow pine.

Q. And have you always sold it under the name of yellow pine?

A. I can't answer that; I don't recall.

Q. Then, so far as your recollection serves you, you think you have always sold Pinus ponderosa lumber under the name of yellow pine?

A. Yes; or clear mountain pine.

Q. Well, which?

A. Well, I would say about 50-50 each way. Years ago it was generally on our price list as clear mountain pine. That is a localism peculiar to the vicinity of Fresno, I believe.

Q. Are you referring to clear lumber only?

A. Yes, sir; that is, B select and better.

Q. Now, you sold it originally as clear mountain pine?

2404 A. That was the old list, my earliest remembrance.

Q. When was that term replaced by the tenm "yellow pine", or is it yellow pine or California yellow pine, which?

A. Well, our customers began to specify sugar pine and yellow pine, oh, some ten or fifteen years ago.

Q. Then am I to conclude that commencing some ten or fifteen years ago you discontinued the use of the term "mountain pine" for Pinus ponderosa lumber, and commenced to sell it as yellow pine, and have sold it under the name of yellow pine ever since?

The WITNESS. Read that again.

(Whereupon the question referred to was read by the reporter.)

A. I can't answer that question yes or no.

By Mr. MATTHEW:

Q. Well, can you give me the facts?

A. In our retail yard we have our bins, or storage bins, plainly numbered and lettered as to the contents therein. And in the bins marked "yellow pine" we buy and put in yellow-pine lumber, or Pinus ponderosa. In the bins marked "sugar pine" we put in sugar pine, and we sell it to the trade just as it comes from our bins.

Q. The bins that contain yellow pine have the letters "Y.P." upon them; is that it?

A. They are typed out "yellow pine."

2405 Q. All right. When were the words "yellow pine" placed upon your bins?

A. Well, at Sanger we put them on a year ago last April when we built the yard, and at the other yards I can't tell you when they were put on.

Q. Recently, or something that took place ten or fifteen years ago? I am sure you can tell me that.

A. Well, as a retailer, that is not a paramount matter, and it is not firmly fixed in my mind. I couldn't answer.

Q. Whether it is paramount or not, the Commission will determine. I am trying now to get your best recollection as to when you began to put the words "yellow pine" upon your bins.

Examiner DE BRULER. Tell the facts as you remember.

A. Oh, I would say that it has been within the last ten years.

By Mr. MATTHEW:

Q. Has it been within the last two or three years, as a matter of fact, Mr. Prescott?

A. No, sir.

Q. Then it is your best judgment that as long ago as ten years back you placed the words "yellow pine" upon the bins in your retail yards to indicate the lumber yielded by the Pinus ponderosa tree?

A. Yes, sir; we have made a practice for probably ten years of branding our stuff just what we buy.

Q. Would you mind answering the question? Did you put that name upon your bins as long ago as ten years ago?

2406 The WITNESS. Read the question.

(Whereupon the question referred to was read by the reporter.)

A. I think I answered that.

By Mr. MATTHEW:

Q. Did you put the words "yellow pine" upon your bins as long as ten years ago?

A. Do you want to know if I personally went out and nailed the tag on the bins?

Q. I don't care whether you or anybody else did, but have the words been on your bins for ten years continuously?

A. I said approximately ten years; yes, sir.

Q. Did you buy the lumber under the name of yellow pine or California yellow pine?

A. I think it was probably purchased as white pine, the term being similar in our system.

Q. You mean as California white pine?

A. White pine and yellow pine being synonymous terms to our idea.

Q. That is, California white pine has been the common trade name?

A. For yellow pine; yes, sir.

Q. For the lumber which is manufactured from the Pinus ponderosa tree; that is true, is it not?

A. Yes, sir.

Q. The term "California white pine" is still used in that territory to describe this lumber?

A. Yes, sir; wholesale, it is used extensively.

2407 Q. And always has been during your entire period of familiarity with the industry, has it not?

A. Yes, sir.

Q. And you have known, during all of that time, that when you purchased California white pine you were purchasing lumber manufactured from the Pinus ponderosa trees?

A. Yes, sir.

Q. Has it usually been invoiced to you as California white pine until very recently?

A. I presume that it is still invoiced as white pine. I couldn't tell you that particular point.

Q. From what companies do you buy this lumber?

A. The Yosemite Lumber Company, the Missouri Sugar Pine Company, the Sugar Pine Company of Pinedale, the West Side Lumber Company—wherever we happen to place the order.

Q. So far as you know, all of those mills bill their lumber to you as California white pine?

The WITNESS. Mr. Commissioner, I don't handle the invoices. We have a purchasing agent who places the orders, and those things go through him. As to my taking an oath as to what actually is on those manifests, I haven't personally examined a manifest for probably the last year. I couldn't say exactly what they are. The counsel asked me a question. How can I answer it?

Examiner DE BRULER. What was the question? Read the
2408 question.

(Whereupon the reporter read the question referred to.)

Examiner DE BRULER. What is your best knowledge of it?

The WITNESS. I haven't seen those particular documents. I couldn't swear about it.

Examiner DE BRULER. If you don't know or you can't answer it.

The WITNESS. I can't answer it.

By Mr. MATTHEW:

Q. You haven't any impression at all as to whether those mills bill the lumber to you under one name or another?

A. Well, I am not swearing to my impressions.

Q. You don't care to give your best impression?

Mr. BURR. I think that counsel is pressing the matter too far. The witness is under no obligation to give it.

Examiner DE BRULER. He can bring out the question.

Mr. BURR. He can say he doesn't know.

Examiner DE BRULER. I think so, too, if he doesn't.

The WITNESS. I don't know.

By Mr. MATTHEW:

Q. Do you know under what name the Sugar Pine Lumber Company invoices the Pinus ponderosa lumber to you? I am dealing now with a particular company. You may happen to know as to that one.

A. I do not.

2409 Q. Do you know whether or not within the last two or three years the Sugar Pine Lumber Company changed its name for Pinus ponderosa lumber from California white pine to some other name?

A. I do not.

Q. Have you heard of any other changes recently made by any of the lumber companies which you have mentioned in the name under which they offer this lumber to the trade?

A. No, sir; I have not.

Q. You have heard of the term pondosa pine?

A. Yes, sir.

Q. Do you know of any company which uses that name under which to sell its lumber?

A. No, sir; I do not.

Q. As far as you know, none of the lumber companies operating in the vicinity of the Fresno-Sanger territory use the name pondosa pine?

A. They might, but not to my personal knowledge; I am not so advised.

Q. I am asking as to your knowledge. Do you carry the term California white pine on your own invoices to your customers?

A. That term doesn't appear on our price list.

Q. Did it ever appear on your price list?

A. Not to my knowledge—I am speaking as a retailer.

Q. I am asking you as a retailer.

A. Yes, sir.

Q. Now, that rather confuses me for this reason: Mr.
2410 Prescott, you testified that for some years you did sell this lumber to your customers as California white pine. Am I right in so recalling your testimony?

A. No, sir.

Q. Then you never did? Maybe I am wrong. You stated you sold it as mountain pine, I believe. Am I right?

A. I didn't so state.

Q. Then what did you state?

A. I referred to our uppers from Basin that we sold at the mill to the Frank B. Doe Lumber Company, San Francisco.

Q. Let's get it straight. We will start all over. I understand that you are a retail dealer in lumber?

A. Yes.

Q. And that you have been a retail dealer in lumber for approximately twenty-five years?

A. No; you are wrong.

Q. Let's get it straight.

A. I have been actively operating a yard at Sanger for the past two years.

Q. Yes?

A. And during the past season I operated a sawmill at Hume. Preceding that time I was interested in retail yards at Visalia and Fresno, but not in an active salesman or executive position.

Q. How many years of experience have you had in the retail lumber industry?

2411 A. Where I have been actively connected, I would say about five years.

Q. That means two years at Sanger?

A. Two years at Sanger. Three years with the Valley Lumber Company at Fresno many years ago.

Q. How many years ago?

A. Many years ago.

Q. During the time you were with the Valley Lumber Company at Fresno, were you selling any lumber under the name of California white pine?

A. That was in 1903, 1904, and 1905, and instead of multiplicity of grades and terms——

Mr. MATTHEW (interrupting). I move to strike out the witness' answer. I asked him a simple question to be answered by yes or no.

The WITNESS. Read the question.

(Whereupon the reporter read the question referred to.)

Examiner DE BRULER. Answer that yes or no.

A. No, sir.

By Mr. MATTHEW:

Q. Under what name did you sell lumber which was produced from Pinus ponderosa trees?

A. I think the term "mountain pine" was used.

Q. For what period have you been familiar with sugar-pine lumber as such, Mr. Prescott?

A. Thirty years.

2412 Q. Have you always known it as sugar pine?

A. Yes, sir.

Q. Never by any other name?

A. No, sir.

Q. Do you know whether or not any of your customers at Sanger ever inquired for California white pine?

A. I have never heard one.

Q. Under what name do they ask for Pinus ponderosa lumber?

A. I have never had them inquire for Pinus ponderosa lumber.

Q. Do you mean you don't sell Pinus ponderosa lumber?

A. Yes, sir; we sell it.

Q. Well, what inquiries are made, which precede a sale of that lumber?

A. Well, the customer wants sugar pine, or he wants clear lumber, clear pine. If he demands sugar pine, we have it; if he wants clear pine he gets Pinus ponderosa or possibly apple pine.

Q. What is apple pine?

A. There are local woods there and that is the local pine.

Q. Do you know what it is botanically?

A. No, sir; I don't.

Q. Do you know whether it comes from the Pinus ponderosa tree or not?

A. No, sir; it is a different tree.

Q. Is it lumber which is produced Sierra Nevada mountains?

A. Yes, sir.

Q. At a high elevation or low elevation?

2413–14 A. High elevation.

Q. Do you happen to know whether it comes from Jeffrey pine?

A. No, sir; it is not Jeffrey pine.

Q. Are you familiar with the Jeffrey pine?

A. No, sir.

Q. You don't know that tree?

A. No, sir.

Q. You referred to customers who want clear lumber. Did you use that expression?

A. Yes; finished.

Q. I am not quite sure I understand how you determine whether you are to furnish sugar pine or Pinus ponderosa lumber in response to such an inquiry.

A. On our price list, clear finished is prescribed. If they want sugar pine it costs more money. Sugar pine is definitely defined.

Q. Well, is your other lumber definitely defined?

A. So far as in our power.

Q. I know, but how do you do it on your price list? You speak of clear finish, with sugar pine definitely defined. How do you definitely define this other lumber as Pinus ponderosa?

The WITNESS. Read the question again.

(Whereupon the question referred to was read by the reporter.)

A. Clear finish.

2415 By Mr. MATTHEW:

Q. Well, is it clear-finish yellow pine, or is it clear-finish something else?

A. It might be.

Q. Which is it? You do recall definitely that you have the words "sugar pine" definitely defined in your price lists?

A. Yes, sir.

Q. Can't you tell me what term you have on your price lists?

A. Clear pine.

Q. Then when you use the words "clear pine", you mean pine that is yielded by the Pinus ponderosa tree?

A. Yes; and what other timber goes into the same grade.

Q. Any fir in that grade?

A. No, sir.

Q. Any cedar?

A. No, sir.

Q. Just merely pine?

A. Yes, sir.

Q. But no sugar pine?

A. No sugar pine.

Q. Then you are not selling any lumber as yellow pine under that name; am I right in that conclusion?

A. We are selling yellow pine under the name of yellow pine, also clear yellow-pine finish.

Q. Now, did you have the words "clear yellow-pine finish"

2416 in your price list?

A. Yes, sir.

Q. That is what I have been trying to find out.

A. Pardon my dumbness.

Q. Then, you have sugar pine and clear yellow pine on your price list?

A. Yes, sir.

Q. And have you always had the term "clear yellow pine" on your price list from the commencement of your operations?

A. At Sanger, yes, sir; 2 years.

Q. Now let's get into commons. Do you sell any sugar pine commons?

A. Yes, sir.

Q. Under what name?

A. Sugar pine.

Q. Do you sell any yellow pine common?
A. Yes, sir.
Q. Under what name?
A. Yellow pine, or common pine boards.
Q. What are common pine boards?
A. Well, it is largely yellow pine with possibly a sprinkling of apple pine in it.
Q. Some sugar pine?
A. Yes, sir; some sugar pine.
Q. All thrown together in the common grades?

A. It might be, but where we specify clear sugar pine—
2417 that is, common sugar pine—we get sugar pine.

Q. When a customer simply asks for common lumber you give him what may be a mixture of sugar pine and yellow pine and apple pine, as you term it?
A. That is correct.
Q. Now, in the opening part of your testimony, if I understood you, Mr. Prescott, I think you stated that your customers are confused by the term "California white pine", and you added specifically, as I recall it, that many of them are recently from the East and that that circumstance tends to increase their confusion.
Mr. BURR. I object to that statement of his testimony. I don't think he said his customers were, but that the retail trade were confused.
Examiner DE BRULER. Objection overruled.
Mr. BURR. I think he has misstated the evidence.
Mr. MATTHEW. The witness has a right to correct me.
Examiner DE BRULER. Your objection is overruled.
Mr. BURR. I have a right to object if your statements aren't fair.
Mr. MATTHEW. I asked if I correctly stated the testimony.
The WITNESS. No, sir; you didn't state it.

By Mr. MATTHEW:

Q. Will you correct me on that and tell me what you did testify in that respect?

2418 A. Counsel asked me if my customers knew what white pine was, or that is the gist of what he asked me, and I answered him that in their minds white pine was a grade that held over from their acquaintanceship and use in the eastern part of the United States, and that when they called for white pine they thought they were getting that northern white pine, which is a very different wood from the so-called trade name, white pine of California.

Q. Now, I thought you also said, in response to my question, that your customers do not call for California white pine by that name. Am I wrong in so recalling your statement?
A. Do you want what I tried to convey to you?
Q. I want this point cleared up.
The WITNESS. Read the question.
(Whereupon the question referred to was read by the reporter.)

Examiner DE BRULER. That is fair.

A. No, sir; they don't ask for California white pine. They ask for white pine, or did.

By Mr. MATTHEW:

Q. Then they do ask for white pine?

A. Occasionally.

Q. That is only occasionally, is it?

A. In the course of business; yes.

Q. When a customer asks for white pine in your yard what does he get? What is sold?

2419 A. My salesmen are instructed to explain what he can get and show him the material.

Q. That is all that you meant to convey, then, by your testimony in direct examination as to confusion in the customer's mind?

A. Yes, sir; we try to sell a man what he calls for.

Q. I assume you think you succeed in doing it, do you not?

A. I don't know—I am here.

Q. You do sell the Pinus ponderosa lumber to quite an extent, do you not?

A. Yes; we sell it.

Q. You sell more of it than of the sugar pine?

A. No; not in our retail yard at Sanger.

Q. In fact, the Sanger-Fresno district happens to be a particularly favorable sugar pine market, is it not?

A. Well, they are pretty well educated to the benefits of sugar pine.

Q. The best sugar pine stands are in the near vicinity of the Sanger-Fresno area, is it not?

A. No; the best sugar stand is north of Fresno, north of the Fresno area.

Q. How far north?

A. I think the Forest Service specifies that the best stands are found in Madera, Mariposa, and Tuolumne Counties.

Q. I didn't intend to confine you too strictly to the territory immediately opposite Fresno. It is in the southern section of

2420 the Sierras generally that you find that the larger and more important stands of sugar pine, is it not?

A. Well, yes; Fresno claims all those places.

Mr. MATTHEW. May I suggest that that be stricken out—that is, the last part.

Examiner DE BRULER. You may strike that out.

By Mr. MATTHEW:

Q. Let me come back once more to the way your lumber is packed in bins in your retail yard. Your clears are both sugar and yellow pine, as you term it—are put in bins which are marked "sugar pine" and "yellow pine." That is true?

The WITNESS. What is the question?

(Whereupon the question referred to was read by the reporter.)

Examiner DE BRULER. You can answer that yes or no.

A. No, sir. You asked if this material was put in bins and branded "yellow pine" and "sugar pine." In lumber that wouldn't go.

By Mr. MATTHEW:

Q. I asked if the bins were labeled "sugar pine" and "yellow pine", respectively.

A. The bins for the storage of the lumber in question have a little card right on the side of them, and if the bin contains yellow pine, or clear pine finish, or sugar pine, the same is noted on the card indicating the bin that it is in.

2421 Examiner DE BRULER. Let me ask what is in the clear pine finish—what kind of timber is put in that bin? You spoke of clear pine finish; what kind of timber goes into that?

The WITNESS. In our yard—I am answering as to what it is in my yard—in that bin branded "clear pine finish" would be yellow pine, apple pine, and some other of the local pines that might not be—I couldn't classify. It is a general trade name, Mr. Commissioner—clear pine.

Examiner DE BRULER. What would you have under yellow pine? What would you have in that bin?

The WITNESS. There is a grade of finish called "clear yellow pine finish" that we sell and that is what I am trying to explain to counsel, that in my yard these things are designated that way.

By Mr. MATTHEW:

Q. Now, I so understand; that is, I think I understand. When you have this clear yellow pine finish in a particular bin there is a card on the bin that shows that it is there?

A. That is my instructions; yes, sir.

Q. That is done in fact, isn't it?

A. Yes, sir.

Q. And you deal similarly with your sugar pine clear finish?

A. Yes, sir.

Q. How do you label the common?

A. The common dimensions are branded 1, 2, or 3 mountain

2422 pine—1, 2, or 3 pine, or 4. We handle some no. 4 in pine. Now, that pine contains largely yellow pine; it may contain some sugar pine.

Then, in another series of bins, we have sugar pine boards—1, 2, 3, and 4 sugar pine boards.

Q. Then you still carry and market lumber known as mountain pine?

A. We do; yes, sir.

Q. Does your mountain pine at the present time include such lumber as cedar and fir?

A. It does; yes, sir; that is, in some grades. In other grades it does not.

Q. In some of the grades mountain pine which you sell, it does contain cedar and white fir?

A. In the boards only.

Q. What do you mean by the boards?

A. One inch by six, eight, ten, or twelve inches in width.

Q. How is your lumber graded—in accordance with any particular grading rules of an association of lumbermen?

A. Yes, sir.

Q. What grading rules do you follow?

A. Well, the California Sugar and White Pine Association rules.

Q. Then, these terms and these grades, concerning which you have been testifying, have been taken from the grading rules of the Californing White and Sugar Pine Manufacturers Association?

A. Yes, sir.

Q. Do you find the term "mountain pine" there?

2423 A. Yes, sir—well—the term "mountain pine" occurs on the price lists, I am certain. I wouldn't swear that it is on the California White and Sugar Pine price lists.

Q. I didn't ask you what price lists, I asked you about grading rules.

A. Grading rules, instead of price lists—pardon me.

Q. You didn't find the term "yellow pine" in the grading rules of the California White and Sugar Pine Manufacturers Association, did you?

A. I don't remember. To the best of my knowledge and belief it is there.

Q. You think it is there?

A. Yes, sir; I think it is.

Q. Does your no. 2 common correspond to the no. 2 common as specified by the grading rules of the California White and Sugar Pine Manufacturers Association?

A. The so-called "mountain pine mills", consisting of Pickering, the Yosemite, the Madera Sugar Pine, and the Sugar Pine Company of Pinedale, use what is known as a San Joaquin Valley grade, and that is what we buy and what is furnished.

Q. Exactly. Then you are following the San Joaquin Valley grades, and not following the grades of the California White and Sugar Pine Manufacturers Association, are you?

A. I would say that those grades are so interwoven that it would be impossible for an average man to divide them up.

2424 Q. Let's concede that, but which grades are you following?

A. We are following the grades which we buy.

Q. Then you are following the grades of the San Joaquin Valley Association, to which you referred?

A. I don't know of any association—they are known as the "mountain pine mills."

Q. Then you are following the grading rules of these mountain pine mills; isn't that it?

A. As applied to our locality; yes, sir.

Q. I am asking you about your locality entirely. All of my questions are about your locality. May we have that understood? I take it that is the common practice in the Fresno-Sanger district?

A. It is my practice.

Q. Do you know whether it is the common practice in the trade?

A. I think it is; yes, sir.

Q. Will you tell me whether or not you were requested, by any of the manufacturers of lumber, to use the name "yellow pine" to describe this Pinus ponderosa lumber?

A. I never have been approached on that subject.

Q. Never has been discussed between you and any wholesalers or manufacturers of lumber?

A. No, sir.

Q. You told us, Mr. Prescott, about a purchase of logs in 1918, and I think you said you got them from the Sanger Lumber Company at Hume?

2425 A. I didn't tell you that.

Q. Well, I guess my notes are in error. My notes say you bought four million feet of logs in a pond from the Sanger Lumber Company at Hume.

A. Yes, sir; I did.

Q. In what respect was my statement in error?

A. You said I bought them in 1918. I bought them during the past season, 1929.

Q. Beg pardon. You bought them in 1929?

A. Yes, sir.

Q. They have been in the pond since 1918.

A. Prior to 1918; yes, sir.

Q. What year were the logs put into the pond?

A. I said prior to 1918.

Q. I asked you now what year?

A. I didn't put them there.

Q. Do you know?

A. I do not; no, sir.

Q. Do you know whether the sugar-pine logs were placed in that pond before the ponderosa logs were placed there?

A. Some of them were; yes, sir.

Q. What do you know about it?

A. There were some sugar-pine logs at the bottom of the dump there that I took out that were buried ten deep. That dump had been dragged over numerous times, so I am positive that some of those sugar-pine logs had been there probably from the in-

2426 ception of the operation.

Q. But you don't know of your own knowledge when they were put in the pond?

A. I do not.

Q. I think you stated that in your particular territory, with which you are familiar, there are more sinkers relatively among the sugar-pine logs than among the ponderosa logs; is that right?

A. Correct.

Q. To what do you ascribe that circumstance; why should there be more sinkers in the sugar-pine logs than in the ponderosa-pine logs?

A. Well, they are heavier.

Q. Why are they heavier?

A. They contain more sap, more sap liquid.

Q. Than the sugar pine?

A. I assume so; yes, sir.

Q. I——

A. (Interrupting.) Wait a minute. You are asking me a question silviculture that I am not capable of answering.

Q. The answer is you don't know?

A. I don't know.

Q. And similarly you don't know what makes ponderosa logs heavier or lighter?

A. I don't know.

Q. Do you ever have any difficulty in distinguishing sugar-pine lumber from ponderosa-pine lumber?

A. Yes, sir.

2427 Q. Some pieces are almost indistinguishable?

A. Yes, sir.

Q. When did you first become acquainted with the term Pinus ponderosa?

A. I think in 1915, in reading Bryant's book on logging.

Q. I suppose about the same time you became familiar with the botanical name of sugar pine?

A. I did; yes, sir.

Q. In testifying as to the condition of logs in this pond and elsewhere, Mr. Prescott, you called attention to the fact, as I recall it, that the sapwood decays more quickly than the heartwood. Is that correct? That is my inference from your testimony. Am I right?

A. In the Pinus ponderosa.

Q. Well, how about the sugar pine; would the sapwood decay more quickly than the heartwood in sugar pine?

A. What my testimony was?

Q. I am asking your judgment now.

A. It depends on conditions.

Q. Any conditions. We will take just sugar-pine lumber, some sap and some heart, and I ask which will decay the more quickly under identical conditions.

A. Sap.

Q. Did you notice whether the timber which required replacement in the Sequoia Lake Dam was sapwood or heartwood?

A. It was impossible to tell at that date.

2428 Q. You spoke of using some Pinus ponderosa lumber to construct pile bottoms for foundations at your basin operation?

A. Yes, sir.

Q. And in two or three years the foundation planks rotted?

A. Yes, sir.

Q. These planks were sawn lumber?

A. Sawn lumber.

Q. Sapwood or heartwood?

A. Both.

Q. About the most severe test to which any wood can be put, as I recall your testimony, is to alternate wetting and drying?

A. I think authorities agree on that.

Q. That is a condition, according to your observation, that is most favorable to rapid decay?

A. Yes, sir.

Q. In general, have you found that the Pinus ponderosa lumber which you obtained from the northern areas, say the Klamath Falls Basin, is lighter in texture and softer than the Pinus ponderosa lumber obtained from the vicinity of Sanger, or in the southern Sierras generally?

A. You ask if the Pinus ponderosa that I bought from Klamath Falls was softer than that of our vicinity?

Q. Exactly.

A. Yes, sir.

2429 Q. I want to be sure, Mr. Prescott, that I got the intent of your testimony as to the relative amounts of sapwood and heartwood in the sugar-pine and yellow-pine clears. Do you recall testimony in that regard?

A. I don't know what you got.

Q. You recall testifying on that point, do you not?

A. Yes, sir.

Q. I want to find out what I got. Do I understand you to state that it is the common thing to get a very large proportion of clear lumber from the heartwood of the sugar pine?

A. I testified as to the relative proportion; there is a greater proportion of clear lumber of sugar-pine heartwood than as compared with yellow-pine heartwood.

Q. Then, may we put it this way, and have a fair summary of your testimony, or at least your information: That the sugar-pine clears are more than 50 percent of sapwood?

A. No, sir; I wouldn't agree to anything on a percentage basis.

Q. You wouldn't express an opinion on it?

A. I would not; no, sir.

Q. The most you can say is that the substantial proportion of sugar-pine clears would be of sapwood?

A. A substantial proportion; yes, sir.

Q. I assume you have no interest at the present time in any lumber-manufacturing company?

A. I have no interests in any manufacturing concern.

Mr. MATTHEW. I think that is all.

2430 Redirect examination by Mr. BURR:

Q. Mr. Prescott, in your part of the State how do the local residents, in your experience, refer to the ponderosa trees? Do they call it white pine or yellow pine, or how do they refer to it?

A. Yellow pine.

Q. That is the common name, is it?

A. Yes, sir.

Q. How is it among the loggers, the actual fellows that take it, that do the work in the forests; do they call it yellow pine or California white pine?

A. The loggers have various terms. Some of them I don't think would do in this inquiry. They generally refer to it as yellow pine.

Mr. BURR. That is all.

Recross-examination by Mr. MATTHEW:

Q. Has it ever occurred to you that this common name of yellow pine may have been suggested by the color of the bark of the tree?

A. Well, that same color goes all through it.

Q. Would you mind answering the question now?

A. Yes.

Mr. MATTHEW. That is all.

Mr. BURR. That is all.

2431 Examiner DE BRULER. That is all. You may be excused.

(Witness excused.)

Mr. BURR. Call Mr. Berry, please.

SWIFT BERRY was thereupon called as a witness on behalf of the Commission and, having been first duly sworn, testified as follows:

Direct examination by Mr. BURR:

Q. Mr. Berry, your business is lumber, is it?

A. Yes, sir.

Q. And what concern are you associated with?

A. The Michigan, California Lumber Company.

Q. How long have you been connected with that concern?

A. Six years.

Q. They are located where?

A. At Camino, El Dorado County, California.

Q. And have been located there ever since you have been connected with them, have they?

A. Yes, sir.

Q. Now, Mr. Berry, I wish you would say when you first began to have experience in forestry matters, and more or less sketch your experience.

2432 A. I began in 1903 in the Black Hills, South Dakota. I worked there three seasons in the woods, during high-schools vacations; I worked eight months in the Black Hills of South Dakota as a ranger in the Forest Service. I spent the best part of two years in North Carolina in the forest school, and also cruised timber in North Carolina, West Virginia, Georgia; and I then entered the

Forest Service, was in Colorado for two years, and then I came to California. I was nine years connected with the district office of the Forest Service here in San Francisco, where my work was first on timber sales as an inspector of timber sales work, and logging engineer for the Forest Service.

Then I was two years in France in the forest engineers, and since then in timberwork, and one year as secretary of the California Forest Protective Association before going with the Michigan, California Lumber Company.

Q. Now, in connection with your work for the Forestry Service, what were your duties?

A. Check scaling and inspection on timber sales—that is, sales of timber made to purchasers of national forests—and later as logging engineer. I appraised prices for sales of Government timber, during which work I visited practically all of the lumber operations in California pine, both the mills and the woods, getting information on costs for the purpose of appraising costs of operation.

2433 Q. What is your company at the present time designating for sales purposes its ponderosa lumber?

A. We get out our stock sheets and price lists as pondosa pine.

Q. How long have you been calling it pondosa pine?

A. Since July 1927.

Q. Can you tell me what induced the company to make that change?

A. The company felt that——

Mr. MATTHEW (interrupting). Pardon me a moment. This matter was the subject of detailed and extensive testimony on the part of Mr. Danaher, who, I understand, is the president of this same company, at the New York hearing. I think that it is purely accumulative. In fact, it is worse than accumulative; it is a restatement by another officer of the same company of the same facts, and I object to it going in the record again. And if that objection isn't followed, I desire to offer another.

Mr. BURR. I think I will withdraw the question.

Examiner DE BRULER. If that is the case, I think it shouldn't go in.

Mr. BURR. I have no desire to offer anything to rebutt that part of Mr. Danaher's testimony.

Mr. MATTHEW. I don't think you have a right to put on a number of witnesses to testify to the same identical state of facts.

Mr. BURR. I don't agree with counsel. Nevertheless, I will withdraw that question.

2434 Q. Now, Mr. Berry, have you had, in connection with your experience, an opportunity to know as to the relative durability of ponderosa- and sugar-pine logs after being felled and left on the ground; have you had experience of that kind? First, tell us what your experience is; and second, what you found to be the situation as regards comparative durability.

A. I have had that experience.

Q. Now, just state in general how you have had opportunities to observe that situation.

A. My observations have been that sugar-pine logs lying on the ground, either in the entire tree or bucked, are more durable than pondosa-pine logs. Pondosa-pine logs felled in the summertime, left with the ends lying together, start to blue-staining the sapwood within three weeks. That doesn't occur nearly so soon in sugar pine. We never leave sugar-pine logs over winter.

Q. Sugar-pine logs?

A. Pardon me; we never leave pondosa-pine logs over winter, because the sapwood entirely blues. We do leave sugar-pine logs sometimes, because they don't blue nearly so much; that is, the sapwood. The heartwood doesn't blue over winter.

Q. Of either variety?

A. Yes. In the summer of 1926 we logged timber that has been owned by our company over twenty years, where trees had been felled for shake timber thirty-five years ago but didn't split
2435 and had been left on the ground. The bark of these logs has entirely disappeared; the sapwood has rotted; but the heartwood was perfectly sound, and we took them all to the mill, and they made good lumber.

In 1927 we built our logging railroad south of camp 9 and felled ponderosa pine on the right of way. These logs were left until September 1929; at that time they were so stained and had the advance of brown rot to such an extent that we did not log them.

Q. Now, have you had any opportunity to observe the durability of dead but standing timber?

A. Yes, sir.

Q. Has that included the varieties of ponderosa and sugar pine, that experience?

A. Yes, sir.

Q. Can you describe any instances of that character so that you can tell which are the more durable?

A. We commonly fell dead sugar-pine trees on our logging operations. In connection with the timber sale this year we felled all the dead trees. The sapwood of ponderosa pine, of standing dead ponderosa pine, begins to stain and decay sooner than the sapwood of sugar pine. The heartwood of ponderosa pine becomes unmerchantable sooner than the heartwood of sugar pine.

We fell and log sugar-pine dead trees that have been
2436 standing a great many years. Ponderosa-pine dead trees that have been standing over one summer season we do not log.

Q. Why is that?

A. The sapwood has become so stained and soggy with the advance rot that it isn't really merchantable, of good merchantability.

Q. The sapwood, you say?

A. Yes, sir.

Q. How about the heartwood; don't you log that?

A. The heartwood would be sound, but it makes up a less proportion of the tree. It is not enough to pay to log it.

Also, the standing ponderosa-pine tree checks more—at least it checks to a greater extent—and also bores enter the ponderosa-pine tree more than the sugar-pine tree.

Q. Can you contrast the El Dorado County ponderosa as to texture and quality, etc., with the Plumas County as to cutting values and proportions of sap?

A. Yes.

Q. Will you be kind enough to do so?

A. The timber in El Dorado County, as a rule, is larger, produces in the factory grades wider lumber, longer distance between knots, and has a greater cutting value. It varies more between localities; that is, growing conditions of certain types in El Dorado County permit a long growing season, which makes more summer
2437 wood and therefore a greater difference between the spring wood and the summer wood, which makes a greater difference in texture of the lumber. There are other localities in El Dorado County where growing conditions are very satisfactory for ponderosa pine. The growing season doesn't last quite so long; the summer wood is less in proportion; and the texture quality of the factory lumber compares very well with that in Plumas County or other counties further north.

My experience and observation of the lumber produced in the upper Feather River is that the ponderosa pine varies between localities there and not so great as it does on the west slope, but to a considerable extent.

I have noticed that due to the difference between the heartwood and the sapwood in ponderosa pine, in Plumas County, that there is a good deal of warping and also checking.

Q. Now, have you noticed the proportion of sap in the shop grades of the El Dorado County and Plumas County in contrast? I don't think you covered that point. I would like you to state what you have noticed as to the proportions of sap and heart in the shop grades in those two sections.

A. I don't think I can answer that.

Q. All right, sir. Now, taking Pinus ponderosa as an average, as nearly as you can, will you compare the proportion of sap with the proportion of sap in sugar pine?

A. In our country, in our locality, by volume the proportion
2438 of sapwood in the ponderosa pine is about double that of the sugar pine.

Q. You say in your locality?

A. Yes, sir.

Q. Yes?

A. I think the same thing holds for the rest of the west slope of the Sierras, at least, probably throughout the range of sugar pine.

Q. That would be the result of your experience, is it?

A. Yes, sir; also measurements which I have made.

Q. Now, in the factory, or shop grades, of sugar pine, which predominates, the heart or the sapwood?

A. The heartwood.

Q. Well, what would be the percentage of sap, would you say, as an average proposition of those grades—shop grades?

A. I wouldn't want to put it into percentage, but the heartwood predominates to a very considerable extent.

Q. What is the designation of the selects and clears, insofar as they come from the sappy part of the sugar pine; for what purposes are they used?

A. We manufacture our sap sugar pine into four-quarter or five-quarter lumber. That is the thinner lumber, because it is easier to dry or season it. Those grades go for quality use, interior finish, to some extent, piano-key manufacture.

Q. What?

2439 A. Piano-key manufacture, pipe-organ manufacture, and high quality uses of that sort.

Q. They don't go on the outside of the building, do you say?

A. I don't think so.

Q. Which has the greater amount of sapwood in the shop grades, sugar pine or ponderosa?

A. Ponderosa pine.

Q. Which has the greater diversity of texture, the heartwood of sugar pine or the heartwood of ponderosa?

A. The heartwood of ponderosa pine differs more from the sapwood than the heartwood of sugar pine.

Q. In what respects?

A. In color and, I think, hardness perhaps.

Q. Do you find that the heartwood of either of these varieties of trees is ever so small as not to have a scale value?

A. Yes; both of them.

Q. Both of them?

A. Yes.

Q. In which variety does it happen more often?

A. In the ponderosa.

Q. Up to what sized tree would that occur in the sugar pine?

A. Rapidly growing young trees; it might occur up to 24 to 30 inches in both trees.

Q. Might it occur to a larger diameter in one variety than in the other?

2440 A. Yes. I don't recall any great difference in both rapidly growing trees, but at the lower elevations we find many more trees of that type of ponderosa than we do of the sugar pine.

Q. Is there a difference between the ability of sugar pine and ponderosa to stay in place in the yard and to keep its shape in the yard?

A. Yes.

Q. Which is the more subject to warping in the yard?

A. Ponderosa pine.

Q. Do you sell a larger amount of either of these varieties of lumber for pattern purposes?

A. Yes, sir.

Q. Which is the more sought for that purpose?

A. Sugar pine.

Q. What are the characteristics that make sugar pine more usable for pattern purposes than ponderosa?

A. The uniformity of its texture, which makes for easy working, and also it will stay in place after it is made into patterns. It doesn't warp or check.

Q. I wish you would define the word "check" for the benefit of the Commission. What do you mean by check?

A. Check is a split, a small split that occurs in lumber, due usually to the difference in texture between the heart and sap, or the summer and spring wood. In drying, giving off moisture in dry-
2441 ing—I will change that—in giving off moisture in drying, the spring wood may dry out a little faster, and it shrinks faster, and that causes it to check.

Q. What are the characteristics that are required of lumber on the part of manufacturers of pipe organs and piano keys?

A. I should say it was primarily a soft lumber that will stay in place after it is manufactured—seasoned and manufactured.

Q. Did you testify that sap is used, of the sugar pine, on occasions for those purposes?

A. Both heart and sap are. I am not sure about piano keys; I wouldn't say.

Q. Do you sell ponderosa lumber for those purposes?

A. We do not.

Q. Beg pardon?

A. We do not.

Q. Are you familiar with the rules of the Forestry Service with regard to lumber sales in relation to dead and down timber?

A. Yes, sir.

Q. What are those rules? Can you state them in substance?

A. Their contracts provide that all standing, and dead timber standing, and down dead timber that is merchantable will be taken under the contract.

Q. Is the clause practically the same for various varieties of lumber, irrespective of species?

A. It provides that a merchantable log for sugar pine and western yellow pine, ponderosa pine, will be considered merchantable
2442 if 33⅓ percent is sound. And that logs of Douglas fir, white fir——

Q. (Interrupting.) I don't believe we will go into that part.

Examiner DE BRULER. Keep within the pines.

By Mr. BURR:

Q. Did you finish your answer?

A. Yes, sir.

Q. Except for the other varieties?

A. Yes, sir.

Examiner DE BRULER. The reason why I said that is if we go into all timber we will never get through with this hearing.

By Mr. BURR:

Q. Now, the rule is the same, is it, in its language, as to both sugar pine and ponderosa; is that true?

A. To the best of my recollection.

Q. Now, do you know what the common name, among the residents of the forested parts of the country, is for ponderosa, the common, ordinary name in use?

A. Yes, sir.

Q. What is it?

A. It is yellow pine.

Examiner DE BRULER. I didn't get the answer.

The WITNESS. Yellow pine.

By Mr. BURR:

Q. What is the common local name of sugar pine?

2443 A. Sugar pine.

Q. Is the same true for the lumberjacks in California, so far as you have had experience?

A. Yes; particularly with our operation they call it yellow pine; they call the logs yellow pine.

Q. Do you cut grades of all heart sugar pine for the markets, Mr. Berry?

A. Yes, sir.

Q. You get orders for that kind of material?

A. We get orders for thick material which, in order to season, must be cut all heart, such as 2½ inches, 3 inches, and 4-inch stuff. During the past season we cut 6-inch lumber—lumber 6 inches thick—clear heart sugar pine.

Q. To what classes of purchasers does that type of clear heart go?

A. Principally to pattern users and to retail yards where they require thick pieces for special purposes, perhaps mantlepieces—I don't know just where it does go.

Q. Now, your shop lumber is not clear heart; am I right on that? Or is it clear heart?

A. It is not entirely clear heart; there are sapwood corners on some of our shop lumber, but it is largely heart lumber in the sugar pine.

Q. Will you state what are the characteristic qualities of sugar pine very briefly, the character and qualities of that type of lumber?

2444 A. Of the tree or the lumber?

Q. Of the lumber.

Examiner DE BRULER. As to its texture.

By Mr. BURR:

Q. In general, if you please.

A. It comes from trees of large size. It produces a high-quality lumber of good texture, good cutting quality, and a large proportion of clear and select lumber.

Q. Available in wide or narrow widths?

A. Available in wide widths.

Q. Which is the largest variety of pine in the country, if you know?

A. Sugar pine.

Q. Would you say that is true as an average?

A. Yes; as an average, and as the maximum size of the trees.

Q. In the characteristics that you have referred to, do you regard sugar pine as notable among the pines for those characteristics?

A. Yes, sir.

Q. Are you a graduate of the forestry school?

A. Yes, sir.

Q. Where?

A. At the Biltmore Forest School at Ashville, North Carolina.

Q. Are there certain qualities that are known as characteristic of so-called genuine white pines?

2445 A. I am not familiar with the timber of northern white pine or Idaho white pine.

Mr. BURR. That is all.

Cross-examination by Mr. MATTHEW:

Q. Mr. Berry, has the common or popular name of sugar pine been sugar pine throughout the entire period of your familiarity with the tree?

A. Yes, sir.

Q. Your lumberjacks always refer to it as sugar pine?

A. Yes, sir.

Q. You never heard them refer to it as white pine?

A. No, sir.

Q. Do you know that botanically it is classified in the white-pine group?

A. Yes, sir; it is a five-needle white pine.

Q. Has it ever occurred to you that the popular name of yellow pine was given Pinus ponderosa because of the color of the bark?

A. I think it comes from the color of the bark and also the general appearance of the tree, which has a yellow-pine appearance, such as a short-leaf yellow pine.

Q. You naturally expect that any ordinary layman going through the forest and seeing the tree with the yellow trunk will say, "That is a yellow pine"?

A. Yes, sir; the bark is yellow; it has the appearance of yellow pine.

2446 Q. You referred to the suitability of sugar pine for pattern purposes. Do you know whether or not the United States Navy Department has ever disapproved of sugar pine for pattern uses?

A. Why, we have sold considerable sugar pine that went to the navy yard at Vallejo up until two or three years ago. We have lost that business. It has gone to other distributors. As far as I know, personally, I don't know whether the Navy Department has made any ruling on the sugar pine or not.

Q. You don't know whether the Navy Department has disapproved of the sugar pine for pattern purposes?

A. No, sir.

Q. You never heard of any action taken by the Navy Department on that matter?

A. I have heard that——

Mr. BURR (interrupting). I don't think we want hearsay.

Examiner DE BRULER. He can ask him that. I wouldn't be so particular about that.

Mr. MATTHEW. I am testing the validity of this statement.

Mr. BURR. Go ahead.

The WITNESS. Shall I answer?

Examiner DE BRULER. Yes.

A. I have heard that, yes; that they have made some ruling. I am not familiar with it.

By Mr. MATTHEW:

Q. Disapproving of it?

A. An unfavorable ruling; yes, sir.

2447 Q. Mr. Berry, do you intend to convey the impression that there is any marked difference between the average size of the ponderosa trees and of the sugar-pine trees, respectively, which are used for lumber purposes in California?

A. Yes, sir; the sugar-pine trees throughout the larger portion of the range of sugar pine average larger than the yellow-pine tree. The sapwood on them is less.

Q. I am not asking about the sapwood. Is there a marked difference in the average size of the sugar-pine trees and the ponderosa trees in California? I am talking now about the merchantable trees.

A. Yes, sir. I should say the sugar-pine trees would average perhaps ten inches to a foot in diameter more than the ponderosa-pine trees.

Q. Can you give me the average number of logs to a thousand feet, from your observation?

A. No; I can't exactly.

Q. Could you approximate it?

A. They average, the pines average, 2 to 3 logs to the thousand and——

Mr. BURR. Which pine?

The WITNESS. The pines.

By Mr. MATTHEW:

Q. I am asking about sugar pines.

A. I think they both run between 2 and 3, but the average for sugar pine would be less; that is, nearer two than the pon-
2448 derosa pine would be.

Q. That is as closely as you can approximate it?

A. Yes, sir.

Q. You stated, Mr. Berry, that it is your opinion that the sapwood of sugar pine is not going to exterior use. How can you be certain of that?

A. That is my opinion; I can't be certain.

Q. All you know is, you sell your lumber to the trade; do you not?

A. Yes, sir; I am not—I haven't experience in distributing lumber.

Q. You have no knowledge at all as to whether or not sugar-pine sapwood may not be used for exterior purposes?

A. I know that most of our product is not used for that.

Q. But you don't know whether or not——

Mr. BURR (interrupting). Let him finish his answer.

Mr. MATTHEW. I thought he had finished.

A. I was going to say that I couldn't swear that none of it was used for that. I don't think it is.

By Mr. MATTHEW:

Q. That is not based on any information?

A. That is getting out of my knowledge—the distribution of lumber.

Q. Does the period of year in which trees are felled have anything to do with their susceptibility to decay?

2449 A. I do not know.

Q. That is, as far as you know it makes no difference whether the tree is felled when it is in the sap or otherwise?

A. A tree felled with the sap down will not stain as quickly as one with the sap up, but I don't know about the actual rotting.

Q. By stain you are referring to the blue stain?

A. The blue stain.

Q. The blue stain is not a symptom of decay, is it?

A. Not necessarily.

Q. You may have blue logs which are not decayed at all?

A. Yes; we have stained lumber that is not decayed at all. It is sound.

Q. Is the sugar pine ordinarily cut to greater thickness than your ponderosa pine?

A. Ordinarily, although it is becoming a custom to cut some thick ponderosa pine. We have cut some thick ponderosa pine the past season.

Q. The thicker boards are less likely to warp, cup, and twist, are they not?

A. In sugar pine; yes, sir; it is more difficult to season the ponderosa pine.

Q. I mean the thicker boards are less likely to warp, cup, and twist than the thinner boards of the same species?

A. Yes, sir.

2450 Q. It is your custom, when your sugar-pine lumber is sawed, to pile it, cover it with great care, paint the ends, see that they are sun-shaded?

A. Yes; we pile our sugar-pine lumber carefully in most of the yards for air-drying. We cover the piles well; we paint the ends of the lumber 2½ inches and thicker, but not 2-inch lumber or any lumber thinner.

Q. Do you follow the same practice with your ponderosa lumber?

A. We dry-kiln most of our ponderosa lumber, especially the upper grades, and we dry-kiln a small part of our sugar-pine lumber.

Q. You do not dry-kiln all of your ponderosa?

A. All that the kiln capacity will take care of. Some of the lower grades the kiln won't handle, and we pile it in the yard for air-drying.

Q. That that you pile in the yard, is it treated as your sugar pine?

A. It is treated, as well as sugar pine, in the same way.

Q. I assume that when you paint the ends of your lumber in the yard, covered, protect them from the sun, at least for the purpose of discouraging any checking or warping?

A. It discourages any small insects that might occur.

Mr. MATTHEW. That is all.

2451 Redirect examination by Mr. BURR:

Q. The kiln-drying process, is that as easy in the two types of lumber, the ponderosa and the sugar pine?

A. We find it easier to kiln dry ponderosa pine lumber.

Q. The kiln-drying process, has that been found successful up until recently in the sugar pine?

A. Yes; I think some concerns have kiln-dried sugar pine for some time. We kiln dried sugar-pine lumber successfully this season by giving it longer time and more careful treatment. The danger in kiln drying sugar-pine lumber is you get it too hot and burn it. We kiln dried 3-inch sugar pine this season.

Mr. BURR. That is all.

Examiner DE BRULER. Are there any further question to ask?

Mr. MATTHEW. That is all.

(Here followed remarks off the record.)

Examiner DE BRULER. We will take a recess until two o'clock this afternoon.

(Whereupon, at 12:35 o'clock p.m. a recess was taken until 2:00 o'clock p.m.)

2452 AFTER RECESS

2:00 P.M.

Examiner DE BRULER. We will proceed with the hearing if the parties are ready.

Mr. BURR. Call Mr. Andrew D. Ferguson.

ANDREW D. FERGUSON was thereupon called as a witness and, having been first duly sworn, testified as follows:

Direct examination by Mr. BURR:

Q. Mr. Ferguson, your line of occupation is what, sir?

A. I am the founder and principal owner of the Summer Home Town in the General Grant National Park of this State.

Q. How long have you lived in this State?

A. 62 years.

Q. That is, all of your life, is it, sir?

A. Beg pardon?

Q. You were born here, were you?

A. Yes, sir.

Q. And you have lived in Orrosi all this time?

A. No, sir; my ranch is in Orrosi, my principal business is in General Grant National Park. I have a vineyard in Orrosi.

Q. Are you running any kind of a mill at the present time?

2453 A. I have a planing mill in connection with my lumberyard at Wilsonia.

Q. You are retailing lumber, are you?

A. Yes, sir.

Q. Now, have you been familiar as a user of lumber with the various types of the lumber produced in your section of the State?

A. Yes, sir.

Q. For how long a period?

A. My first experience with this was probably 35 years ago, when I used to haul it from the mills in the mountains into the valley.

Q. How long have you been a retailer?

A. Ten years about.

Q. Do you run that establishment yourself?

A. Yes, sir.

Q. Do you know of certain logs that were bought by Edwin Prescott which were kept in Hume Lake up to about a year or so ago?

A. Yes, sir.

Q. Did you examine the sugar-pine logs in that lake after it was drained?

A. Yes, sir; some of them at any rate.

Q. What did you find their condition to be?

A. I found them to be in perfect condition as far as I could see.

Q. Are you familiar with the distinction between heart and sap lumber, or part of the timber?

A. Yes, sir.

2454 Q. Did you notice whether the sap portion of these sugar-pine logs was sound or not?

A. Apparently it was.

Q. Have you any knowledge as to how long those logs had been cut?

A. Yes, sir.

Q. Will you please state what knowledge you have?

A. The logs had been in the lake not less than six years, for the reason that the mill shut down six years before I examined these logs; how much longer I couldn't tell, because you understand in logging operations where they dump them into a large lake they keep ahead of the mill, and some of them might have been in several years before the mill was shut down. They were there at least six years, which would be seven years last year.

Q. Did you have occasion to notice any ponderosa logs in that mill-lake bottom?

A. Frankly, I used to be quite familiar with the botanical names of all logs, but I would rather you designate them by the terms I am familiar with now.

Q. Do you know what is known as the western yellow pine?

A. Yes, sir.

Q. Did you notice any yellow-pine logs, western yellow-pine logs in that lake bottom?

A. There were yellow-pine logs there. I didn't examine them closely.

Q. Why didn't you examine them?

2455 A. I was examining the location, in company with Mr. McGee, who was caretaker. He took me over to show me how well preserved the sugar pine was, and that is why I was looking at them. Incidentally, I was looking at them for the purpose of trying to buy some of those sugar-pine logs to make shakes of for my construction work in Wilsonia. That is the particular reason I examined sugar pine.

Q. Have you had occasion to buy lumber for any buildings in recent years?

A. Yes, sir.

Q. What occasion was that?

A. I have been buying it for ten years, but in 1928 I bought probably half a million feet in one lump.

Q. For what purpose were you buying?

A. General construction work in my summer town.

Q. Do you do the construction work for persons who buy lots from you out at your summer colony?

A. I would explain it this way: A large part of that construction work is my own buildings. In the meantime, for the convenience of my people, I buy lumber, all grades, and resell it to those people. So in that way everything in Wilsonia practically has gone through my hands.

Q. Now, have you had an opportunity, in connection with these repurchases, to observe the durability of sugar pine and yellow pine in contrast?

A. I have.

2456 Q. I wish you would state what the circumstances were.

A. I mentioned that I bought about half a million feet at Hume from the Hume Lumber Company, who were then proprietors of that whole tract and outfit there. This lumber was in piles, piled, what we call tight piling; that is, there is no sticks between the different layers of lumber. I bought the stuff as a lump and had occasion to move it. In that way I was able to tell the difference in the keeping qualities between sugar and yellow pine.

Q. Is tight piling a greater strain upon the durability of the wood than piling with sticks between the boards?

A. Unquestionably; yes.

Q. Why is that true?

A. Because, being piled tight, the moisture not only accumulates but there is no chance for the air to dry out the lumber; it will stay moist the year round.

Q. Now, was part of this lumber western yellow pine and part sugar pine?

A. Yes, sir.

Q. Now, what was the condition of the sugar pine that was piled tight or close?

A. It was in good condition.

Q. Was it blue stained?

A. Oh, naturally, weather stained some, of course; yes, sir; but the material was in good condition.

2457 Q. What was the condition of the yellow pine piled close?

A. A very large percent was in bad condition.

Q. What do you mean by bad condition?

A. I mean that rot had set in, had commenced to go to pieces, and occasionally a piece had completely gone, so far as building was concerned.

Q. What are the qualities and characteristics of sugar pine as contrasted with yellow pine?

A. You mean as a building material?

Q. Yes; in quality.

A. For any purpose that I have ever had occasion to use it the sugar pine is preferable to yellow pine. The reason, in the first place, it does not check, doesn't have a tendency to split, it doesn't warp under any conditions that I ever met with. It is easy to handle, easily sawed, and it will take nails. For instance, you can nail a sugar pine, drive a 12-penny nail within a quarter of an inch of the end of a board without splitting. That is not true of yellow pine. It is easier worked, as I say, in every manner, and stands the weather better, inside or outside conditions better.

Q. Are you familiar with the reputation of sugar pine for durability in your part of the State?

A. Yes, sir.

Q. What is it?

A. We consider it the most durable of all the pines.

2458 Q. Of all the pines?

A. Yes, sir.

Q. Are you familiar with the reputation in your part of the State of yellow pine for durability?

A. Yes, sir.

Q. What is the reputation of yellow pine for durability when exposed to the weather?

A. It is inferior to sugar pine.

Mr. BURR. You may cross-examine.

Cross-examination by Mr. MATTHEW:

Q. Mr. Ferguson, would you recommend the use of sugar pine for outside work where it would be in contact with the ground and subject to alternate drying and dampening?

A. I would; I use it that way.

Q. Would you recommend the sapwood of sugar pine for such purposes?

A. The same answer. I don't hesitate to use it that way. Don't misunderstand me—there might be some other form of wood that would be better, but between sugar pine and what we have been talking about I prefer the sugar pine.

Q. I haven't asked you whether you preferred sugar pine to yellow pine.

A. I didn't mean to run ahead of the question.

Q. I am asking you whether you recommend sugar pine for

2459 exterior use where it would be in contact with the ground and subject to wetting and drying alternately.

A. I do; I have used it.

Q. You recommend it for that use?

A. Yes, sir.

Q. Would you recommend the sapwood of sugar pine for such use?

A. Yes, sir—the sapwood?

Q. Yes.

A. Beg pardon. No; I wouldn't recommend sapwood of any kind for that use.

Q. Why wouldn't you recommend the sapwood of sugar pine for such use?

A. For the simple reason that sapwood of any wood is not as durable as the heartwood.

Q. I take it that you would prefer, in any event, not to use sugar pine for such purposes as I have just described where it will be in contact with the ground and be wet and dry alternately.

A. Let me understand the question. Do you speak now of sapwood or heartwood?

Q. Well, take heartwood; would you recommend it for that use, or does it tend to decay if it is in that position?

A. I would recommend it.

Q. There is no wood you would recommend in preference to it?

A. Redwood, but not any of the pines.

Q. Pardon?

A. Redwood would be more durable, but none of the pines.

2460 Q. Would you recommend cypress in preference to pines?

A. Pardon?

Q. Would you recommend cypress in preference to pines for such purpose?

A. I have never handled cypress. I don't know anything about it.

Q. Or cedar?

A. If it were good, sound heart cedar, it would be equal to sugar pine, and possibly a trifle better.

Q. Yellow-pine lumber is largely used for shop purposes, is it not, Mr. Ferguson?

A. Used for what purposes?

Q. Shop; as shop lumber?

Mr. BURR. I object to the question. I don't think it is fair.

Examiner DE BRULER. The objection is overruled.

Mr. BURR. This witness is not familiar with the manufacture of lumber. He has never been a manufacturer of lumber.

Mr. MATTHEW. It doesn't require a manufacturer of lumber to answer that.

Examiner DE BRULER. If he knows, he can answer.

Mr. BURR. You are asking an expert question of a man who has not been a manufacturer.

Examiner DE BRULER. If he can't answer, he wouldn't answer. He can answer if he can.

The WITNESS. By the term shop lumber, what am I to

2461 understand by that?

By Mr. MATTHEW:

Q. You are not familiar with that expression, shop lumber?

A. No, sir.

Mr. BURR. I object to this line of questioning. The witness isn't qualified to answer. Besides it isn't proper cross-examination.

Mr. MATTHEW. The examiner will recall that upon direct examination counsel asked him a very broad question as to the qualities and the uses.

Examiner DE BRULER. Oh, yes; he may answer the question if he can. I think we can get along faster to let him answer the question.

The WITNESS. If he will explain the term, I will answer it if I can.

By Mr. MATTHEW:

Q. For what purposes, in your opinion, is the yellow-pine lumber best adapted?

A. Well——

Q. I will withdraw that question.

Is yellow-pine lumber used at any time for interior trim?

A. Yes, sir; I use it.

Q. You find it satisfactory for that purpose?

A. I use it. It is satisfactory, sure. That is, it does for my purposes.

2462 Q. Do you use it at all in the manufacture of doors which are to be hung in the interior of houses?

A. Well, I don't manufacture doors. We make our own as we go. I never use it at all that way.

Q. You prefer the sugar pine?

A. Yes, sir.

Q. For that purpose?

A. Yes, sir.

Q. Now, is there any other use which you have in mind which yellow pine is quite commonly employed for?

A. I use it for studs, particularly in heavy construction. I use considerable of it for rafters. I use it in the 1x12 stuff for barns, outhouses, things of that sort. In other words, I use it in my rough construction.

Q. That is common lumber?

A. Common lumber; yes, sir.

Q. Do you use sugar pine in the common grades as well?

A. I do when I can get it. As a rule, you get very little sugar pine in the common grades.

Q. Do you know whether the sugar pine and yellow pine are mixed in the common grades?

A. There would be some mixture in my experience, but a very small percentage of sugar pine.

Mr. MATTHEW. I think that is all.

Examiner DE BRULER. That is all.

(Witness excused.)

2463 Mr. BURR. Call Mr. Benedict, please.

M. A. BENEDICT was thereupon called as a witness and, having been first duly sworn, testified as follows:

Direct examination by Mr. BURR:

Q. Mr. Benedict, your occupation is what, sir?

A. I am forest supervisor of the Sierra National Forest.

Q. How long have you been in the Forest Service?

A. Since 1908.

Q. I wish you would trace your various positions and name the forests that you have been working in in connection with your experience in the United States Forest Service.

A. I was ranger for two years on the Plumas Forest and deputy supervisor for four years on the Sierra and supervisor of the California Forest for two years. The California Forest, that is an individual forest unit. And supervisor of the Sierra Forest since 1916, 13 years, I guess it is.

Q. Have you had to do with the scaling of timber logs?

A. Yes.

Q. Will you describe about that experience, for how long a period, and where?

A. Well, personally, as to scaling, of course, I haven't done very much of that, only as incidental checking or something like that, for a good many years. But that is one of the jobs that is under my direct supervision.

2464 Q. And you did do it yourself for a period, did you, when you first joined the Service?

A. Yes; when I first went in the Service.

Q. For how long a period did you continue to do that with fair regularity?

A. Well, I have been in it—more or less contact with it—ever since I have been in the Service, off and on.

Q. How long have you had to do, if any, with the selling of timber on forest reservations?

A. Well, ever since I have been in it, of course, the different grades that you are in you have different authorization. As a ranger you can sell a small amount, and the different supervisor jobs you can fell varying amounts, depending upon the size of the business. My present authorization is around 20 million feet.

Q. Have you had opportunity to observe the lasting qualities of dead and down timber?

A. Yes, sir.

Q. Of what species of pine?

A. Well, the yellow pine, the jeffrey pine, the sugar pine.

Q. Will you describe what kind of opportunities you had to get experience and making observations on dead and down timber?

A. Well, besides general observation that any forester would make in connection with his job, in our contracts with the operators

2465 who manufacture, log and manufacture the forest products from the national forests, we require in these contracts certain utilization standards. Those standards are based on the merchantability of the different species in both green and dead condition. Our contracts are based on the experience of the locality in which the operation is situated, on the condition of the dead and down timber for that particular locality and species.

Q. Well, now, do you have regulations or contract provisions which relate specifically to varieties of pine, or are these general in their terms?

A. They are general in terms. The pines, for instance, are specified as 33⅓ percent of net content of the log. If there is that much in it it is a merchantable log. In practice, that is, we go on the general practice of the locality which depends upon utilization practice and possibly utilization in the particular species of timber involved.

Q. And the clause is general, rather than specifying the variety of pines; is that true? In other words, the clause doesn't specify sugar pine or western yellow pine by species?

A. No.

Q. In your experience, which do you find lasts longer when dead and down, the ponderosa or the sugar pine log?

A. Sugar pine.

Q. Well, I wish you would explain what the results of your observation and experience have been?

2466 A. Well, the sugar pine logs will stand up, at least the heart will stand up a long time. I know of particular instances of logs over twenty years, because I have known of the logs for twenty years, that are being taken out of woods by the operator, required by us to be taken out, and there is no complaint. That is more or less true in the stands that have been killed by either fire or bug infestations. Those logs, exclusive of sap, are in pretty good shape and are merchantable, while the yellow pine log, after a year's wetting or exposure, is usually not in shape to bring in. We don't require it.

Q. Well, when you say you don't require it, I wish you would clear that up. Is it a case of merchantability?

A. Absolutely.

Q. In other words——

A. (Interrupting.) If they were merchantable, we would make them bring it in.

Q. In other words, you ascertain the merchantability and require, or not require; is that the case?

A. That is it, but it must always be judged largely on the individual log or tree, or whatever it is. The man in charge of the sale has certain latitude based on his best judgment, but, generally speaking, we don't look for merchantability in a yellow pine log or tree that has laid out for a year, because it has started to rot and it checks so bad that it is no longer merchantable within the terms of the contract.

Q. The supervisor is the judge, isn't he, as to merchantability?

2467 A. Well, he is called upon to judge; he isn't often in charge of the sale itself.

Q. Who is the judge, unless there is some complaint?

A. The man in charge of the sale.

Q. You mean the forestry man?

A. Yes.

Q. What is his title, ranger?

A. Well, he may be a lumberman, or a scaler, or whatever particular job he is connected with.

Q. Do those people report to the supervisors?

A. Yes.

Q. When you say lumberman, do you have——

A. (Interrupting.) That is a particular title of a man.

Q. A title in your service?

A. Yes; a title in our service.

Q. There has been some testimony here with regard to bull pine. Is that a term that is recognized by your service?

A. No.

Q. What is bull pine from the lumberman's point of view, or rather what does bull pine mean in your connection with this work?

A. Well, it is a yellow pine that has certain characteristics.

Q. Is it a ponderosa pine?

A. Yes.

Q. What characteristics does the bull pine have?

2468 A. Well, in general terms there are two definite characteristic trees of bull pine. Either it is a tree that is growing off by itself, and rough, at a low elevation. It is not a very good tree, but a pretty rough individual. Or it may be a young tree that hasn't developed into a very high percentage of good material. I mean high-grade clears, or anything like that.

Q. In what localities do you find the bull pine, that variety of yellow pine, which I describe as sometimes known as bull pine?

A. Well, I think it is over the entire range of the species, as far as I have ever observed. You will hear individuals, the logger or anybody connected with the woods, say "There is a bull pine, it don't amount to much", but it is a yellow pine just the same.

Q. What are your requirements as to the paying for bull pine in the sales that you make of yellow pine in the forest?

A. It is still a yellow pine and the contract says you pay so much for yellow pine per thousand feet. It doesn't make much difference to us whether he is a high-grade individual or a low one, he gets paid for just the same as yellow pine.

Q. If there is a large amount of that kind of wood in the stand that you are selling, will or will not that affect the amount that is bid?

A. Well, it affects our appraisal. We appraise the timber on its value and its value is largely based on the percentage of

2469 uppers that it will cover, taking into consideration accessibility, and other logging factors, and manufacturing factors, but grade is largely the determining factor in price.

Q. Your appraisal constitutes the minimum, does it?

A. Yes.

Q. Have you observed whether these so-called "bull" pines are actually cut by the purchasers?

A. They are cut whenever they are marked for cutting for us, and we mark them with the same regularity if they are within the marking rules that we set up for the particular area.

Q. Have you had an opportunity to observe in the State of Oregon at all?

A. State of Oregon?

Q. Yes.

A. Just a ride through it is all.

Q. Have you noticed whether there is any bull pine in the Klamath Falls section?

A. I have never been right in the Klamath Falls section. I have been in eastern Oregon a little bit.

Q. Have you found it south of the State line on the east slopes of the Sierras?

A. Well, everywhere from Plumas south, that I have been, bull pine is wherever there is—there are individuals that should be classed as bull pine wherever yellow pine occur.

Q. Are there individuals that can be classed as bull pine, of both the two kinds of bull pine that you described, both the
2470 young and the ones unfortunately located, are both those classes at present wherever you have been?

A. Yes.

Q. Have you had an opportunity to observe how the percentage of sapwood and heartwood runs in the bull pine? About how would you say it would average?

A. Well, there is a percentage in yellow pine which is generally a good deal higher than in any other pine.

Q. Pardon?

A. The percentage of sapwood is a good deal higher than in sugar pine. For instance——

Mr. MATTHEW (interrupting). I move that be stricken out as not responsive.

Mr. BURR. I will ask that question then.

Mr. MATTHEW. Is the motion granted?

Examiner DE BRULER. The motion is granted. He will ask another question.

By Mr. BURR:

Q. Is the percentage of sapwood in yellow pine different from the percentage in sugar pine?

A. Yes.

Q. Is it higher or lower?

A. It is higher.

Q. Is it markedly higher or just a shade higher?

A. It is a good deal higher.

2471 Q. How about the percentage of sapwood in bull pine as contrasted with the percentage of sapwood in the average yellow pine?

A. Well, you can't answer that question definitely one way or the other because you have got two types of individuals in what I would consider as bull pine. You have the old scrubby individual, and the percentage wouldn't be so high as it would in the bull pine that is a young individual, and you get those two different types. I don't know whether I can explain it, but being around the woods——

Q. (Interrupting.) I think that is very clear. How is the percentage in the type of bull pine which you have described as the old and scrubby variety, compared with the average of western yellow pine generally?

A. It is about the same.

Q. How is the percentage of sapwood in the young variety of bull pine as contrasted with the percentage in the average of western yellow pine?

A. Well, it is larger, of course, because it is younger.
Q. You are referring to sapwood, are you?
A. Yes.
Mr. MATTHEW. Would you pardon a question for the sake of clarity? Do you suggest any difference between the percentage of sap in this young type of bull pine and other yellow pines of about the same age?
The WITNESS. I wouldn't say there was any difference.

2472 By Mr. BURR:
Q. How would it compare with the young sugar pine?
A. Well, the percentage is not so—there isn't a wide variation in the young trees in the yellow pine as there is in the old trees.
Q. Is there any corresponding scrubby variety of sugar pine corresponding, I mean, with the variety of bull pine of that character that you have described?
A. No.
Q. In your judgment, for what reason is that the case?
A. Why I think the range of yellow pine is wider than the range of—I mean the elevational and climatic range of yellow pine is greater than the range of sugar pine. At least that is my own theory in the matter.
Q. How does sugar pine compare in uniformity of character and texture with the ponderosa in the same respect?
A. Its character, both as to texture and everything, is confined to a narrower boundary than yellow pine. There is a greater variation in yellow pine than there is in sugar pine.
Mr. BURR. You may cross-examine.

Cross-examination by Mr. MATTHEW:
Q. Are you a graduate of any forestry school, Mr. Benedict?
A. Yes.
Q. What is the school?
2473 A. University of Nebraska.
Q. In what year?
A. '06 is my graduating year.
Q. Shortly after leaving Nebraska, I take it, you entered the Forestry Service?
A. Yes.
Q. And came to California?
A. Yes. I tried to mine for a couple of years.
Q. Is there any large proportion of this so-called "bull pine" in the Sierra National Forest?
A. No.
Q. How about the Plumas National Forest?
A. I should judge—I thought you meant in the whole Sierras.
Q. Well, take the whole Sierras.
A. I wouldn't say what percentage, but there are individuals scattered all through.

Q. Just the occasional tree, is it not?

A. Well, in the lower reaches of the lower part of the range, elevational range, it is pretty frequent. In the upper, merging into the yellow pine and sugar pine, it is less frequent.

Q. From the point of view of merchantability, comparatively little bull pine finds it way into the lumber yards; is that so?

A. I couldn't say what percentage.

Q. Comparatively a minor item, is it not?

2474 A. I wouldn't say, because I don't know how much has been cut of these lower reaches of the range, what percentage was cut. I would say wherever it is cut in the lower reaches of the range why that percentage would go into the markets. As far as I know, it is going into the same market.

Q. There isn't much of it, is there? Is that a large factor in the lumber market?

A. I don't know.

Q. You have no impression about that?

A. No; I wouldn't.

Q. Did you ever hear of apple pine?

A. Yes.

Q. What is apple pine?

A. Jeffrey pine.

Q. Jeffrey pine is found characteristically towards the eastern slope of the Sierras and in the higher elevations?

A. It all depends on where you are in the Sierras. In my particular locality it is around 6,500 to 6,000 feet, about. Of course, the altitude has some effect on it in different localities, but above the range of the normal yellow pine, western yellow pine, sometimes there is a mixture, but very seldom.

Q. Are the trees quite readily distinguishable from the ponderosa trees?

A. Yes.

Q. It is always easy to distinguish the Jeffrey pine from ponderosa?

2475 A. I say it because I have lived with it and it is for me. It is a redder bark.

Q. The scientifically trained forestry man can make the distinction, differentiate, but is it easy for the practical lumberman to distinguish the trees?

A. Oh, yes.

Q. Can you readily distinguish the lumber that is manufactured from Jeffrey pine and that which is manufactured from ponderosa pine?

A. Not so easy, except when it is being manufactured you can smell it.

Q. That is, the Jeffrey pine lumber has quite a distinct fragrance; is that it?

A. Yes.

Q. After it is seasoned, is it difficult to distinguish Jeffrey pine lumber from ponderosa pine lumber; is that true?

A. As far as I know.

Q. Is it customary to mix the lumber from the Jeffrey and ponderosa pine trees?

A. I don't know when it goes into the yard—my guess would be yes.

Q. Well, you have had quite a bit of experience in connection with the manufacture of lumber; have you not?

A. Well, it is this way: They go through the mill and they go down to the yards in the valleys, and we don't pay much attention to it after that, and the practices there are not so well known.

2476

Q. Take it from the sawmill itself, is it customary at the end of the grader to segregate the Jeffrey pine lumber from the ponderosa pine lumber?

A. I don't know. Our mills, the large mills that operate, send their product right to the valley before it goes into the yards, and I wouldn't—I have never checked that up at all. I don't know.

Q. You have been in these larger mills in the course of operation?

A. Yes.

Q. Have you ever noticed any effort there to segregate the Jeffrey pine lumber from the ponderosa pine lumber?

A. No; I never have.

Q. Isn't it your best information that no effort is made to segregate those lumbers from the two types of trees?

A. As far as I know, they don't; they may.

Q. Are you certain that the Forestry Service usually, or does require the cutting of the bull pine type of tree?

A. If it is a young tree it usually would not be marked for cutting.

Q. Usually would be?

A. Would not. In some particular cases the young trees are marked. The other type of bull pine is almost always cut, unless we need it in that particular situation for a seed tree, but as far as its age and condition is concerned, why it is better to get it out of the State.

2477

Q. That is the type that is more rare than the younger type of bull pine, is it not?

A. Yes; sure.

Mr. MATTHEW. That is all.

Mr. BURR. That is all.

Examiner DE BRULER. You are excused.

(Witness excused.)

Examiner DE BRULER. We will take a recess for five minutes.

(Whereupon a five-minute recess was taken.)

Mr. BURR. Call Mr. Weyerhaeuser.

F. E. WEYERHAEUSER was thereupon called as a witness and, having been first duly sworn, testified as follows:

Direct examination by Mr. BURR:

Q. Mr. Weyerhaeuser, your business is what, sir?

A. Lumber.

Q. And you are interested in a number of lumbering corporations, are you, that are known roughly speaking as the Weyerhaeuser companies?

A. Yes, sir.

2478 Q. How long have you been interested in lumbering operations?

A. 33 or 34 years.

Q. Will you state what your experience has been, Mr. Weyerhaeuser, in the forests in so far as you have had forest experience, just briefly?

A. I have traveled back and forth through the logging camps of Wisconsin, Minnesota, Idaho, and Montana, particularly.

Q. In that connection have you had opportunity to observe the various varieties of timber that was being cut and logged, and logs that were being milled?

A. I have.

Q. What relation do you hold to the Weyerhaeuser Sales Corporation?

A. I have no official connection with it.

Q. Did you organize that company?

A. Yes, sir.

Q. Now, the interests known as the Weyerhaeuser interests, have they been engaged in the cutting and manufacture of northern white pine from the Pinus strobus tree?

A. Yes.

Q. In the early part of your experience where were they engaged in cutting northern white pine?

A. In northern Wisconsin and Minnesota.

Q. Are they still engaged in doing so in Minnesota?

A. They are in Minnesota; yes.

2479 Q. About what time did you begin to supplement your northern white pine from the lake States by means of cutting and the manufacture of Idaho white pine, or monticola?

A. About 1900. I am not sure of the exact date.

Q. For how long a time, then—you have been cutting monticola since about that time?

A. Approximately 30 years.

Q. Can you tell me about how large the annual cutting of the Weyerhaeuser companies as a total is from northern white pine at the present time?

A. Somewhere between 50 million and 60 million feet per year.

Q. And how large is it in Idaho white pine?

A. About 275 million.

Q. Are you cutting any ponderosa at the present time?
A. They are.
Q. About how much of that are you cutting?
A. We manufactured about 175 million last year.
Q. Have you had made, under your direction, any estimate of the standing timber since Mr. Lindsay was on the stand in October?
A. Yes; I have.
Q. Will you be kind enough to give me your best judgment as to the amount of standing timber that you have at the present time, merchantable, in northern white pine?
Mr. MATTHEW. That is, belonging to this company?

2480 By Mr. BURR:
Q. Belonging to this company—I mean this group of companies.
A. It is approximately 300 million.
Q. How much have you of the Idaho white pine belonging to these manufacturing Weyerhaeuser companies?
A. It is considerably over 4 billion.
Q. And about how much of the ponderosa is the estimate?
A. It is about 9 billion, something over that.
Q. Are you buyers of strobus at all?
A. Yes.
Q. Where are you buying that from?
A. In Cook County, Minnesota.
Q. That is aside from the stand that is owned by your company; is that true?
A. Yes.
Q. Have you ever bought any yet in Canada?
A. We don't own any in Canada now; we have owned some in the past.
Q. But have disposed of it, or cut it?
A. Disposed of it.
Q. Did you say that you had bought in Cook County, Minnesota?
A. Yes.
Q. Was that a large tract?
A. No; it is a small tract.
Q. How long ago did you buy that?

2481 A. Well, we are buying whenever any is offered.
Q. Do you understand that there is a considerable body of northern white pine available in Canada at the present time?
Mr. MATTHEW. I suggest the question is leading.
Examiner DE BRULER. Just state what you know about it.
The WITNESS. I don't understand the question.
Examiner DE BRULER. Read the question.
(Whereupon the question referred to was read by the reporter.)
Mr. MATTHEW. The question is undoubtedly leading. And it is too general.
Examiner DE BRULER. You may answer it to the best of your ability.

A. I know there is a large quantity of northern-pine timber, strobus timber, in Canada.

Examiner De Bruler. What do you mean by a large quantity, in a general way?

By Mr. Burr:

Q. Would it run into billions or what?

A. Yes; it will run into the billions.

Q. Have you had any opportunity to observe the northern white pine in New England localities?

A. I have.

Q. Has your observation along that line been of recent period?

A. Yes.

2482 Q. I wish you would state what the result of your observation is.

A. Well, I have motored through New England, more or less, during the last ten or fifteen years and have seen large quantities of second, or, perhaps, third growth of strobus timber.

Q. Is it marketable, any of it?

A. It is.

Q. Is any of it being cut?

A. It is.

Q. Have you noticed sawmills cutting it?

A. I have.

Q. About how many would you saw you have noticed?

Mr. Matthew. The number of sawmills?

Mr. Burr. Yes.

A. Well, I spent one summer at Rye Beach some years ago. In motoring about Boston I saw a large number of small mills. My estimate at the time was about 30, but I didn't count them. I didn't make an exact figure, but my impression is there were about 30 sawmills within a short motor distance of the city of Boston.

Q. I believe you testified that a number of years ago you began to supplement your strobus supply with Idaho white pine; is that true?

A. Yes.

Q. Now, did you consider at that time what trade name

2483 you would give your monticola, or Idaho white pine, in the market?

A. When we first began buying monticola we thought it was exactly the same as strobus, and it wasn't until we came to manufacture it, according to the best of my memory, that we came to an appreciation that there was some difference between it and the so-called northern white pine.

Q. Well, you gave it the name of Idaho white pine, or was that the common name before on the part of all the manufacturers?

A. I am not very clear on that particular subject, but I think the history was something like this: We began manufacturing it as white pine, and selling it to our customers and they began to refer

to it as white pine from Idaho. I think that was the origin of the term "Idaho white pine", but I am not very clear on that point.

Q. Now, by the by, do you know whether Idaho white pine was being taken out in large quantities before the Weyerhaeusers began to ship it?

A. No, it was not in large quantities.

Q. Is the ponderosa tree to be found in the same forests in Idaho where you have your stands of Idaho white pine?

A. They don't grow largely intermingled in the same definite area, but they are close together and so in our logging operations we take out both yellow pine and Idaho white pine.

Q. Now, did you begin to cut the ponderosa about the same time that you began to cut the Idaho white pine?

2484 A. Not long afterward. I am not sure as to the exact time.

Q. Are the two varieties milled in the same mill?

A. They are.

Q. What name was given to the ponderosa at about the origin of your manufacture and sale of that variety?

A. We called it western soft pine.

Q. Were others manufacturing it about the same time?

A. I am not sure—I didn't catch the question.

Q. Were others manufacturing it at about that same time?

A. Yes.

Q. What induced you to give it the name that you gave it?

A. We thought it was desirable to give it a name different from the yellow pine of the South, as it was a softwood.

Q. Did the manufacturers in that locality at an early date begin to give it a name which included the word "white", or several names including the word "white"?

A. Yes, but I am not sure as to the exact dates.

Q. I am not asking you for exact dates. Why did not the Weyerhaeuser interests use the word "white" in connection with other ponderosa?

A. There were a number of reasons why they didn't.

Q. Will you describe those reasons, if you please, sir?

A. In the first place, as I have already stated, we were manufacturing large quantities of white pine in Wisconsin and Minne-

2485 sota and selling it through our own sales organization. We later began to manufacture what we called Idaho white pine. We thought it would be a serious mistake for us to adopt a name that would be misleading as to yellow pine in our merchandising of it from Idaho.

Q. Why would that be a mistake?

A. In other words, we would send out a salesman to sell white pine from—had we adopted that policy we would have had to send out a salesman to sell white pine from Minnesota, Idaho white pine from Idaho, and at the same time another white pine, which we would have had to describe as a yellow pine, because it was not a white pine and we knew it was not a white pine. Therefore we

knew it would be misleading to the trade. We had a reputation of many years standing of furnishing our customers with the type of lumber that we sold them, and we did not wish to jeopardize our reputation by selling them or offering to sell them, under the trade name "white pine", what was really yellow pine. They would——

Mr. MATTHEW (interrupting). Just a moment, please. It seems to me, Mr. Examiner, that the witness is going far beyond the question asked by counsel.

Mr. BURR. I think that is within the question. I will ask another question, to which counsel may object if he deems fit.

Q. Mr. Weyerhaeuser, in connection with the reason that you have just outlined, did you regard the naming of pondosa lumber as a variety of white pine, had you named it a variety of white
2486 pine, did you regard that as detrimental to the eastern or northern and the Idaho white pine?

A. Yes; we would have.

Q. Now, did you regard that detriment as a market detriment in part?

A. A market detriment.

Q. Would it have been a market detriment?

A. Yes.

Q. In what respect?

Mr. MATTHEW. It seems we are getting into the realm of mere speculation quite far afield from the issues of the case.

Examiner DE BRULER. What are the differences in the wood that caused you to give it different names?

The WITNESS. One was yellow——

Mr. BURR (interrupting). If the examiner please, I would like to bring that out under a different topic.

Examiner DE BRULER. That last query, I think, is pertinent and rather important.

By Mr. BURR:

Q. Will you describe just how far, in your judgment, it would have been a market disadvantage to the genuine white pine to have called pondosa a white as part of this trade name?

Mr. MATTHEW. I assume the witness is going into facts and not the mere speculation.

Examiner DE BRULER. Yes; just deal with the facts and do not go into speculation.

A. Well, the term "white pine" has come to mean something very definite to our trade. The term "white pine" was one that
2487 had been used for centuries.

Examiner DE BRULER. A certain wood, I suppose?

The WITNESS. For a certain wood, Pinus strobus, and we wished to maintain the value of that name. We didn't wish to have the characteristics peculiar to white pine confused with woods of another species.

By Mr. BURR:

Q. What effects, if any, upon the marketability of pondosa itself would have resulted, in your judgment, from designating pondosa as white pine, western white pine, or something containing the words white pine?

A. Well, in our judgment it would have been a mistake to do so.

Q. I am now talking from the standpoint of marketability of pondosa, and you understand that?

A. Yes.

Q. Wherein would it have been a mistake?

A. I don't quite get your question.

Q. Let me state the question again: I am now talking about the marketability of pondosa itself, resulting from the use of the word white, had you adopted it, as part of the trade name for pondosa. Is that clear?

Mr. MATTHEW. That question is not responsive to any issue in this case. There is no claim that the marketing of pondosa lumber is being inhibited by the term California white pine.

2488 Mr. BURR. Exactly so.

Mr. MATTHEW. I don't recall any such allegation.

Mr. BURR. The allegation is in the complaint that the use of the word "white pine" is a detriment to the timber that is being marketed as pondosa.

Mr. MATTHEW. Pondosa?

Mr. BURR. Yes. This gentleman is now using the word "pondosa."

Examiner DE BRULER. As long as you confine yourself to the pines, go ahead.

Mr. MATTHEW. I thought you used the word "ponderosa" in your question?

Mr. BURR. That is where the two terms verge one another.

Examiner DE BRULER. Go ahead.

A. We had a very high regard for pondosa pine. It has many excellent uses. It is a fine wood, but it is not suitable for all the uses to which white pine is put, or to which it had been put. Therefore, we thought it would be a serious mistake to sell pondosa pine under a white-pine trade name, with the result that someone would buy it and use it as he had been accustomed to using true white pine and have a complete failure in the use of his lumber. Therefore, you would acquire a prejudice against pondosa, which should not attach against it, because it is an excellent wood in its proper place.

2489 By Mr. BURR:

Q. What do you regard as its proper place?

A. Certainly any place where it is not exposed to the weather.

Q. Would you say for pattern purposes?

A. No.

Q. Well, it is not exposed to the weather for pattern purposes. Would you change that answer a little under those circumstances?

A. I mis-spoke; yes, sir.

Q. Is it a good wood for interior trim?

A. Yes.

Q. Is it a good wood for organ pipes?

A. You are getting into a technical field there. All I can say is that I think not. I don't know.

Q. Was there another consideration, aside from the detriment to which you have testified, which might ensue to the genuine white pine, and also the detriment that might ensue to ponderosa pine in the market—was there any other consideration that led you not to use the word white pine for the trade name for pondosa?

A. Yes.

Q. What other consideration did you have in mind at that time?

A. We think there is involved an economic waste in using any wood where some other wood will give better service.

Q. Is there any influence that nomenclature has upon that situation?

2490 A. Yes.

Q. What is it?

A. The sapwood of yellow pine, or, rather, lumber made from the sapwood of yellow pine, is the lumber that most nearly resembles the heartwood of white pine. I think I might say that it requires almost an expert to tell the difference merely from appearance; and when a sapwood piece of yellow pine is used, where it is exposed to the weather, instead of the heartwood, under ordinary conditions the service given by that wood would not be satisfactory; it would fail.

Q. I wish you would tell me whether or not the use of accurate nomenclature has its influence on the public employment of lumber for the purposes for which each species is best adapted?

A. Certainly it is desirable not to have any confusion in nomenclature. Architects frequently have asked me why we didn't do something to clarify the situation as to nomenclature of the pines.

Q. Referring particularly to what?

Mr. MATTHEW. Just a moment! I move to strike out that last answer, as to what architects told the witness, as not responsive to the question.

Examiner DE BRULER. I think he has answered that as a fact, as to what he has been told.

Mr. MATTHEW. It is hearsay, too.

Examiner DE BRULER. It is, but we will let it go.

2491 By Mr. BURR:

Q. Do you know whether architects are in the state of confusion as to the qualities of pine and the nomenclature applicable to them?

Examiner DE BRULER. Answer that yes or no.

Mr. MATTHEW. I think that is objectionable. The witness hasn't shown he is qualified to testify as to architects' state of mind of this matter.

Mr. BURR. I think the witness knows better than the architects themselves.

Examiner DE BRULER. Read the question.

(Whereupon the question referred to was read by the reporter.)

Examiner DE BRULER. Answer that yes or no.

Mr. MATTHEW. I think that is objectionable. He shouldn't testify as to the state of mind of architects.

Examiner DE BRULER. He asked if he knew. He can answer that yes or no.

Mr. BURR. That isn't a state of mind; that is a matter of knowledge.

Examiner DE BRULER. Answer the question yes or no.

A. I would have to say no.

Examiner DE BRULER. That answers the question.

Mr. MATTHEW. I withdraw my objection.

By Mr. BURR:

Q. What effect on the industry has wrong nomenclature in
2492 the pine business?

Examiner DE BRULER. I think that has been gone over enough.

Mr. MATTHEW. It is speculative and argumentative.

Examiner DE BRULER. We have gone over it so often that there is no need going into it any further. That is a conclusion anyway, as a matter of fact.

Mr. BURR. If the examiner please, if anybody knows about this, it is the gentleman we have on the stand.

Examiner DE BRULER. That is a conclusion.

Mr. BURR. This man is an expert if there is one.

Examiner DE BRULER. What is the question?

(Whereupon the question referred to was read by the reporter.)

Examiner DE BRULER. You can answer that if you know.

Mr. MATTHEW. If the examiner please, that is a general question not addressed to this particular lumber at all.

Examiner DE BRULER. It must be to this particular lumber.

Mr. MATTHEW. It is argumentative, and I submit it is improper.

Examiner DE BRULER. It must be confined to this particular lumber.

2493 By Mr. BURR:

Q. What effect has that wrong nomenclature——

Mr. MATTHEW (interrupting). Possibly we can save time, so I will withdraw my objection to your prior question.

Mr. BURR. I think I can do better. I think you will make the testimony stronger if you keep on.

Mr. MATTHEW. Perhaps I can, too.

Mr. BURR. Possibly so.

Q. Do you regard the calling of ponderosa pine as California white pine, or as western white pine, an accurate piece of nomenclature?

A. I do not.

Q. Why?

A. Because it is not white pine.

Q. In what respects is it not white pine?

A. It is a different species.

Q. Different species, you say?

A. Yes.

Q. Is it different in the characteristics of lumber produced by the species?

A. It is.

Q. In what respects, if you please, sir?

A. It contains a very much higher percentage of sapwood. It is a different character of knot and a different fibre of heartwood.

2494 Q. Has it a different texture?

A. Different texture.

Q. In what respects?

A. It is harder, it is more difficult to work, and does not hold its place as true white pine does.

Q. Is it equal in point of paintability, so called?

A. It is not.

Q. Does it differ in color?

A. It does, aside from the sapwood.

Q. Does it differ in reputation from genuine white pine?

A. It does.

Q. Now, then, what effect does the naming of ponderosa, with the word white pine contained in the trade name, have upon the adaptation of the genuine white pines and the ponderosa by the public to the various uses to which these types of lumber are best adapted? Is that a clear question?

Mr. MATTHEW. It is not to me.

The WITNESS. I would like to have the question read.

(Whereupon the question referred to was read by the reporter.)

A. There results confusion, and the ordinary consumer of lumber in buying a wood which is called white pine is quite likely to be misled.

By Mr. BURR:

Q. Is he less or more likely, on account of that misnaming that you have described to use these varieties of pine for the

2495 purposes for which these varieties are best adapted?

Mr. MATTHEW. I object again, Mr. Examiner, as it is purely speculative and indefinite. If counsel for the Commission cares to undertake to bring out any specific instances of fraud or deception or confusion, within the allegations of the complaint, I cannot possibly object. But to have the general questions put, it seems to me, it is unfair, as well as speculative and argumentative, and I think it is improper.

Mr. BURR. This man is an expert along these particular lines, at the head of one of the largest——

Examiner DE BRULER (interrupting). I understand. You can answer that question if you can. I think you have gone far enough along that line.

Read the question.

(Whereupon the question referred to was read by the reporter.)

Examiner DE BRULER. Can you answer that?

A. They are less apt to use them.

By Mr. BURR:

Q. Well, why?

A. Because of the confusion in the nomenclature.

Examiner DE BRULER. I think that has been gone into sufficiently.

By Mr. BURR:

Q. Now, does the error in nomenclature that you have described have any effect as regards the conservation of lumber products?

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A. I have already stated that it is our policy to try to have used that particular wood which will give the best service, and where there is a failure in so doing there is an economic waste.

Examiner DE BRULER. He stated that in answer to a question some time back.

Mr. MATTHEW. I don't think the answer is responsive to the inquiry as to conservation.

Mr. BURR. Waste and conservation is the same problem precisely.

Q. Now, does this nomenclature, if properly made, prevent waste?

A. It certainly tends to prevent waste?

Q. Now, is there any effect that nomenclature has upon preventing lumber markets, having in view the competition that lumber has with lumber substitutes?

Mr. MATTHEW. Now, Mr. Examiner, I think that——

Examiner DE BRULER (interrupting). Is that covered in the complaint?

Mr. BURR. If the examiner please, this whole question of public service is important in all of these Federal Trade Commission cases.

Examiner DE BRULER. I understand that.

Mr. BURR. It seems to me—I don't want to indicate what testimony I am expecting, but I will say this, because it is hardly fair to opposing counsel, but I will say this: That it seems to me that if it can be shown that nomenclature has a direct effect upon keeping for lumber its proper field in the economic system, that there is a point of public service that is important to consider in this case, along with other considerations.

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Examiner DE BRULER. He has answered that twice.

Mr. BURR. He has answered the question of waste, but he hasn't answered this question, it seems to me, as far as I recall, as regards the effect upon the lumber industry of having it used for something that is not——

Examiner DE BRULER (interrupting). Wait a second.

Mr. BURR. Yes, sir.

(Here followed remarks off the record.)

Mr. MATTHEW. I suggest my remarks be taken down tentatively.

This is somewhat of a reversal of the usual order, because the moment I attempt to make an objection counsel proceeds to make an argument as to the propriety of my proposed objection. So I have not yet been heard in support of my objection and he has been heard in support of the objection to my objection.

If I understand this complaint, these several respondents are charged with attempts to defraud and deceive and confuse the public. They are charged specifically under a provision of the statute which condemns unfair practices. Now, insofar as testimony is to
2498 be elicited in support of the allegations of this complaint, proper testimony, I can offer not the slightest objection, but an attempt to go into the whole realm of economic theory and ask this witness to speculate as to what the effects of our calling this lumber one name or another may have upon economic waste or the conservation of natural resources seems to be far beyond the proper scope of examination.

Mr. BURR. I am not talking now about economics. I am——

Examiner DE BRULER (interrupting). Let's go back to the question. Read the question.

(Whereupon the question referred to was read by the reporter.)

Examiner DE BRULER. I am going to let him answer that the best he can.

A. Yes.

By Mr. BURR:

Q. Will you describe how?

A. I believe that the most deep-seated source of trouble in the lumber business has been the failure of lumber manufacturers to consider the real interests of the consumer of lumber. We believe that we should do everything in our power to make it possible——

Examiner DE BRULER (interrupting). You need not go into what you believe. State what the facts are, what the result is.

A. The result of a confusion in nomenclature is the failure
2499 of a consumer to be able to get exactly what he wants, or get the material which will best suit his needs, and the result of which is, where failures occur, this same consumer naturally will turn to substitutes for lumber, with the result that lumber is gradually losing its volume over the United States.

Examiner DE BRULER. I don't think we will go into that part of it. We will let it stand, but that is far enough to go along that line of questioning.

By Mr. BURR:

Q. Is your manufacture of ponderosa increasing?

A. Yes; very much.

Q. What do you expect it to be within a short time?
A. Approximately 4 million feet per year.
Q. You are opening up a large mill at one point, are you?
A. Yes.
Q. Where?
A. At Klamath Falls.
Q. Has any manufacturer of so-called California white pine informed you that the use of the word "white" in the trade name for ponderosa pine has a monetary value?
Mr. MATTHEW. I object to that question.
Mr. BURR. If the examiner please——
Examiner DE BRULER (interrupting). You can answer that by yes or no.
A. Yes.
2500 Mr. MATTHEW. I was trying to make an objection. I would like to ask counsel on what theory he deems such question to be proper.
Mr. BURR. I will bring it out.
Mr. MATTHEW. I object on the ground that it is immaterial in any event.
Mr. BURR. He doesn't know who the respondents are and he will have to ask.
Q. Who was it, if you please, sir?
A. It is either Mr. Nelson or Mr. Tennent, of the Long Bell Lumber Company.
Q. Are those gentlemen both of the Long Bell Company?
A. Yes. I am not sure which it was.
Q. How long ago was that?
A. It is within two years.
Q. What monetary value did you place upon the use of the word "white"?
Mr. MATTHEW. That is leading, of course.
Mr. BURR. I don't think it is.
Examiner DE BRULER. He may answer; that is, assuming that he did put a monetary value on it.
Mr. MATTHEW. You could reframe the question in any event, so go ahead.
A. I stated it was worth two dollars a thousand.

By Mr. BURR:

Q. Do you remember where and when that was, as nearly as
2501 you can say?
A. It is merely an impression.
Q. You can't say where and when it was?
A. No.
Q. Within how long a period, or did you say that?
A. I said within two years.
Mr. BURR. That is all.
Examiner DE BRULER. We will take a five-minute recess.

(Whereupon a five-minute recess was taken.)

Examiner DE BRULER. If the parties are ready, we will proceed.

Cross-examination by Mr. MATTHEW:

Q. Mr. Weyerhaeuser, when did you first become familiar with the term California white pine?

A. I can't answer that. I don't know.

Q. Can you tell me approximately the number of years during which you are reasonably certain that you have known it?

A. I think I heard it very early in our Idaho operations, but I can't fix any date.

Q. You don't know about when you first encountered a movement of California white pine into the Middle Western States, say, into the Chicago territory and to the Mississippi River?

A. My recollection is that there was some movement of so-
2502 called California white pine when we started our Idaho operations.

Q. That was about 1900, I think you stated?

A. That is the best of my memory.

Q. Then, may we assume that you have been familiar with the term California white pine for approximately thirty years?

A. I think I have.

Q. And during all that time that term has been employed to refer to lumber manufactured from a tree known botanically as Pinus ponderosa?

A. Yes, sir.

Q. Has lumber been marketed under that name throughout the Middle West during all that period, as far as you can recall?

A. I think so.

Q. Is the name quite well known to the lumber trade in the Middle West.

A. At the present time, do you mean?

Q. Yes.

A. I think it is.

Q. And it has been well known for a considerable number of years back, at least, has it not?

A. I think so.

Q. Have you any reason to doubt that the remanufacturers of lumber, such as the manufacturers of sash and doors, understand fully that they are getting a lumber, under the name of Cali-
2503 fornia white pine, which is yielded from the ponderosa pine tree?

A. I think they understand it.

Q. When you first resorted to Idaho for additional supply of pine lumber, I think you stated that you began to introduce it to your trade under the name of white pine. Am I correct in so recalling your testimony?

A. I stated that I wasn't very sure about the early history of the term "Idaho white pine."

Q. I recall your saying that, but I think you likewise stated that it is your best recollection that you were offering the lumber as white pine?

A. Yes.

Q. And that some of your customers, knowing that it came from Idaho, referred to it as white pine from Idaho?

A. Yes.

Q. And that accordingly the name "Idaho white pine" then developed; is that about a correct statement?

A. Yes; that is as I remember it.

Q. So then, according to your best recollection, you first offered the lumber under the name of white pine?

A. We offered it as a white pine. I am not sure as to whether we used merely white pine—that I can't say.

Q. And as of that time were you selling your strobus pine lumber as white pine?

A. Yes.

2504 Q. And it is your best recollection that you commenced to sell Idaho white pine lumber just as white pine as well?

A. Yes.

Q. Would you feel free to offer Idaho white pine to the trade at the present time under the name of white pine, without the word "Idaho" prefixed?

A. We would, if there were no confusion of nomenclature.

Q. Would there, in your opinion, be any confusion in nomenclature if you did offer it as white pine, without the term "Idaho" included in it?

A. I think so.

Mr. BURR. You do think so?

The WITNESS. Yes.

By Mr. MATTHEW:

Q. Then if you received an order for white pine from any customer, or were asked to bid upon lumber under specifications calling for white pine, without any qualifying term, you would not feel free to offer Idaho white pine?

A. We would feel free to offer white pine, Idaho white pine, but we would first ask whether it was so-called "California white pine" they wished, or true white pine, in order to make an intelligent quotation.

Q. I am asking now as to Idaho, Mr. Weyerhaeuser, if you please, and I am putting the case where you are asked to furnish white pine, or where there are architects' specifications calling for

2505 white pine?

A. Yes.

Q. And I asked you whether you would feel free to furnish Idaho white pine?

A. Yes.

Q. Upon those specifications?

A. Yes.

Q. Even though Idaho white pine were not specifically named in in the specifications?

A. Yes.

Q. To your mind, that does not result in any confusion?

A. No.

Q. Then, you think it is perfectly appropriate to furnish Idaho white pine in response to specifications calling for white pine?

A. Yes.

Q. Would it be equally proper to furnish California sugar pine upon specifications calling for white pine?

A. I know practically nothing about sugar pine.

Q. Well, you know that sugar pine is classified botanically as a true white pine?

A. Yes; I know that.

Q. Recognizing it as a true white pine, is it, then, your opinion that California sugar pine can, with propriety, be furnished upon specifications calling for white pine?

A. I think so, with the qualification that I know nothing
2506 about, have had no experience with sugar pine.

Q. I so understand. But your answer, then, goes to this: That it is your view that specifications calling for white pine may reasonably be satisfied by furnishing lumber coming from any one of the trees recognized botanically as a true white pine?

A. Yes.

Q. You make botanical nomenclature an essential criterion; is that correct?

A. I didn't catch the question.

Q. You make botanical nomenclature the essential criterion, as I understand it?

A. Not necessarily.

Q. You have by virtue of that answer, have you not?

A. I wouldn't say so.

Q. You have stated, Mr. Weyerhaeuser, that, in your opinion, it is proper to furnish lumber yielded by any one of the trees recognized botanically as a true white pine in response to specifications calling for white pine. You have so stated, have you not?

A. I so stated as to strobus and monticola; yes.

Q. And as to sugar pine?

Q. Well, I confess that I have never had anything to do with sugar pines.

Q. But you said that, adding the qualification that you are not particularly familiar with sugar pine, you saw no objection
2507 to furnishing sugar pine in response to an order for white pine, did you not?

A. Subject to my knowledge of sugar pine.

Q. Then, did you not also say, in response to a very specific question which I put, that you thought it appropriate to furnish lumber yielded by any one of the true white pine trees upon specifications calling for white pine?

A. I think there are other white pines that I know nothing about, so I couldn't answer that.

Q. You don't recall giving me an answer to that very question?

A. Well, if I so stated I am mistaken.

Q. Then you are not prepared to say that it would be appropriate to furnish lumber from any one of the true white pine trees in response to specifications calling for a white pine?

A. No; I don't think it would necessarily be.

Q. And you are doubtful in the case of sugar pine?

Mr. BURR. That is unfair. He doesn't know anything about sugar pine.

Mr. MATTHEW. I think I am within the proper scope of cross-examination.

Examiner DE BRULER. Go ahead and answer the best you can.

By Mr. MATTHEW:

Q. You are doubtful in the case of sugar pine?

A. I am, because I don't know the wood.

2508 Q. And even though you know that sugar pine comes from a tree which is a true white pine, botanically speaking, you are not prepared to say that it would be proper to furnish sugar pine lumber upon specifications calling for white pine?

A. No; I don't think it is necessarily so.

Q. Do I understand from that that you are doubtful on the point?

A. Yes.

Q. Then it reduces itself to this: That you are certain only that it is proper to furnish either strobus pine lumber, or monticola pine lumber upon orders calling for white pine; that is as far as you can go?

A. That is.

Q And it happens that your companies are very largely interested in the production and marketing of both the strobus pine and the monticola pine of Idaho?

A. Yes.

Q. Would you see any objection to the marketing of California sugar pine under the name of California white pine?

A. I would personally see no objection to it as far as my knowledge of the subject goes.

Q. Then you would think that if the Federal Trade Commission should prevail in these proceedings, and the respondents were compelled to discontinue the use of the term California white pine, it would be quite appropriate for the producers of California sugar pine to offer their product, namely, sugar pine, to the

2509 trade as California white pine?

A. Yes; as far as my knowledge of the subject goes.

Q. And that strikes you as being entirely fair, both among producers and to the public, to offer California sugar pine to a trade which, for at least thirty years, has known that California white pine means a wood of an entirely different character?

A. As far as my knowledge of sugar pine is concerned, I see no objection to it.

Q. Isn't it quite obvious from that last answer of yours, Mr. Weyerhaeuser, that you are making botanical nomenclature the essential criterion for the market nomenclature, if you please?

A. No, sir.

Mr. BURR. You say it is not true?

The WITNESS. No.

By Mr. MATTHEW:

Q. Well, your justification for a possible offering of California sugar pine to the public under the name of California white pine is predicated upon botanical nomenclature, is it not?

A. No.

Q. What can be the justification?

A. The term white pine over the centuries means something very definite and monticola and strobus answer perfectly. I assume that sugar pine does, but I don't know.

2510 Q. Well, if we assumed that the sugar pine answers the purposes of the trade as satisfactorily as Idaho white pine, or the northern white pine in the monticola and strobus, respectively, then you think it appropriate to offer sugar pine to the trade as California white pine?

A. Yes; if it has the necessary qualities.

Q. Must the qualities and the botanical nomenclature concur?

A. Yes.

Q. Then if sugar pine is not as well suited to a particular trade as the strobus pine or the monticola pine, you think it would not be proper to offer sugar pine to the trade as California white pine?

A. Not as white pine; no.

Q. The mere fact that it is recognized as a true white pine would not justify an offer?

A. Not necessarily.

Q. How long have you been familiar with the term "California white pine", or sugar pine, if you please?

A. Oh, thirty years or more.

Q. That name again is well known to the lumber trade throughout the United States, is it not?

A. I think it is.

Q. Have you ever known California sugar pine to be marketed under the name of California white pine, or under any other name with the word "white" in it?

A. No; I haven't.

2511 Q. Your company is extensively engaged in the production and marketing of a lumber known as Douglas fir?

A. Yes.

Q. Do you market it under the name of Douglas fir?

Mr. BURR. If the examiner please, I object to the proposition of Douglas fir being introduced here. He is trying to raise here a

different nomenclature and contends that his misnaming of California white pine is not as bad, perhaps, or not as gross, or something, as the other nomenclature, and I think that I am entitled to object to it, and I want to press that objection. It don't think it has a thing to do with the case.

Mr. MATTHEW. The gate is wide open now. Counsel was allowed, over a certain objection, to ask for the witness' views on the whole question of the alleged misnaming of lumber. It wasn't confined to ponderosa.

Mr. BURR. As this Court knows, and as opposing counsel knows——

(Here followed remarks off the record.)

Examiner DE BRULER. I don't think we ought to go into anything but pine timber.

Mr. MATTHEW. This is for the record. I must, with deference, insist on what I think are the rights of my clients in this respect.

The whole question of the proper nomenclature of lumber is
2512 involved in this case, is opened up by counsel himself, and Your Honor will recall that——

Mr. BURR (interrupting). Is this on the record?

Mr. MATTHEW. Yes; I have the right to have it made of record.

Mr. BURR. I want my speech on the record too, then.

Mr. MATTHEW. I don't propose to make a lengthy statement.

Certainly there are some rights which these respondents may ask to have recognized.

Mr. BURR. If I can be heard on the record I have no objection to his being heard briefly.

Examiner DE BRULER. Make it brief, make your statements brief for the record.

Mr. BURR. If he is making it for an appeal, let's have his statement in good shape.

Mr. MATTHEW. Whatever "appeal" may mean.

The Examiner will recall that in the course of the cross-examination of Col. Greeley, at the Portland hearing, I believe, the ruling was finally made that we might appropriately go into the question of the nomenclature for the various woods, contrasting the market names if you please, or identifying them with botanical nomenclature, and certainly it has been one of the threads of the case put on by counsel for the Federal Trade Commission here that our wood

comes from a tree which is not a true white pine. I think
2513 that probably at least twenty times today counsel has referred either to genuine white pine or true white pines. Now he has used that in a botanical sense. He could not have used it in any other sense, and when he is allowed upon the examination of this witness in chief, to go into various questions of the broadest character as to the effect of the alleged misnaming of the woods—you will recall his express use of the word "misnomer" in a question that was put here—it certainly is within the proper field of cross-examination for me to go into the question of nomenclature

of various woods. If I have any conception at all of the proper scope of cross-examination, I am within my rights, and I must insist that I be allowed to examine this witness along these lines.

Mr. BURR. I would like to make a statement. I will make it as brief as I can.

The distinction between the questions which counsel has just referred to, and the scope of the examination as to nomenclature, the distinction between those and the questions of nomenclature which counsel now desires to go into, is this: The nomenclature that I asked about is a nomenclature described in this complaint. It is an issue here. These other nomenclatures are not in issue here, and counsel is here asking that varieties of fir lumber shall be put upon trial as to whether they are misnamed and, as a corollary, whether there is any offense to the public as the result of the misnomer of firs and if he follows the line of questioning that

2514 he has before as to whether the misnaming of certain varieties of cedar as such, when they are as a matter of fact botanically, according to the line of questions that he has already propounded in this case, actually junipers, what has that to do with that complaint? Not a thing in the World!

Examiner DE BRULER. I am ready to rule on that question. The objection will be sustained.

Mr. MATTHEW. If the examiner please, may I ask that you withhold that ruling for a moment, for one reason?

Examiner DE BRULER. I will withhold the ruling until you give your reason.

Mr. MATTHEW. Of course, your ruling is not in harmony with the ruling you made at the Portland hearing. Counsel made the same objection.

Examiner DE BRULER. At the Portland hearing my recollection is that I allowed the cross-examination to go to the limit with the statement then that that matter should not be gone into any further by any other witnesses, that that had nothing to do with the issues in this case.

Mr. BURR. That is correct.

Mr. MATTHEW. If Your Honor please, the examiner has allowed counsel for the Federal Trade Commission, in his direct examination of this witness, to ask the generic question——

Examiner DE BRULER (interrupting). This witness?

2515 Mr. MATTHEW. This very witness—to ask the generic question as to the effect of alleged misnomers upon the marketing of woods, upon economic waste, upon conservation. Your Honor will recall my objections are put in timely fashion. They were all overruled. You allowed the general line of inquiries. Now there is only one way to get a general answer to a general question and that is by directing my cross-examination to this specifically. It is a fundamental characteristic of cross-examination uniformly followed.

Examiner DE BRULER. I understand that, but I understand these questions related only to the pine woods.

Mr. BURR. That is exactly it. We proved a misnomer, and we proved the effect of misnomers.

Examiner DE BRULER. That is my understanding.

Mr. BURR. The witness on the stand proffered it was detrimental to the public, and then I asked him what effect that had upon lumber as contrasted with lumber substitutes. That doesn't open the thing to the fir or cedar industry.

Mr. MATTHEW. If Your Honor please, he asked the general question as to the effect of misnomers upon the lumber industry, and he was allowed to say that as a result of these misnomers there was not only this confusion in the minds of the public but that people turned to lumber substitutes. It was a general question and a general answer.

Mr. BURR. Based upon the foundation that we proved a misnomer here.

2516 Mr. MATTHEW. It makes no difference what the foundation may be, I have a right to test that testimony.

Examiner DE BRULER. My understanding was it went to the pine lumber only, and I have ruled several times today we would not be permitted to go outside of that one question, so the objection is sustained.

Mr. MATTHEW. Will the examiner allow me an exception?

Examiner DE BRULER. Certainly; exception allowed.

Mr. MATTHEW. And if I desire, a reference to the Commission on this point?

Examiner DE BRULER. Certainly.

(Here followed remarks off the record.)

By Mr. MATTHEW:

Q. Do you market any lumber as pine which is not produced from a tree which is botanically a pine?

A. I think not.

Mr. BURR. Your operations are confined solely to pine; is that right?

Examiner DE BRULER. Proceed with the cross-examination now.

Mr. BURR. Never mind, I have it.

By Mr. MATTHEW:

Q. Have you ever sold any lumber under the name of Oregon pine?

Mr. BURR. There again, this Oregon pine is a fir.

Examiner DE BRULER. Objection overruled. Go ahead.

2517 Mr. BURR. The record shows that Oregon pine is a fir, and may I ask why counsel is bringing this matter in? He is again trespassing.

Examiner DE BRULER. I think that question may be answered.

Mr. MATTHEW. The witness may not know it is a fir.

The WITNESS. May I have the question read?

(Whereupon the question referred to was read by the reporter.)

A. Not that I know of.

By Mr. MATTHEW:

Q. You have heard of the term "Oregon pine", have you not?

A. Yes.

Q. Do you know what lumber is meant by the term "Oregon pine"?

Mr. BURR. One moment, if the examiner please; I object.

Examiner DE BRULER. Objection overruled, as long as he is asking about pines.

Mr. BURR. Oregon pine is not a pine.

Mr. MATTHEW. We are trying to find out. I am asking that question.

Examiner DE BRULER. Objection overruled.

The WITNESS. What is the question?

Mr. BURR. This is again designed to prove a supposed misnomer in some other species than pine.

Examiner DE BRULER. As long as he asks about anything
2518 called pine I think it is proper.

A. I have. It is so-called "fir" lumber.

Mr. BURR. I move to strike out on the grounds it is intended to show again a supposed misnomer in the fir industry and not in the pine industry.

Examiner DE BRULER. That answer may stand.

By Mr. MATTHEW:

Q. Why did you say "so-called fir"?

Mr. BURR. I object. It is proved this is not a pine.

Examiner DE BRULER. Objection overruled.

By Mr. MATTHEW:

Q. Why did you use the words "so called" in your answer?

A. I have heard it stated that the fir lumber is not a true fir.

Mr. BURR. If the examiner please, I move to strike upon the ground that this other misnomer, or supposed misnomer, has nothing to do with this case. I think it is consistent with the examiner's former ruling that this be stricken.

Mr. MATTHEW. I think it is not.

Examiner DE BRULER. We will let that answer stand.

Mr. BURR. I would like to have an exception specially noted on both these last two answers with regard to the overruling of my objection.

Examiner DE BRULER. Very well.

By Mr. MATTHEW:

Q. I am not sure whether you stated on your direct exami-
2519 nation whether your company produced and marketed Norway pine or not?

A. I think no reference was made to Norway pine.

Q. Do you produce Norway pine?

A. Yes, sir.
Q. Is it offered to the trade as Norway pine?
A. Norway pine, or northern pine sometimes.
Q. Or northern pine?
A. Yes.
Q. Just what is meant in the trade by the term northern pine, does it mean Norway pine only?
A. In general, yes, although at times some white pine is shipped with Norway in an order for northern pine lumber.
Q. Was that a common practice of your company to mix some northern white pine with Norway pine and ship it as northern pine?
A. I think probably in some of the very low items of very low grade.
Q. Does your price lists quote northern pine of that name?
A. I don't believe I can answer. I haven't been very close with the issuing of price lists, and I might be mistaken.
Q. Do you know whether your grading rules provide for a mixture of Norway pine and white pine?
A. I don't know whether they do or not; I think not.
Q. Norway pine is essentially a structural wood, is it not?
A. Yes.
2520 Q. It is more definitely a structural wood than the strobus pine, for example, is it not?
A. Well, it is more commonly used for that purpose, yes.
Q. Well, it is harder wood?
A. Yes.
Q. Generally speaking?
A. Yes.
Q. And is not a true white pine?
A. It is not a white pine.
Q. Are you familiar with the lodgepole pine?
A. Not as timber; I have seen it in the tree, but not as lumber.
Q. You don't know whether any of your companies engage in the manufacture of lumber from the lodgepole-pine tree?
A. I have never seen any lodgepole pine lumber in any of our yards.
Q. Did you ever see any lumber invoiced by any one of your companies as lodgepole-pine lumber.
A. I never have.
Q. Do you know whether there is any commerce of lodgepole-pine lumber in the territories in which your companies operate?
A. I know of none.
Q. In your answers to my questions respecting the northern white pine, the Idaho white pine and California sugar pine, in the early part of my cross-examination, you stated that you did not regard botanical nomenclature as the only criterion, but that the uses
2521 the wood had had some bearing upon the matter. Was that your expression?

A. I think I stated that the term white pine had a very definite meaning which it carried over for centuries.

Q. I recall that. But you remember I understood to ask you if you were not making botanical nomenclature the sole criterion and you said not the sole criterion, and you thought the uses of the lumber for particular purposes should likewise be considered. Do you recall testifying to about that effect?

A. No; I think rather—the term white pine has a definite meaning over the year; it became something quite definite.

Q. And what is that meaning?

A. There are certain definite qualities that are inherent in the Pinus strubus which have given it a reputation and a character over all the years, and it is that reputation which I have in mind, the service which it renders, the qualities that are inherent in it, the texture of the wood, the quality of the knot, and all the other items that go into it to make up the usefulness of that wood.

Q. Then the qualities of the wood, and the uses to which it is best adapted, constitute in your opinion the governing criterion.

A. That isn't what I have tried to say.

Q. That is exactly the conclusion that I drew from your testimony. Now, as I understand it, Mr. Weyerhaeuser, and please don't
2522 get the impression that I mean to be irritating or unduly persistent in this, but you have been unwilling to say that you regard botanical nomenclature as the final criterion.

A. I wouldn't say that it was.

Q. And then I understood you to say, quite definitely, the term white pine has come to mean certain qualities and uses for which the northern white pine was especially suited. Is that about right?

A. Well, it has come to mean something in the public minds; yes.

Q. As to quality and use, isn't that what you mean?

A. Yes.

Q. Well, I am trying to correctly state what you have put to me. Your justification for marketing pine from the Pinus monticola, as Idaho white pine, is found primarily in the circumstance that you think that the quality and uses of the lumber make it quite a fair substitute for the northern white pine, or a fair alternate for it, if you will. Am I right?

A. Yes; together with the fact that it is a true white pine.

Q. And if California sugar pine has the same or almost the same quality and uses and is a true white pine, you will admit that the propriety of offering that wood as white pine, as I understand you?

A. Yes; I think I should admit it.

Q. Now, suppose we found a tree which yielded lumber, which had quality and utility on a par with the northern white pine, or with the Idaho white pine, would you recognize the propriety
2523 of offering it to the trade as white pine?

A. Not if it were not a true white pine.

Q. In other words, it has to be finally a true white pine, botanically speaking, before you would recognize the propriety of offering it to the trade as white pine?

A. Yes.

Q. Then it must pass the botanical test finally?

A. Yes.

Q. Exactly. Do you deal at all in any of the southern pine lumbers?

A. Yes.

Q. I take it that you deal in shortleaf and in longleaf?

A. Well, we have interests in longleaf, but I have nothing to do with the management of the companies which own longleaf timber.

Q. Do you handle the longleaf timber in a wholesale way?

A. Why, I think so. I can't answer that definitely.

Q. You produce and deal in short-leaf southern pine lumber as well?

A. Yes.

Q. Are you familiar with the grading rules for short-leaf and long-leaf yellow pine lumber?

A. No; I am not.

Q. Do you know whether or not commercial longleaf southern pine lumber is identical with the botanical longleaf yellow pine lumber?

A. I don't get the meaning of it—no; I don't know.

2524 Q. Is it your understanding that all of the longleaf pine lumber, commercially speaking, comes out of trees which are botanically longleafed pine trees?

A. I really know nothing about the subject.

Q. And I take it you are similarly uninformed as to short-leaf pine lumber?

A. Well, I have seen more of short-leaf lumber manufactured, but I don't anything about its botanical name.

Q. I am not asking particularly about the botanical name, but do you know whether the short-leaf pine lumber, as it is known to commerce, comes out of the short-leaf pine tree entirely?

A. I assume so; I don't know.

Q. You have never heard, then, that the short-leaf pine lumber may come either out of the longleaf tree or a short-leaf tree?

A. I have never so heard.

Q. Do you see any impropriety in grading lumber coming out of shortleaf pine trees and longleaf pine trees indiscriminately with request to quality and apparent utility?

A. Yes; I would.

Q. Why?

A. The character of the two trees is quite different and the service it will give in different fields is quite different.

Q. Then you think that the proper course to follow, as far as the merchandising end of southern pine lumber is concerned, is to market

as short-leaf pine lumber only that lumber which comes out of the short-leaf pine trees?

2525 A. Yes.

Q. And similarly to market as longleaf-pine lumber only that which comes out of the longleaf-pine tree?

A. Yes.

Q. What led your company, or companies, to resort to Idaho for a supply of pine lumber?

A. My recollection is that the Northern Pacific, through its land grant, had white-pine timber in Idaho and wished to sell it and offered it to us for purchase.

Q. And were you anticipating a decline in the production of northern white-pine lumber?

A. Not at that time. It was merely a natural expansion of our business.

Q. Now, there has been a decline in the production of the northern white-pine lumber during the past thirty years?

A. Yes.

Q. Rather a marked decline?

A. Yes.

Q. And, as I recall your direct testimony, your company now owns some 300 million feet of merchantable strobus pine lumber in the Great Lakes States?

A. It is approximately that amount.

Q. Your annual cut is 50 to 60 million feet?

A. Yes; of strobus.

Q. I am talking about strobus.

2526 A. Yes.

Q. And that would mean that the available supply left to you would meet your needs for only some five or six years?

A. No.

Q. How can you maintain a rate of cutting of 50 to 60 million feet a year without shortly exhausting or practically exhausting 300 million feet?

A. Because our timber lies in National and State forest reserves, the State particularly, and the Government is selling this timber from time to time, and so that we are able to extend the life of operation by purchases from those sources and from individuals who still own claims and small tracts of timber in that territory.

Q. Do you expect to be able to maintain an ample cut of as great as 60 million feet indefinitely?

A. The manager of the company does, but I don't think—it scarcely seems probable to me that we can maintain it indefinitely, but I hope we can for a period of twenty years at least, or approximately twenty years.

Q. After that you expect a decline?

A. A probable decline in the amount of strobus that we manufacture; yes.

Q. I am asking about strobus. For the present time you are cutting a great deal more of Idaho white pine than of the strobus?

A. Oh, yes.

2527 Q. And that is largely replacing the market which you formerly filled with strobus pine?

A. Yes.

Q. Is your ponderosa pine likewise entering into some extent the market which you formerly supplied with strobus pine?

A. I think so; yes.

Q. For what purpose is your pondosa pine being used primarily?

A. It is rather difficult for me to answer that question. Of course, in a general way I know it is used for sash and doors and interior trim and various items.

Q. I suppose that during the years of your early experience in the lumber business the sash-and-door manufacturers in the Middle West largely obtained their stock from the northern white-pine mills; am I right in so understanding?

A. Yes; they used a considerable amount of white pine at that time, of true white pine.

Q. That is, of the northern white pine?

A. Yes.

Q. Strobus?

A. Yes.

Q. And that condition has gradually changed so that they are no longer supplied primarily with that particular lumber?

A. Some factories are; others are not.

Q. Now, do not the larger factories obtain the bulk of their lumber material from the Pacific Slope States?

2528 A. Yes.

Q. Are your companies interested in the Rock Island Sash and Door Company?

A. Yes.

Q. That plant is located at Rock Island, Illinois?

A. Yes.

Q. Can you tell us what particular variety of lumber is primarily used in that plant?

A. It is very largely western yellow pine.

Q. Some of it, I take it, is supplied by your own companies operating in Idaho, or Oregon, or Washington?

A. Yes.

Q. Does it purchase any lumber from California or Oregon mills under the name of California white pine?

A. I can't tell you that we purchase from California and Oregon mills, but I think I have never seen one of their invoices.

Q. You obtain lumber from the Klamath Basin?

A. I am not sure.

Q. Now, does your Rock Island plant likewise use strobus pine in its operation?

A. A very small amount.

Q. Why is the amount relatively so small?

A. I presume because the trade that buys from them demands a cheaper item and it can be made at less cost from western yellow pine.

Q. Then there has been a natural economic replacement of
2529 the strobus pine lumber very largely with what you term the western pine?

A. Yes.

Q. Does your Rock Island plant use any considerable quantities of Idaho white pine?

A. I don't think they do; a very small amount if any.

Q. Can you tell us why they use so little, if any, of your Idaho white pine?

A. For the same reason that I have just given.

Q. That is, it is too expensive?

A. Too expensive.

Q. Is it not also a fact, Mr. Weyerhaeuser, that the Idaho white pine yields comparatively a small amount of lumber of the shop types?

A. Yes.

Q. Ponderosa pine, ordinarily speaking, yields a very much larger proportion of lumber of the shop type?

A. Yes.

Q. Then it is quite natural that the ponderosa pine lumber should supply the needs of the remanufacturers in the Middle West engaged in making sash and doors and other materials from shop lumber?

A. Yes.

(Here followed remarks off the record.)

Examiner DE BRULER. We will continue this hearing until tomorrow morning, January 30, at 10:00 a.m.

2530 (Whereupon, at 4:45 p.m., an adjournment was taken until Thursday, January 30, 1930, at 10:00 o'clock a.m.)

2531 Docket No. 1620 to 1689, inc.

SAN FRANCISCO, CALIFORNIA, *January 30, 1930.*

Met pursuant to adjournment, 10:00 a.m.

Before Ellis De Bruler, examiner.

Appearances:

Eugene W. Burr, for the Commission.

McCutchen, Olney, Mannon & Greene (by Mr. Allen P. Matthew and Carl I. Wheat) for the respondents.

Examiner DE BRULER. We will proceed with the hearing if the parties are ready.

(Here followed remarks off the record.)

Examiner DE BRULER. Mr. Weyerhaeuser will take the stand for further cross-examination.

Mr. MATTHEW. Mr. Examiner, I have the consent of counsel to make a further tender of certain testimony through this witness, Mr. Weyerhaeuser, on this question of the alleged misnomer of lumber. As I recall it, I did interrogate the witness to some extent, or undertook to interrogate him, respecting Douglas fir.

I desire now to offer to prove by this witness, Mr. Weyerhaeuser,
2532 that lumber manufactured from a tree commonly known as Douglas fir, but which is not botanically a fir tree, is offered to the trade in interstate commerce and in foreign commerce, not only as Douglas fir, but as Oregon pine, and that those names are known to the trade.

Mr. BURR. I wish to object on the ground, briefly stated, that that would put the Government upon its proof to show the distinction in the matter of public effect of those other supposed misnomers as contrasted with the misnomer in this case, which would be to try a number of questions of importance without the parties in interest manufacturing these other varieties of lumber brought into court or examined as parties in any fashion. I therefore object.

Mr. MATTHEW. My reply to that is that we are not undertaking to try other woods, rather alleged misnomers, but we are undertaking to test by a specific illustration the validity of the witness' general statement as to the effect of alleged misnomer of lumber upon the lumber industry.

Examiner DE BRULER. In my judgment, such testimony is going outside the issues in this case, and for that reason the objection to the offer of such testimony is sustained.

Mr. MATTHEW. The examiner, as I understand it, will allow me an exception.

Examiner DE BRULER. An exception is allowed.

Mr. MATTHEW. Exception is allowed and a reference to the Commission?

Examiner DE BRULER. Yes; certainly.

2533 Mr. MATTHEW. I offer similarly to prove by this witness, Mr. Weyerhaeuser, that lumber which is marketed in interstate commerce under the name of western red cedar is yielded by a tree which is not botanically a cedar tree.

Mr. BURR. I object to that same question on the grounds stated.

Examiner DE BRULER. The objection is sustained.

Mr. MATTHEW. And exception reserved?

Examiner DE BRULER. Exception allowed.

Mr. MATTHEW. I offer again to show that lumber which is marketed under the name Alaska cypress is obtained from a tree which is not botanically a cypress tree.

Mr. BURR. Same objection.

Examiner DE BRULER. Same ruling.

Mr. MATTHEW. I offer to show that lumber which is manufactured from a tree which is botanically a juniper is commonly marketed under the name of cedar.

Mr. BURR. Same objection.

Examiner DE BRULER. Same ruling.

Mr. MATTHEW. And I assume, Mr. Examiner, that similar tenders which I might offer at this time along the same lines respecting other lumbers commonly known and offered to the trade under names which differ either from the botanical name of the tree or the common, popular name of the tree would likewise be made, that the same objection and ruling would be made?

2534 Mr. BURR. I should interpose the same objections.

Examiner DE BRULER. The same ruling would be made for the same reason that I stated, that it does not come within the issues of this complaint.

Mr. MATTHEW. It may be understood that I have made my offer to go into this general subject specifically as to various kinds and types of lumber and trees, and that in each instance the examiner has ruled adversely to my offer?

Examiner DE BRULER. That is correct.

Mr. BURR. I now wish to make an offer to this effect: That if, on perusal of this witness' testimony, it is found by opposing counsel that he is correct in his supposition, that this witness made the statement with regard to misnomers in the lumber industry generally, which is not confined to this misnomer here in court, that I shall not oppose a motion to strike on his part that part of the answer, or at least confine the answer to this misnomer here alleged.

Mr. MATTHEW. Obviously, the testimony throughout the hearing has gone too far to make that appropriate from my point of view. I will continue with a few questions.

F. E. WEYERHAEUSER resumed the stand and further testified as follows:

2535 Cross-examination (continued) by Mr. MATTHEW:

Q. As I recall your testimony yesterday, Mr. Weyerhaeuser, you agreed that the lumber obtained from the Pinus ponderosa tree is used generally for the same purposes for which the northern white pine has commonly been used?

A. Yes.

Q. And it is also a fact, is it not, that the lumber yielded by the ponderosa tree is not, for the most part, used for the same purposes for which the southern yellow-pine lumber is used? I am again speaking generally and recognizing that there are exceptions.

A. If you refer to the item of shop lumber, I think, probably, you are correct.

Q. I am talking about the general use of the ponderosa pine. In general, it is not a structural lumber that southern yellow-pine lumber predominately is?

A. Do you include what is commonly called shortleaf?

Q. Let's put it this way—either shortleaf or longleaf?

A. My impression is that shortleaf is very much like western yellow pine and serves very much the same uses.

Q. You think the ponderosa-pine lumber of the Western States is used commonly for the same purposes as the shortleaf yellow pine?

A. I think so.

Q. Is it the longleaf pine lumber of the South which repre-
2536 sents the bulk of the production?

A. Yes.

Q. I think you also stated that in appearance and general quality and use the ponderosa pine timber is quite closely analogous to the lumber yielded by Idaho white pine and the northern white pine.

The WITNESS. Read the question.

(Whreupon the question referred to was read by the reporter.)

Mr. BURR. I think there are two questions there. Can't you divide the question?

Mr. MATTHEW. I will withdraw the question.

Examiner DE BRULER. Very well.

By Mr. MATTHEW:

Q. If the lumber which is here in issue, the California white-pine lumber as it is known to the trade in a very large section of California and southern Oregon at least, is to be considered with respect to quality and primary use, entirely disregarding botanical names, would you say that it comes more appropriately within the group of white-pine lumbers, or in the group of yellow-pine lumbers?

A. Yellow-pine lumbers.

Q. And what is the basis for that answer?

A. My knowledge of western yellow pine and my knowledge of short leaf yellow pine.

Q. Now, in the quality of relative hardness, does it more
2537 nearly approximate the northern pine and Idaho white pine, or the southern yellow pine?

A. Merely as to hardness?

Q. Yes.

A. I think it approaches nearer true white pine than it does the longleaf, certainly.

Q. And does it not more nearly approach the northern white pine than the short leaf yellow pine in the South in the quality of hardness?

A. I am not so sure about that. I have seen a great deal of short leaf yellow pine that I couldn't distinguish from western yellow pine.

Q. If——

A. (Interrupting.) I think there is a little wider range in short leaf than there is in pondosa in that respect.

Q. Have you examined the governmental data showing the results of tests as to hardness, resistance to pressure, and other physical characteristics of various pine lumbers?

A. Only very superficially. I know practically nothing about the subject.

Q. Then your answers are predicated on your observation and not particularly upon the analysis or familiarity with tests?

A. No; my answer is based upon our experience.

Q. And not at all upon a comparative analysis of the results of tests?

A. I don't know that I can say that absolutely—in general, yes.

2538 Q. I am talking about tests of a scientific character. Your answer is yes?

A. In general, yes.

Q. I am not certain, Mr. Weyerhaeuser, whether I asked you as to the relative yield of shop lumber from Idaho white pine and ponderosa pine. If I did not, may I ask you now?

A. The western yellow pine produces more shop lumber.

Q. Can you give us the approximate percentage of shop lumber that is yielded by typical Idaho white pine?

A. No; I cannot you the percentage.

Q. Is the Idaho white shop lumber relatively a small factor in the shop trade at the present time?

A. Yes; I should say so.

Q. I think you testified that the mill which is owned by the Weyerhaeuser interests at Rock Island, Illino's, draws its raw material very largely from ponderosa pine mills?

A. Yes.

Q. And that mill is engaged largely in the manufacture of sash and doors and similar products?

A. Yes.

Q. Do you know whether or not the sash and doors and other manufactured products of that mill, are offered to the trade under the name of pondosa pine?

A. In answering that question I must make the statement that our business is large and varied and I cannot be supposed to

2539 follow every detail of invoices. The only answer I can make definitely is that the last catalog which I happened to see of the Rock Island Sash and Door Works referred to used the term "western pine." But that was some time ago, and I don't know what the present practice is.

Q. You understand, Mr. Weyerhaeuser, I recognize that you may not be familiar with the details with many of these operations. I appreciate that you are entirely candid in your answers, but so far as you know the product of that factory is not offered to the trade under the pondosa pine name?

A. I can't answer that. I don't know that it is, nor that it is not.

Q. Well, do you know of any sash and door, manufactured anywhere in the Middle West, offered to the trade under the pondosa pine name?

A. I have no knowledge of any other factory than our own.

Q. Then if I should broaden the question, if I may, and ask whether you know of any sash and doors anywhere offered to the trade as pondosa pine, do you know of any?

A. No; I do not.

Q. Irrespective of the name which may be employed to identify the lumber which is manufactured from the Pinus ponderosa trees, do you expect that the bulk of the shop trade will in the future be supplied, as now, with ponderosa pine lumber?

A. Yes; except as coast fir may make inroads on it.

2540 Q. Subject to that qualification, you expect ponderosa pine lumber to supply the bulk of the needs of shop trade?

A. Yes.

Q. You testified briefly yesterday respecting certain small mills in New England engaged in cutting strobus pine or second or even third growth. May I ask you whether you made any particular observations as to the quality of the lumber which is being turned out by those mills?

A. No; I did not.

Q. Did you note the trees and, therefore, the logs are quite small in diameter?

A. Yes.

Q. Perhaps ten or twelve inches?

A. Some of them were larger than that. I didn't measure them so I am scarcely able to say what the diameters of those logs are.

Q. From your observation, would you say the average diameter would be more than ten or twelve inches?

Mr. BURR. Are you referring to second growth?

Mr. MATTHEW. As to all the mills he noted around New England which he testified to on direct examination.

A. My impression is that some of the logs were larger and some were smaller than twelve or fourteen inches.

By Mr. MATTHEW:

Q. You couldn't approximate an average?

A. It wouldn't mean anything if I did; I didn't scale any

2541 of the logs.

Q. Did they appear to be on the average smaller in diameter of the logs which are being put through your mills in northern Minnesota at the present time?

A. Yes; I said it was either second or third growth timber, which implies that it is not old growth timber at least.

Q. Have you told us the average diameter of the logs which are being milled on your properties in northern Minnesota now?

A. No; I do not know.

Q. Do you happen to know how many logs, on the average, are required in order to make 1,000 feet of commercial lumber at your Minnesota mills?

A. It varies so much from year to year that I could not give you—make a statement of the situation at this time.

Q. Couldn't you approximate it? Would it be ten or eleven logs of sixteen-foot lengths?

A. The difficulty with that question is this: Our averages of logs include not only white pine, but Norway pine, poplar and spruce,

and tamarack, and any other wood we happen to manufacture, and so I cannot tell you what the average of the white pine logs would be, and I assume that it is the strobus that you are interested in.

Q. Yes; I am asking about the strobus. Coming back for a moment to these New England mills, working in second or third growth timber, will you state, please, whether or not the
2542 percentage of sap in lumber yielded by those trees would not be relatively very high?

A. The sap on a white-pine tree does not increase very much with the growth of the tree, so naturally the smaller the tree the greater the percentage of sap.

Q. I take it that most of the lumber that is being manufactured in New England at these mills to which you referred is of rather inferior type and was marketed ordinarily as common lumber?

A. I think that is probably correct, although the surface indication of the trees indicated a rather smooth type.

Q. Would you expect any lumber of the factory grades to come out of those milling operations?

A. By factory grades, you mean shop type?

Q. Yes.

A. Very little.

Q. These mills for the most part were very small, I think you said.

A. Yes.

Q. Could you approximate their annual capacity?

A. For the most part they were single-saw mills.

Q. They were simply small portable mills?

A. Some of them were portable mills; some were a little more—I think on the whole you would call them portable mills.

Q. Operating with circular saws, I assume?

A. Yes.

2543 Q. Did any change take place in the price differential between ponderosa-pine lumber and Idaho white-pine lumber following the change in your name from western white pine, or western pine, to pondosa pine?

A. We never called our wood western white.

Q. Let me make it a little clearer.

As I understand it, before you adopted the name pondosa pine as a trade name, the lumber which was manufactured from ponderosa-pine trees was offered to the trade by you under the name of western pine?

A. Western soft pine.

Q. Yes. And there were different practices in the territory and some of the mills were selling that lumber as western white pine; that is, some of your competitors?

A. I assume so, but I cannot say that I know that to be a fact.

Q. Now, I assume, of course, that the Idaho white pine commanded something of a premium over your western soft pine, grade for grade?

A. In every grade except the very lowest, possibly.

Q. Let's except the lowest grades for a moment. There was a price differential, and they referred to a premium, a price differential?

A. Yes.

Q. I am asking you whether you observed any change in that price differential after you adopted the term western soft pine
2544 and replaced it with the term pondosa pine?

A. If there was any change in the differential, I don't remember it.

Q. So far as you know, the relative price level remained just as before?

A. So far as I know; yes.

Q. And did you notice any change in the manner in which the ponderosa pine lumber entered the trade? By that I mean did it go into the trade for the same uses generally for which it was used theretofore?

A. I think so.

Q. Is there a price differential between Idaho white pine and northern pine, grade for grade?

A. The prices are not uniform. I am not well enough posted to tell you exactly what the differentials are.

Mr. BURR. Did you refer to northern white pine?

Mr. MATTHEW. Yes.

Mr. BURR. Read the question.

(Whereupon the question referred to was read by the reporter.)

Mr. BURR. I beg your pardon.

The WITNESS. Perhaps I should add that the term differential wouldn't apply there. There are differences in the prices of the different grades, but it doesn't become fixed as the term differential might imply.

2545 By Mr. MATTHEW:

Q. I don't mean to suggest that there is a constant and exact relationship in price levels, but what I wanted to determine is whether or not your northern white pine lumber customarily sells upon a different price level from the price level at which Idaho white-pine lumber sells.

A. Grade for grade there is not very much difference.

Q. Take your B selects, is there a typical—may we take that as an illustrative grade for the moment?

A. No; it wouldn't be.

Q. Can you give us a representative grade which we may take as a barometer of prices?

A. Most any than B selects.

Q. Take any one you suggest.

A. I am not familiar enough with prices today to answer that question.

Q. You have in general followed the price levels of northern white pine and Idaho white, have you not?

A. Yes.

Q. Has not the northern white pine ordinarily commanded a somewhat higher price than Idaho white pine, grade for grade, in the Chicago market, for example?

A. I think not.

Q. They have sold about on a parity, have they, those grades?

A. Approximately so.

2546 Q. Does the trade, so far as you know it, seem to as willing to accept Idaho white pine as northern white pine, grade for grade, at the equality of price?

A. Some buyers prefer one and some prefer the other.

Q. Does that mean, for different purposes or for the same purposes?

A. For the same purposes.

Q. Do you know whether your companies feel free to furnish Idaho white pine upon orders calling for white pine only?

A. Which companies?

Q. The Weyerhaeuser Companies; we will say the Weyerhaeuser Sales Corporation, if that is the name.

A. If it was shipped from Choquet [Cloquet], they would accept it without exception; if an order of that kind came to our sales company, there would immediately be some doubt in their mind as to what was meant, unless they knew the customer who sent the order.

Q. Then, do you know whether or not Idaho white pine is ever supplied on an order calling for white pine only?

A. I can't say that I know from actual experience; I suspect it would be.

Q. You would feel free to furnish either lumber interchangeably if you felt that that was in accordance with the customer's desire or requirements?

A. Our salesmen ordinarily are required to sell, to place, to accept an order from a given stock sheet.

2547 Q. What?

A. Stock sheet. In other words, they must know that the stock of lumber that they are selling is in existence in some particular yard. Therefore, an order comes designated for a certain mill. So that ordinarily the question does not arise.

Q. Then, so far as you are personally concerned, or so far as your personal information goes, you do not know whether orders for white pine, coming to your company, are sometimes filled with Idaho white pine?

A. Why, I don't know that. I haven't actually seen such an order, but I am very sure that it would be if they knew that true white pine was meant by the order.

Q. That is, they would feel free to furnish Idaho white pine, if they felt that was what the customer desired or needed?

A. Yes, sir.

Q. May I ask you whether your companies have ever sold lumber yielded by the ponderosa pine tree under the name of yellow pine or under a name which included the term "yellow"?

A. I don't know.

Q. So far as you information goes, you have employed the two terms to describe this lumber, the first term being western soft pine, and the next term being pondosa pine?

A. So far as I know, but I may be mistaken.

Q. Well, will you tell me why the word "yellow" was avoided when the names western soft pine and pondosa pine were selected?

2548 A. I think it was probably an effort to differentiate between an Idaho yellow pine and a southern yellow pine.

Q. For that reason you decided to leave the word "yellow" out of the trade name for this lumber?

A. I don't know that that is the reason. I can only make a guess as to that.

Mr. MATTHEW. That is all.

Redirect examination by Mr. BURR:

Q. Is the short leaf pine, or Arkansas soft, used for sash and door in some instances, as far as you know?

A. Yes.

Q. The Rock Island Sash and Door Company—does that use Arkansas soft, do you know?

A. It does at times.

Q. It has at times?

A. Yes.

Q. Now, I believe you testified that your company holds even larger stumpage in ponderosa than it does in Idaho white, did you not?

A. Yes.

Q. You expect to market that timber from time to time in the form of lumber, do you?

A. We do.

Q. Now, does the Rock Island Sash and Door Company make more than one type of sash, make it out of more than one variety of lumber?

2549 A. They have at times. I am not very familiar with the operation.

Q. Do you know whether they make a genuine white pine sash?

A. I don't think they do as a stock item; they would make it on special order.

Q. Does the Rock Island Sash and Door Company have competition in that line?

A. In which line?

Q. Sash and door, their product?

A. Yes.

Q. And that competition comes from what, the makers of what variety of lumber?

A. Very largely from so-called California white pine and pondosa.

Q. They meet those people in the markets, do they?

A. Everywhere; yes.

Q. Do you know whether the sash or door made by their competitors are designated California white pine sash or doors?

Mr. MATTHEW. I think that is not within the scope of redirect examination.

Mr. BURR. I do, if the examiner please. He went into the sash and door business with a good deal of care, I thought.

Mr. MATTHEW. Not for the question of the names of other companies.

Mr. BURR. I wasn't asking for the name of other companies.

2550 Mr. MATTHEW. I don't think I made any inquiry as to the names used by other sash and door companies.

Mr. BURR. I think that is probably true, but it is proper to find out what aspect this sash and door business has upon this controversy.

Mr. MATTHEW. I object on the ground that it is not proper redirect examination.

Examiner DE BRULER. Objection sustained. I think that line of questioning has gone far enough.

Mr. BURR. Pardon?

Examiner DE BRULER. Objection sustained. The line of questioning has gone far enough.

Mr. BURR. If the examiner please, I offer to prove right now that this is a volume competitive business and that these people meet California white pine, and sash and door, on the markets and that they are accordingly obliged to meet the price, except to the extent that they have a high grade specialty custom which recognizes the difference between genuine white pine and California white pine sash and door.

Examiner DE BRULER. Is that the object of the question?

Mr. BURR. Yes; that is the object of the question to lead up to——

Examiner DE BRULER (interrupting). Go ahead. You may proceed, but make it as short as possible, please.

2551 The WITNESS. I can't say that I know how other sash and door factories invoice their products.

By Mr. BURR:

Q. You don't know whether the sash and door on the market is designated as California white pine sash and door; is that true?

A. I do not know.

Q. Do you regard a sash made from Pinus strobus, or Pinus monticola as a superior sash or a superior door, where exposed to the weather, as contrasted with a ponderosa sash or door exposed to the weather?

Mr. MATTHEW. That is not proper redirect examination. I object to it on that ground.

Mr. BURR. If the examiner please, that is made under a part of the offer that I made a moment ago. It seems to me that inasmuch as counsel has endeavored to show by this witness that this company is manufacturing a ponderosa product, it seems to me that the competitive condition is——

Examiner DE BRULER (interrupting). He can answer that one question. It should have been gone into on direct examination.

A. I do.

Mr. BURR. Will you read the question? I don't know what "I do" refers to.

(Whereupon the question referred to was read by the reporter.)

By Mr. BURR:

Q. Is it a higher priced product?

2552 A. It is.

Q. I think you testified with regard to the product of the New England mills, mills which you have observed in traveling about that part of the country, is that true?

A. Yes.

Q. On cross-examination you testified as to the character of the wood. Is that lumber that is being cut there, does it belong to the strobus species, is that what is known as second growth, to a large extent, or wholly?

A. I would say second growth; yes.

Q. Is that a small knotted type?

A. I didn't examine enough of the lumber really to be qualified to answer as to the type of knot.

Q. On lumber of the size that you described will large knots occur in those young trees?

A. Ordinarily not.

Q. Then would you say that that is a small knotted type?

A. I would.

Q. Without observing that, would that naturally be the case?

A. I think so.

Q. Is it possible to use a small knotted type in factory work?

A. Yes; if the knot is sound.

Q. Would that small knotted type, then, for a trade asking for genuine white pine, would that be available for factory purposes, or would it not?

A. It might be available for sash and it would be available

2553 for moulding and various items of exterior trim, I think, not qualified under the term of factory plank.

Q. When an order comes in for white pine to the Weyerhaeuser Sales Corporation, is it ever possible to know whether or not the customer is a northern white pine or Idaho white pine customer?

A. Some of our customers ordinarily order northern white pine; others ordinarily order Idaho white pine. The territory has something to do with that. At times we would know, but at other times we wouldn't.

Q. Would that knowledge have any bearing upon what you would furnish on an order for white pine simply?

A. If you refer to pure white pine, no; I think not.

Q. Well, I am referring to pure white pine. I am referring to this order that comes in for white pine. Would the knowledge of what the customer was in the habit of getting—that is to say, whether Idaho white pine or northern white pine—affect the decision to ship one or the other of those varieties?

A. Well, it might. For instance, some of our own yards might order white pine and we would know what they intended.

Q. I am not referring to interyard shipments.

A. These are not interyard shipments; they are independent corporations, do their own buying independently. In such an instance we would know that white pine meant white pine. If an order
2554 came from some other individual, we might not know whether it meant true white pine or whether it meant pondosa, and the result would be we would have to send back to our salesman to inquire, if it weren't explicit on the order, and it all tends to confusion and delay.

Mr. MATTHEW. I move to strike out the last sentence of the witness' answer on the ground that it is not responsive to the question.

Examiner DE BRULER. That is the result of it, is it?

The WITNESS. Yes, sir.

Mr. MATTHEW. He wasn't asked about that.

Examiner DE BRULER. Let it stand. I think we ought to proceed more rapidly.

By Mr. BURR:

Q. When you get an order from the outside and it comes in for white pine the question as to what should be shipped under that order, is that ever determined by a knowledge of what his customer has purchased previously?

A. I think it would in certain instances; in others it wouldn't.

Q. When you get orders for white pine what are the possibilities that that customer may be asking for?

A. He may be asking for Idaho white pine, or he may be asking for so-called California white pine.

Q. May he be asking for northern white pine?

A. Yes.

Mr. BURR. That is all.

2555 Re-cross-examination by Mr. MATTHEW:

Q. When a customer asks for white pine, did you ever get the impression that he means sugar pine?

A. No; because we never handle sugar pine, and I know nothing about it.

Q. What did you mean by the expression "pure white pine"?

A. I want to keep it very definite that I don't mean so-called California white pine.

Q. You didn't mean to exclude Idaho white pine when you referred to purity?

A. No; I did not.

Q. When you purchase Arkansas soft pine for use in your Rock Island plant do you obtain selected stock or just mill-run stock?

A. You are asking a question of detail that I am not qualified to answer.

Q. That may be. I don't know whether you were advised on that or not. You may not be advised on this next question, but I want to ask it in any event.

Is the Arkansas soft pine used for the purpose of making a straight run of sash or doors, of Arkansas soft pine, or is it intermingled with the woods of other species in making an assembled door, for example?

A. It is used exclusively in making a given door, or I assume
2556 it may be mixed. I have no knowledge of that.

Q. What I meant to determine particularly is whether you turn out at that plant doors which are made entirely of Arkansas soft pine and other doors that are entirely made of Idaho white pine, and others entirely of ponderosa pine, or of other varieties, or whether the common practice is not to cut up the stock and feed it through the plant with the result that you get in a single door three or four varieties of lumber?

A. I never saw true white pine mixed with pondosa, or short leaf. As to whether short leaf and pondosa are mixed, I can't say.

Q. You don't know whether the doors which you market under the name of western pine may include some Arkansas soft pine?

A. That I cannot answer.

Q. Do you know whether any of the New England pine now being cut is actually manufactured into sash or doors?

A. I do not know.

Q. Is it the practice to use knotted stock in making sash or doors?

A. Some grades of doors. I didn't refer particularly to doors in knotted stock. I referred rather to exterior trim, cornices, and mouldings, etc.

Q. Exterior trim or interior?

A. Exterior.

Q. Ordinarily the knotted stock would not be deemed to be
2557 especially suitable for the manufacture of either sash or doors, or for interior trim?

A. Not for doors; it might be used for sash because it would be cut up in short lengths.

Q. What percentage of the small knotted stock goes to the sash and doors; have you any impression?

A. I have none; no, sir.

Q. And you haven't any impression as to the percentage of sash and doors which have small knots in them, some one inch, up to one inch in diameter?

A. It would be very limited.

Mr. MATTHEW. That is all.
Examiner DE BRULER. That is all.
(Witness excused.)
Mr. BURR. I will call Mr. Taylor for a few moments.
(Here followed remarks off the record.)

CHARLES L. TAYLOR was thereupon called as a witness, and having been first duly sworn, testified as follows:

Direct examination by Mr. BURR:

Q. Mr. Taylor, your business is what, sir, if you please?
A. Building construction.
Q. How long have you been in that line of work?
2558 A. Personally I have been in the building business since 1906. The firm of which I am now a member has been in business for ten years and a half.
Q. Pardon?
A. Has been in business for ten and a half years.
Q. During how long a period have you been in the business in that city; all that time?
A. Yes.
Q. What is the line of your contracting work?
A. Particularly what we call frame construction, residential work, clubhouse work, that would be of frame construction.
Q. Are you familiar with the reputation of sugar pine for exterior uses in frame buildings?
A. I can't say that I am.
Q. You don't use sugar pine for exterior work?
A. We do not use sugar pine for exterior work.
Q. Are you familiar with the reputation of sugar pine for exterior sash and door?
A. Yes; particularly for sash.
Q. What is that reputation as regards durability?
A. First class; high class.
Q. Are you familiar with the reputation of ponderosa sash, or California white-pine sash, so-called, for durability?
A. I am not.
Q. You are not?
2559 A. No.
Q. How general is the use of sugar pine for window sash in this community?
A. On all of the better class of work sugar pine has quite a preponderance of the call. California white pine is used sometimes in the lighter sizes of sash and where the job is one of keen competition.
Q. By keen competition what do you mean—price or quality competition?
A. Price.
Q. Is there a differential between the price of California white pine sash and sugar-pine sash in price?

A. A slight differential; yes.
Q. Which is the higher in price?
A. Sugar pine.
Q. Which is considered more durable?
Mr. MATTHEW. Just a moment. He testified that he didn't know as to the reputation of California white pine for durability.
Examiner DE BRULER. My recollection is that he stated that.
The WITNESS. I couldn't answer that.
Mr. BURR. That is all.

Cross-examination by Mr. MATTHEW:

Q. Have you been familiar with the term sugar pine during your entire experience in the building industry?
2560 A. Yes.
Q. And likewise with the term California white pine?
A. I have not been as familiar with the California white pine as I have with sugar pine.
Q. About how long have you been familiar with the term California white pine, if you recall?
A. I haven't had any great familiarity with it at all. We haven't had occasion to use it.
Q. For the most part you have used the sugar pine, as I understand it?
A. For sash, yes, some portions of interior work.
Mr. MATTHEW. I think that is all.
Examiner DE BRULER. That is all.
(Witness excused.)
Mr. BURR. Call Mr. Ivory, please.
E. P. IVORY was thereupon called as a witness and, having been first duly sworn, testified as follows:

Direct examination by Mr. BURR:

Q. Mr. Ivory, your business is what, sir, at the present time?
A. I am employed by the Charles Nelson Company as sales manager, handling redwood, Douglas fir, and California pines, box
2561 shook, and other commodities that we sell both in wholesale and retail.
Q. How long have you been with the Charles Nelson Company?
A. A little over three years.
Q. And they are located here in San Francisco, are they?
A. The main office is here.
Q. You are sales manager, did you say?
A. Yes; handling certain commodities.
Q. Before you became associated with the Charles Nelson Company, I wish you would sketch your experience as regards forestry matters, beginning when you first became familiar with forestry affairs.
A. Well, I studied forestry in college, graduating from the New York State College of Forestry in 1916. After that I was employed in the lumber industry by the Great Southern Lumber Company

at Bogalusa, Louisiana, and my work there was terminated by entrance into the Army at the outbreak of the war.

After being discharged from the Army I was employed for about two years in New York City as a salesman, selling largely southern yellow pine and some other woods.

My next important work in that connection was with the Forest Products Laboratory of Madison, Wisconsin. I went there in 1921 and was employed for about two and one half years on research work, particularly in the project of standardization of American lumber as to grades, sizes, and nomenclature. In that capacity I traveled throughout the United States, made investigations
2562 and studies at sawmills, cutting a great many different species of wood, in fact, all of the principal commercial species. I attended a large number of conferences held for the purpose of developing appropriate standards. They were held at various points in the United States. Some of them were regional conferences in different sections of the country and dealt with the species produced in that particular region. Other conferences were with meetings of representatives of lumber manufacturers, producers, and consumers held in some of the important cities for the purpose I have before mentioned, of arriving at proper standards. Other conferences were held in Washington under the auspices of Secretary Hoover, to make the standards effective and have them declared the standards of the lumber industry.

After that I became associated with California White and Sugar Pine Manufacturers Association as manager of trade extension. My duties there consisted of helping in the formulation of advertising programs, advertising matter, the attendance at these meetings of retailers, wholesalers, or other groups of lumber people interested or who might possibly be interested in the use and distribution of products of California pine mills.

I was in that work for about a year and a half, until the Sugar Pine Sales Company was formed. Then I went with that company in the capacity of sales manager and more later in that of ex-
2563 tension manager. My work there was similar to what it had been with the California Pine Manufacturers Association, but it was more specifically applied to trade extension as regards sugar pine.

When that organization was dissolved I was taken over by Mr. Tyson, head of the Charles Nelson Company, as the sales manager to handle the products of his particular California pine mill, cutting chiefly sugar pine.

Q. And you are still with them?

A. Yes, sir.

Q. Now, in connection with your work, Mr. Ivory, have you had an opportunity to observe the durability of sugar pine as constructed in the buildings at any time?

A. I have.

Q. Will you narrate what effort you made to observe the durability of that wood at one time or at various times?

A. My efforts in that connection extended over a period of nearly three years, possibly longer. Those efforts consisted in endeavoring to locate buildings which had been erected sufficiently early to give a demonstration of durability and which were still in existence.

Q. Go ahead.

A. A number of such buildings were found, photographed, and reported on by me.

Q. Now, at this time did you have an opportunity or take an
2564 opportunity to examine the condition of any structures and ascertain how old those structures were, actually were?

A. I did.

Q. Will you state in some fullness, but not too great detail, what you found with regard to any particular instances of these structures?

A. Well, I found a hotel at Calaveras Grove of Big Trees, known as the "Mammoth Trees Hotel." The building was erected, according to records they now have, in 1854.

Examiner DE BRULER. What wood was that?

The WITNESS. Sugar pine used chiefly in the exterior parts.

Examiner DE BRULER. All right.

By Mr. BURR:

Q. Go ahead.

A. The building is still extant and in use and gives conclusive evidence of considerable durability in the species of sugar pine.

Q. What sort of shape is it in?

A. The building is in habitable, usable shape, and is now used as a hotel.

Q. Does it give evidence of having been repaired from time to time and parts of it replaced?

A. There have been additions made to it, as evidenced by the photograph which I have of the building, as originally constructed and as it is today.

2565 Mr. MATTHEW. Just a moment. That answer is not responsive. The question was as to whether there was evidence of repairs.

By Mr. BURR:

Q. Has it been repaired from time to time; does it show?

A. I couldn't say that it had. There is no evidence that I have observed of the repairs.

Mr. MATTHEW. May I have the examiner's indulgence a moment? I don't like to interrupt counsel or the witness, but I make the suggestion that a mere argumentative conclusion ought to be left out of the witness' testimony. I desire to move to strike out the statement made by the witness which I tried to object to.

Examiner DE BRULER. What was the statement?

Mr. MATTHEW. To this effect: That the building showed conclusive evidence of durability. I move to strike out that part. I have no objection to his stating what the age of the building may be or what the appearance of the wood may be. The particular sentence to which I object is a form of conclusion and, I think, ought to be omitted. I think counsel will agree to that.

Examiner DE BRULER. You state the facts, not conclusions.

By Mr. BURR:

Q. What was the appearance of the building as regards rot?

2566 A. I saw no evidence of rot.

Q. You saw no evidence of rot?

A. No.

Q. Where the sills were made of sugar pine, did you examine where they came in contact with the ground?

A. I did not examine that.

Q. You did not examine that?

A. No.

Q. What evidence of replacement did you find?

Examiner DE BRULER. That relates to the sugar pine?

Mr. BURR. Yes.

A. I found no evidence of replacement.

By Mr. BURR:

Q. How was the building roofed?

A. With sugar-pine shakes.

Q. What was the size of those, roughly?

A. Roughly, half inch thick by six inches wide by thirty-six inches long.

Q. Now, what other pines, if any, did you find in that building?

A. I did not find any other pines in that building.

Q. Well, it wasn't wholly sugar pine, was it?

A. I did not examine the interior frame.

Q. Was the exterior entirely sugar pine?

A. Yes, sir.

Q. By the by, has your company, or is your company, the

2567 Charles Nelson Company, interested in sugar pine at the present time?

A No, sir.

Q. Is your company interested in any variety of pine at the present time?

A. As a manufacturer?

Q. Yes; as a manufacturer.

A. There is incidental to our production a small amount of pine business, monticola, cut at one of our mills whose main production is Douglas fir, but it is a minor factor.

Q. Does your company wholesale as well as manufacture?

A. Yes.

Q. Are you interested in wholesaling any variety of pine at all?

A. Yes, sir.

Q. What variety?

A. Any variety produced on the Pacific coast.

Q. Is your company interested in pushing in a wholesale way any variety of pine as contrasted with any other?

A. No, sir.

Q. Now, did you observe any other sugar-pine buildings in connection with your search on the subject of durability?

A. Yes; I observed a hotel in Yosemite Valley, built and used as a hotel in around 1860, then known as the Hutchings Hotel. That building is now the oldest building standing in the Yosemite Valley. It is still used as part of the Sentinel Hotel.

2568 Q. That is made of sugar pine, is it?

A. Sugar pine was used in the roof and sides of that building.

Q. Did you examine the roof and sides?

A. I did.

Q. What sort of condition, as regards the presence of rot and decay, was there?

A. I did not find rot or decay.

Q. You looked for it, did you?

A. Yes, sir.

Q. Any other variety of pine in the sides and roof of that building?

A. Not that I could identify.

Q. Was there any replacement work that you noticed in the sides and roof of the building?

A. There was replacement in the sides of the building.

Q. Will you describe that, please.

A. Additional windows had been cut and some windows had been transformed into doors.

Examiner DE BRULER. Was that of white pine?

The WITNESS. The replacements?

Examiner DE BRULER. The parts that had to be replaced, was that of pine?

The WITNESS. To the best of my knowledge, the parts replaced were of pine; yes, sir.

2569 By Mr. BURR:

Q. Proceed.

Examiner DE BRULER. Don't go into any other woods except pine.

The WITNESS. I couldn't see the material that had been taken out.

By Mr. BURR:

Q. Now, any other building that you examined?

A. Yes; I once examined a cabin constructed at Meadow Valley which, from the best evidence to be obtainable, had been built about 1870.

Q. What was the reputation as to when that building had been erected?

A. The report of people living in that vicinity was that it had been erected about 1870; that was corroborated by tree growth surrounding it since it had been abandoned, and my experience as a forester would lead me to believe that the building had stood at least fifty years.

Q. What was the nature of this tree growth, briefly?

A. Young trees of indigenous species which had grown up around it.

Q. There might be young trees around a building that had been constructed last year. What was there in that growth?

A. The size of the trees themselves, some of them came upwards of fifteen to eighteen inches in diameter, and standing in such
2570 a position that it was evident the growth had come on of itself; that it had not been planted there.

Q. In what condition was that building?

A. The roof of that building had been covered with sugar-pine shakes. Those sugar-pine shakes were still doing service. It had been neglected, some had been knocked off, and debris largely from the trees growing overhead in the form of leaves and needles had collected extensively on the roof of that building. Also a tree, about six or eight inches in diameter, had at some time in the past fallen across the roof of the building. The tree itself, which had fallen, showed evidences of rot.

The structure, the sugar-pine shakes, were, while not altogether free from decay, showed sufficient evidence of withstanding the advance of decay to convince me of the durability of the shakes.

Q. Now, the debris that had fallen on the roof, of what nature was that—leaves or what?

A. Leaves, needles, etc.

Q. Did you scrape that off and examine the condition of the sugar pine underneath the debris?

A. I did.

Q. Where was it that the rot that you referred to had taken place?

A. Under the debris.

Q. Any other building that you found in your investigation?

A. I inspected a disused hotel at Grub Gulch.

2571. Q. Where is that?

A. It is east of Fresno in the foothills of the Sierras, an old mining community, where mining is followed no longer, or at least not to any extent.

Q. Well, what did you find as to the age of that building?

A. The building was reputed to be about fifty-five years old.

Q. It was made of sugar pine, was it, or to what extent was the exterior made of sugar pine?

A. Sugar pine was used in the roof, in the form of shakes, and in the window sills and casings.

Q. What condition did you find it to be in?

A. I examined one of the window sills, took it out and sawed it apart and looked particularly at the joints, where trouble is most apt to occur, and found it to be of sound wood.

Q. What, if any, evidences of decay did you find to the exterior of that building in the sugar-pine work?

A. I did not identify any evidence of decay in the sugar pine in the building.

Q. Now, were there any other buildings that you examined during that trip?

A. Yes; there was a cottage at Fresno Flats.

Q. And where is Fresno Flats?

A. A few miles beyond Grub Gulch, much in that same general vicinity.

Q. Well, I wish you would state what the age of that building is, or as reported to you?

2572 A. The building is reputed to have been either built in 1854 or 1856.

Q. Was it made of sugar pine on the outside?

A. Sugar pine was used for the roof and the siding of the building.

Q. Did you examine it as to conditions of decay, and the condition of rot?

A. I did.

Q. What did you find the condition as to the decay?

A. I did not observe any decay in the exterior, the outside of the building.

Q. Did you observe any signs that the building had been repaired and replacement work done on the outside?

A. I believe the roof had been replaced.

Q. A new roof put on, is that true?

A. Yes, sir.

Q. Did you examine any other buildings on that trip with regard to the durability of sugar pine?

A. That is all.

Q. Have you made any other trips of similar character investigating the durability of sugar pine?

A. I made a number of trips where the general subject was observed, but I have no further specific instances to report.

Q. What were the results of your observations on those other occasions as regards the durability of sugar pine?

2573 Mr. MATTHEW. I object to that. It calls for a mere conclusion. If he wants to testify as to specific instances, I have no objection.

Mr. BURR. I won't press the question.

Q. Now, did you report these matters to the California White and Sugar Pine Association?

A. I did.

Q. And those matters were embodied in circular material, were they?

A. They were embodied in circular material, not all of which was published by the California White and Sugar Pine Association, however; some by the Sugar Pine Sales Company.

Q. Now, have you brought any photographs that you made, during any one of those trips, of these buildings that you have described?

A. With me today?

Q. Yes; have you any?

A. I believe I have some copies of them in my brief case over there.

Q. I wonder if you would be kind enough to produce them?

A. (Witness produces copies of photographs referred to.)

Q. They are copies embodied in circular material, are they?

A. Yes.

(Here followed remarks off the record.)

Mr. BURR. If the examiner please, after consultation off the
2574 record with opposing counsel, I desire to ask for permission to mount and myself to mark as "Commission's Exhibit No. 47 for the record" pictures to be cut from circular material just produced by Mr. Ivory entitled "Mammoth Trees Hotel, with two wings added shortly after the preceding sketch . . ."—also "The oldest building now standing in Yosemite Valley . . ."—also "Deserted cabin of a gold miner . . ."—also "Cabin built of California sugar pine at Fresno Flats."

(Here followed remarks off the record.)

Mr. BURR. Those pictures will be offered as one exhibit to be Commission's ex. no. 47.

Examiner DE BRULER. They will be so received.

(The copies of photographs referred to were thereupon received in evidence and are to be marked Commission's Exhibit No. 47 by counsel for the Commission.)

Mr. BURR. They may be received subject to my action as described?

Examiner DE BRULER. Yes.

(Here followed remarks off the record.)

Examiner DE BRULER. We will take an adjournment until 2 o'clock.

(Whereupon at 12.05 p.m., a recess was taken until 2 o'clock p.m.)

2575

AFTER RECESS

2 O'CLOCK P.M.

Examiner DE BRULER. If the parties are ready, we will proceed. The witness may take the stand now.

(Here followed remarks off the record.)

E. P. IVORY resumed the stand and further testified as follows:

Direct examination (continued) by Mr. BURR:

Q. Now, Mr. Ivory, the experience that you have had in the forests has it enabled you to observe the characteristics of ponderosa and sugar pine?

A. Yes, sir.

Q. Have you had any opportunity yourself to observe their lasting qualities?

A. Are you through with your question?

Q. Yes.

A. I have.

Q. What opportunities have you had, just what occurred when you got your experience as to the lasting qualities of these classes of wood?

A. I observed sugar pine in its longevity, or durability, and the certain specific cases as related this morning, and also——

Q. (Interrupting.) I am now talking about them in the forest, rather than made up into lumber. Have you had an oppor-
2576 tunity to observe how the trees, after they have been killed, last comparatively, these two species?

A. I have.

Q. Please describe your experience and observation along that line.

A. I have seen examples of sugar pine logs which had been lying on the ground for a great number of years, in which the heartwood was still sound, and which, when put into a saw mill, produced merchantable lumber.

I have seen logs of Pinus ponderosa, which had been lying on the ground for relatively a few years, four to five, which were absolutely valueless for lumber.

Q. For four to five years?

A. Yes, sir.

Q. What part of the country was that, do you recall?

A. The sugar pine has naturally been in the sugar pine producing territory, largely in the middle or southern Sierras.

The observation on California white pine has been more in the northern territory.

Q. Northern part of California?

A. Yes, sir.

Q. Just what parts, if you can tell?

A. In the vicinity of Lassen Peak, and on the extreme edge of California, as regards the Pinus ponderosa, and as to a certain extent in the territory of southern Oregon, contiguous to California.

2577 Q. Now, how did you know the age of these logs that you found, what were your means of observation, or ascertainment as to the age of these logs?

A. Part of it was just by general observation of the state of the material around them, the debris, and part resulted from the fact that I knew they had been felled when a given road was built, or put through that particular territory.

Q. And you happened to know, did you, what time that was?

A. Yes, sir.

Q. Now, have you had any opportunity to observe dead and standing timber of these two species as regards their longevity, or hasn't that come within your observation?

A. I have observed the dead timber of Pinus ponderosa and have noted that it seemed to be dead—standing timber I am referring to—and noted that it seemed to be in an unmerchantable condition after a relatively few years.

Q. What are the characteristics of these two woods as regards their variability in different parts of their range?

A. Which two woods do you refer to?

Q. Ponderosa and sugar pine.

A. I believe that ponderosa has a much greater variability than sugar pine; each has some variability, but that in ponderosa is much wider.

Q. And in what characteristics does ponderosa vary widely as you have testified, what are those?

2578 A. With respect to the relative width of the sap ring, with respect to the relative thickness of the summer ring, as contrasted with the spring wood ring, and with respect to the density of the summer wood as contrasted with the spring wood.

Q. Now, I wish you would say in which respect each diverges from the other. In other words, you have testified as to the width of the spring wood and summer wood. I wish you would say which is the most variable, or have you covered that? Which is the most variable in those respects?

A. Pinus ponderosa.

Q. Now, how about the color, is there more variability in one than in the other?

A. There is.

Q. Which is the more variable in color?

A. Pinus ponderosa.

Q. Which, on the average, has the more heart, the Pinus ponderosa or the sugar pine?

A. Sugar pine.

Q. Can you give me more definite, how much more, as a result of your observation?

A. My observation is that the sap ring in sugar pine doesn't average much over four inches. The sugar pine tree is a larger growing tree than Pinus ponderosa, and so, on the first count of both sap rings, or rather the sap rings of both species were to be of the same size, then there would be a great deal more heartwood in the sugar

2579 pine log because of its larger average size. However, it is not true that the sap ring in the two species are the same size, because in the Pinus ponderosa the sap ring averages considerably larger than it does in the sugar pine.

Q. Well, would it average a half larger, or double, or a quarter larger, or what would you say is your best judgment?

A. My best judgment would be, it would be about double the size.

Q. Now, is this diversity between—is this diversity of ponderosa to be found in the same locality, or are you referring merely to a diversity between different localities?

A. There is a diversity in the same locality and between different localities.

Q. Will you describe the diversity in the same locality a little more fully, if you may?

Mr. MATTHEW. May I inquire of the examiner whether or not there is any rule or practice of the Commission as to cumulative evidence?

Examiner DE BRULER. It is not supposed to go too far; no.

Mr. BURR. This is my last witness.

(Here followed remarks off the record.)

Examiner DE BRULER. Go ahead.

The WITNESS. Read the question.

(Whereupon the question referred to was read by the reporter.)

2580 A. There are some localities in which the tree seems to grow and produce wood of a harder consistency than it does in others, but within that same locality one is apt to find some specimens which is the softest variety produced by Pinus ponderosa. That is, the variations within a given locality run between two extremes.

By Mr. BURR:

Q. Will you, or will you not, find specimens of the harder varieties even in localities where the softer variety of ponderosa prevails?

A. The same variation occurs there, but the harder pieces in some localities are in the minority, whereas in another locality the harder pieces may be in the majority.

Q. Now, are you familiar with this bull pine that has been referred to?

A. No, sir.

Q. I believe you testified with regard to certain standardization conferences, as I recall. Was one of the objects of those standardization conferences a standardization of nomenclature?

A. It was.

Q. Was that a standardization of nomenclature, species, varieties of lumber, or what was it?

A. A standardization of nomenclature of the commercial varieties of lumber.

Q. Is there any relation between the nomenclature of pines and the securing to the consumer of the variety of pine which he desires to use?

2581 Q. I wish you would state what that relationship is.

A. In speaking of the consumer, I refer to the ultimate consumer of the material.

Q. All right; so do I.

A. The ultimate consumer is not inclined to study or inform himself on the numerous varieties of lumber that enters into the trade. Generally speaking, the varieties with which he is familiar are those that have been used in his territory for a great many years past, which he has heard discussed by contractors, or carpenters, or people

using wood. They are inclined to limit themselves to the very few groups of woods of which they have any particular knowledge.

In a large part of our consuming territory, particularly the populous Eastern States, the wood of most common knowledge in the days of, let us say, our fathers, or the generations past, is undoubtedly the old white pine of the East, Pinus strobus.

(Here followed remarks off the record.)

Mr. MATTHEW. I object to the witness testifying as to modern conditions in the East, unless he is further qualified.

Mr. BURR. Well, I will qualify him further.

Q. In connection with your standardization work, about how many meetings did you hold with consumers?

A. I should estimate twenty to twenty-five, at which consumers were present. There were a great many interviews probably running up to 200.

2582 Q. This was done under whose auspices?

A. President Hoover's.

Q. He was then Secretary of Commerce, is that true?

A. Yes, sir.

Q. And those were in various parts of the country, were they?

A. In each section of the country.

Q. Now, then, when you represented the sugar-pine combined sales organization, did you travel in the East in that connection?

A. Chiefly in the East.

Q. Did you come in contact with actual buyers of lumber?

A. I did.

Q. What varieties or classes of buyers did you come in contact with in connection with that work?

A. This is in connection with the Sugar Pine Sales Company work?

Q. Yes.

A. With pattern makers, pattern people, foundry people, in general, planing-mill operators, retail lumber-yard operators, architects, contractors, and the ordinary building.

Q. How many sugar-pine manufacturing concerns were in that organization?

A. I believe there were about ten or eleven—I couldn't say exactly now.

Q. Did that represent most of the important sugar-pine producers?

A. It was estimated to represent 65 percent of the production of sugar pine.

2583 Q. Were you virtually a sales manager for that combination or a sales agent?

A. I was sales manager of that organization during the first several months of its operation.

Q. How many months would you estimate you spent in the East interviewing consumers and others, as you have described?

A. For the Sugar Pine Sales Company?

Q. Yes, please.

A. About four months.

Examiner DE BRULER. I think the witness is qualified, subject to cross-examination.

Mr. BURR. What is the pending question?

The WITNESS. I was making an answer.

Mr. BURR. Read the last answer.

(Whereupon the last answer was read by the reporter.)

By Mr. BURR:

Q. Please continue.

A. They knew the wood just as white pine. They thought highly of it, and as I have previously said, were not given to making fine distinctions between the pines.

Now, when a wood which is not a white pine is presented to them, the probabilities are that the knowledge that this wood is not a white pine stopped some place along the chain of distribution, perhaps with the wholesalers, perhaps with the retailer, at least I be-

2584 lieve it stopped before it reached the ultimate consumer.

Mr. MATTHEW. Just a moment! I move to strike out that last.

Examiner DE BRULER. Why do you believe that; explain that.

Mr. MATTHEW. I would like to have my motion made of record on the ground that it is purely argumentative. I don't think the witness is competent to argue the case.

Examiner DE BRULER. Say whether you believe it is based on facts.

Mr. MATTHEW. I haven't had a ruling, to which I think I am entitled, from the examiner.

Examiner DE BRULER. I said that the ruling—I thought my ruling was made when I said he should not state anything excepting what he knew as a fact, or his conclusions should be based on facts.

Mr. MATTHEW. I understand my motion is granted?

Examiner DE BRULER. Yes.

Mr. BURR. How much is stricken?

Examiner DE BRULER. Read the answer.

(Whereupon the reporter read the answer referred to.)

Mr. BURR. Now, just what is to be stricken?

Mr. MATTHEW. I object to that part of the answer beginning with "the probabilities are that the knowledge", and so on, and move that it be stricken.

2585 Examiner DE BRULER. The last part may be stricken and the rest may stand for what it is worth.

By Mr. BURR:

Q. Now, Mr. Ivory, in connection with this work that you have done, you have talked with a great many of the buyers of lumber; have you?

A. Yes, sir.

Q. Now, what, as a matter of experience, did you find their status to be as regards their knowledge of whether or not California white pine was a genuine white pine?

Mr. MATTHEW. I understand that the witness is not free to relate conversations and is merely going to report what he understands to be the extent of the knowledge of the buyers. Is that right? Otherwise, I shall object to anything in the nature of hearsay.

A. I have been asked repeatedly to explain the differences in the pines and have been told that the actual differences were not understood. I have been asked if the wood sold as California white pine is a genuine white pine. I have had dealers and distributors tell me that they did not pass on to their trade the information that so-called California white pine is not a genuine white pine.

Mr. MATTHEW. I move to strike the last sentence on the ground that it is hearsay.

Examiner DE BRULER. The motion is denied. Let it stand for what it is worth. It is somewhat speculative.

2586 Mr. MATTHEW. I think it is obviously hearsay.

Examiner DE BRULER. I realize that.

Mr. MATTHEW. I think that motion should be granted.

Examiner DE BRULER. He stated what was told him.

Mr. BURR. I think so.

Mr. MATTHEW. That is the reason why it is objectionable.

The WITNESS. Further, I have had actual consumers, house builders, etc., tell me that they did not know the wood they were using and had purchased as white pine, which had come from the species Pinus ponderosa, was not a genuine white pine.

Mr. MATTHEW. I object to that as hearsay testimony.

Examiner DE BRULER. Objection overruled.

By Mr. BURR:

Q. Did you find that they were in a condition of doubt?

A. I found them in—I found many in a condition of doubt.

Q. Do you recall any specific instances of confusion of that kind?

A. Of which variety now?

Q. Where the consumer was not apprised as to the actual status of Pinus ponderosa as belonging, or not belonging, to the genuine white-pine group?

A. I recall an incident taking place in Binghamton, New York, where a builder told me he didn't know it was a genuine white pine.

Examiner DE BRULER. Do you know the name of the builder?

The WITNESS. Yes, sir.

2587 Examiner DE BRULER. Just tell who it was.

The WITNESS. Mr. Hotchkiss. In calling him a builder I refer to one builder about to build his own home, not one professionally engaged in that occupation.

Mr. MATTHEW. If I understand you correctly, this builder was not a contractor, but a builder in the sense that he was having a home built for him.

The WITNESS. That is the idea.

By Mr. BURR:

Q. Now, did you find that the persons whom you talked to were in a condition of doubt as to the relative and comparative qualities of ponderosa and genuine white pine?

A. I did.

Q. Is there a diversity of texture between heart and sap wood in ponderosa?

A. Between heart and sap wood?

Q. Yes; of ponderosa.

A. Your question, sir, is a diversity of texture?

Q. Yes.

A. There is.

Q. Is there a wider diversity of texture, on an average, in Pinus ponderosa, between heart and sap wood, than there is in sugar pine?

A. There is.

Q. I want to ask the same question with regard to the diversity between the summer and spring wood of those two species.

2588 Which has the greater diversity of quality?

A. Pinus ponderosa.

Q. In these conferences that you had in the standardization movement, I wish you would state more fully the various classes that attended those conferences.

A. They were attended by lumber manufacturers, wholesalers of lumber, and retailers of lumber, fabricators of lumbers, such as planing-mill operators, furniture manufacturers, purchasing agents, whose duties led them to buy large quantities of lumber, such as purchasing agents of railroads, contractors, architects. That is all that I recall.

Q. Were these conferences that you held in the various parts of the country, referred to in your answer, or were you referring to conferences at Washington?

A. I was referring to conferences generally, both at Washington and other points.

Q. How many of those did you say you held?

A. I estimated the number of conferences between twenty and twenty-five, that is, conferences on standardization, ways and means.

Q. Then did you make informal talks on occasions, in addition?

Mr. MATTHEW. That is objected to as immaterial whether the witness talked informally or not.

By Mr. BURR:

Q. Did you have other informal meetings?

2589 A. I did.

Q. How many of those did you hold in connection with the standardization movement, or was that in connection with the extension movement that you held those informal conferences?

A. For the most part in connection with extension.

Q. How many such talks, would you estimate, over your period of two and one half years?

A. Are you speaking of informal or formal discussions at this time?

Q. Well, include both in your answer if you will, then we will have it all.

A. I should estimate that I attended between 30 and 40 conferences formal, insofar as a program had been prepared in advance, and I have been asked to talk, and of less formal nature meetings with groups of salesmen, or with the force, manufacturing force of an operator, meetings of that kind, there were probably twenty to thirty.

Q. What is the local name for Pinus ponderosa in parts of California that you are familiar with it?

A. As lumber?

Q. As a tree?

A. Yellow pine or western yellow pine.

Q. What do the loggers, as well as the local people, call it?

A. Those are the names applied by them.

Q. In connection with your work for the association refer-
2590 ing to the California White and Sugar Pine Association, did you recommend either of these types of wood especially for durability?

A. I did.

Q. Which?

A. Sugar pine.

Q. Did you recommend Pinus ponderosa for durability for exterior work, use?

A. Pinus ponderosa was recommended at times for exterior use with qualifications, but not of as a durable nature as the sugar pine.

(Here followed remarks off the record.)

By Mr. BURR:

Q. When you say that recommendation was made in your last answer, you were referring to the recommendation that you, as a representative of that association made, is that true?

A. I am referring more specifically to recommendations made in literature which I helped prepare.

Q. Prepare for the use of the association, you mean?

A. Yes, sir.

Q. And that literature in the main was used, was it?

A. It was.

Q. That you refer to?

A. It was.

Q. In your work for the Sugar Pine Sales Organization, did you encounter sales resistance to sugar pine as the result of the use of white in connection with the term "California white pine"?

2591 (Here followed remarks off the record.)

Mr. MATTHEW. I object to the question unless it is made specific. It think it calls merely for a conclusion of the witness. If he wants to offer a specific illustration, I have no objection.

Mr. BURR. I think it goes to the weight, rather than the competency.

Mr. MATTHEW. I desire to press my objection. I understand the Commission wants facts.

Mr. BURR. I am talking about what he knows as a result of his experience.

Mr. MATTHEW. If the examiner please, I think he ought to be called upon for specific instances and not to respond to a general question which calls merely for a conclusion.

Mr. BURR. If the court please, when a man has talked to as many people as this man has, he knows as a fact whether there is sales resistance there.

Examiner DE BRULER. Let's go back to the question. Read the question.

(Whereupon the question referred to was read by the reporter.)

Mr. MATTHEW. It is further objectionable on the ground that it is argumentative. It assumes the whole question in issue about the effect of this term "California white pine".

Examiner DE BRULER. That is a question you can answer by yes or no.

2592 Your objection is noted, overruled, and exception allowed.

A. Yes.

By Mr. BURR:

Q. Now, you recall, do you, any specific instances of that character?

A. I do.

Q. I wish you would state what you recall in lines of specific cases.

A. I recall that a retail dealer in Reading, Pennsylvania, was unwilling to purchase sugar pine at its market value, because his use for that lumber would have been in the manufacture of what are known as the specials going in a home; that is, the type of millwork that is a little aside from standard in design and size. He bought the stock sizes of millwork from planing mills who put that material on the market under the name of white pine. He could not pay the price for sugar pine for the special work, because he could purchase the same class of material as had been used in the stock millwork for less money, and because both were called white it satisfied him that the material was marketable as white pine.

Mr. MATTHEW. I move to strike out the last sentence on the ground that it is hearsay.

Examiner DE BRULER. The motion is denied.

2593 By Mr. BURR:

Q. Do you recall any other specific case?

A. That is the only one I can give specifically.

Q. Were there others where the names and dates have escaped you?

A. There were.

Mr. MATTHEW. Now, Mr. Examiner——

Mr. BURR (interrupting). It goes to the weight.

Mr. MATTHEW. I am going to make another motion that the last question and answer be stricken. One thing is clearly obvious, that if this witness is asked if there are other instances, dates, and names, and places which he has forgotten I am entirely helpless on cross-examination, and yet an impression is created of record that here we have, perhaps, any number of instances which may be similar in character to the single instance which the witness is able to recall. I think it is highly improper to ask such a question and have it in this record, and I move to strike it.

Mr. BURR. If the examiner please, a man who has had the years of experience that this man has had knows whether there is sales resistance, and those instances that have passed out of his recollection certainly go to the weight.

Examiner DE BRULER. I will let it stand for what it is worth. The exception is noted.

I think you have gone far enough on that line. I hope no further questions of this kind will be asked.

2594 By Mr. BURR:

Q. Are you a skilled technologist on lumber and timber?

A. I passed an examination for the position of assistant wood technologist.

Q. Did you practice that branch of the profession; I mean did you follow it up?

A. I received a salary from the Government for practicing under that title.

Q. And for how long a time was that?

A. Two and one half years.

Q. In that connection did you have occasion to study the chemical composition of white pines and ponderosa at all?

A. I had occasion, but didn't take advantage of it.

Q. Did you study the analogy of the physical composition of these woods or the contrast of any?

A. I did.

Q. The physical characteristics of the white pines—will you state whether they are diverse or whether they are closely related, or what the situation is as regards their similitude, their likeness, or diversions?

A. You are speaking of white pine as a group?

Q. Yes; as a group.

A. Generally, the physical characteristics of the white pine are very similar. There are occasions where one of them may differ in one particular physical property more than the other, but

2595 as a class they are close together.

Q. Now, as regards Pinus ponderosa, is there is a similarity on the part of ponderosa with the genuine white pines, or is there a wider divergence in the physical constituency of the wood?

A. In several of its physical properties there is a close similarity between Pinus ponderosa and white pine and in others there is a wide divergence.

Q. I wish you would answer that question a little more fully, if you will, and let us know wherein the divergence comes, if you can testify along that line.

A. Regarding durability as one of the physical characteristics of the wood, I believe a great divergence comes——

Mr. MATTHEW (interrupting): Is durability treated as a physical characteristic?

Examiner DE BRULER. I don't think that is the point.

Mr. BURR. I am talking about the structure of the wood as a physical matter.

Q. Can you give evidence as regards the similarity or dissimilarity of the Pinus ponderosa in contrast with the genuine white pines as to physical constituency? I don't know whether that comes within your sphere of knowledge or not.

A. I think your term "physical constituency" might be amplified. To me it means certain properties that are grouped together by wood technologists as part of the wood. I would judge that your
2596 remarks lead to certain characteristics inherent in the wood, the assembling of the various minute members of which wood is made up.

Q. Yes. Is there a similarity among the white pines as regards that cell structure?

A. There is.

Q. Now, does Pinus ponderosa approach closely to the white pine group, or is it by itself in that respect?

A. It is by itself.

Q. Can you, as a technologist, take a smooth piece of white pine and tell which one of the white pines it belongs to?

A. No, sir.

Q. Can you tell whether a small piece of Pinus ponderosa is of that description, or will it be mistaken on occasions for some other variety of yellow pine?

A. For some other variety of yellow pine?

Q. Yes, sir.

A. If you are speaking of a piece so small that you require a microscopic examination, I would say yes.

Q. Well, now——

(Here followed remarks off the record.)

By Mr. BURR:

Q. I am somewhat in doubt as to your answer. Suppose I were to give you a piece of wood, say a couple of inches long and half an inch wide, would you be able to tell whether that piece of wood belonged to the white pine group or the yellow pine group?
2597 A. Not by a superficial examination.

Q. Would you be able to make a microscopic examination and determine which group it belonged to?

A. Yes, sir.

Q. Would you be able to tell further whether it was a Pinus ponderosa or some other group of the yellow pine group, if you had determined it belonged to the yellow pine group?

A. I could not.

Q. Would you say, as an expert, that there is a probable relationship between cell structure and durability?

Mr. MATTHEW. I object to that as leading.

Examiner DE BRULER. That is leading.

Mr. BURR. I do not think that is a leading question. It can be answered yes or no. I don't know what he is going to say.

Examiner DE BRULER. You can answer yes or no.

Mr. MATTHEW. The question is leading.

Mr. BURR. I will endeavor to reframe it.

Examiner DE BRULER. I really don't think it is.

Mr. MATTHEW. I do not intend to hamper you, but I think it is a mistake to frame questions in a way so it is obvious as to what the answer is bound to be.

Mr. BURR. I don't know. I think I am running some risk on some of these questions. I haven't talked with this witness in regard to this topic.

2598 Mr. MATTHEW. I am not questioning your propriety.

Mr. BURR. I don't think it is a leading question, but I will try to reframe it. I have no desire to take advantage of opposing counsel.

Q. Upon what, as a physical matter, must the durability of wood rests, if you know?

A. It rests on a combination of physical properties.

Examiner DE BRULER. State those combinations now.

The WITNESS. One would be—put it in this way: That durability would be increased, in my estimation, by lack of response to change in moisture content. In other words, a wood having the least shrinkage or swellage under the opposite conditions would be less subject to decay because the organisms of decay had less chance of getting into its interior.

Examiner DE BRULER. Would the size of the cells have anything to do with it?

The WITNESS. I do not believe so.

By Mr. BURR:

Q. Now, did you finish your answer?

A. There are other characteristics that undoubtedly enter into durability, most of which are imperfectly understood by wood technologists, or investigators of wood, but the chemical constituency is undoubtedly one of those.

Q. Now, in the respect that you have just referred to, in your last answer, I wish you would analyze the white pines and

2599 ponderosa.

A. Which respect, the chemical?

Q. As respects the physical constituency of the wood, as regards its reaction to the changes of the weather.

A. The white pine as a group change less than the yellow pines and therefore would be that feature would tend to give them greater durability.

Q. Now, what is the susceptibility of white pines as to fungus growths as compared with Pinus ponderosa, if you know?

A. The white pines are less susceptible to the attacks of fungus growths.

Q. How does the fungus appearance make itself known to the naked eye in these woods?

A. By discoloration, breaking down of the cellular structure, chiefly brashness, softness to the touch.

Q. What is the discoloration, what shade or general color appears upon the wood as the first sign of fungus growth; can you state that?

A. No, sir; because those colors run the whole gamut of the rainbow.

Q. There has been considerable about blue stain in the record. Is that blue stain a fungus, or isn't it?

A. A blue stain is technically classed as a mold.

Q. Well, is a mold a fungus?

A. In one sense it is, but it is not a wood-destroying fungus.

2600 Q. Well, is blue stain an approach toward decay?

A. Insofar as blue stain is a fungus it might, in one sense, be regarded as an approach to decay. It is not generally classed as decay unless it proceeds to a point where the structure of the wood itself has actually been attacked. In growth a fungus seems, a mold, seems to confine itself to the spaces between the cells; it doesn't seem to enter in and break the cells down. Nevertheless, the condition that fosters the growth of this fungus of the mold could easily foster the growth of the fungus.

Q. Now, will you state what is the relation of the white pines and ponderosa as regards their liability to checking?

A. The white pines are less liable to check.

Q. Which of the pines—that is to say, the white pines or the Pinus ponderosa—are more liable to warp?

A. More liable to warp, is your question?

Q. Yes, sir.

A. Pinus ponderosa.

Mr. MATTHEW. May I have the question read?

(Whereupon the question referred to was read by the reporter.)

By Mr. BURR:

Q. There has been some testimony with regard to beetles, infestation. Which wood is most liable to infestation by the beetle—the sugar pine or the Pinus ponderosa?

A. Pinus ponderosa.

2601 Q. Have you had an opportunity to observe any other of the white pines as regards their liability to this infestation?

The WITNESS. What is the question?

(Whereupon the question referred to was read by the reporter.)

A. No.

By Mr. BURR:

Q. When the heartwood of Pinus ponderosa is exposed to light, does it or does it not have a tendency to change in color?

A. It does.

Q. I wish you would explain that, please.

A. It takes on a dark reddish color on the outside surface, just that portion of it that is exposed to the light.

Mr. BURR. That is all.

Cross-examination by Mr. MATTHEW:

Q. Mr. Ivory, which of the pines is susceptible to attacks from blister rust?

A. The white pines.

Q. The white pines exclusively?

A. To the best of my knowledge.

Q. So far as you know, the ponderosa pine is not subject to attacks of the blister rust; is that true?

A. So far as I know.

Q. What is the blister rust?

2602 A. It is a disease of the trees that passes through several stages in its development. At one phase it occurs in species of the current, and in another phase it occurs in the leaves of the white-pine tree.

Q. Is the disease carried by fungus; is it a manifestation of fungus infestation, if that is the proper term?

A. It is; and it attacks the leaves of the tree.

Q. And what is the effect upon the tree?

A. It eventually will cause the death of the tree.

Q. Does it girdle the tree; does the bark die; is the tree girdled inside the bark?

A. On the smaller twigs chiefly.

Q. Does it attack the trunks of the trees inside the bark?

A. Its attack is not centered; it may eventually get to that part, but its attack is centered on the smaller twigs.

Q. Doesn't it finally kill the tree by getting into the inside of the bark on the main trunk?

A. In my estimation it kills the tree by defoliating it first.

Q. Are you quite certain that is the correct characterization of the operation of the white pine blister rust?

A. That is my understanding of it.

Q. Is there any beetle that attacks Pinus monticola peculiarly?

A. I do not know.

Q. Is there a beetle that attacks sugar pine?

A. I know of none.

2603 Q. Did you ever hear of a beetle called Dendroctonus monticola?

A. Yes, sir.

Q. What is it?

A. It is one of the very numerous Dendroctonus species.

Q. I wonder how it happens to have the name "monticola" included in its entire trade name?

A. I should judge from that name that it either inhabits the mountains, as does the Pinus monticola, or that it was associated with the species Pinus monticola, but I couldn't say from the name how. It might have received it the same way the tree did.

Q. You don't happen to know whether it especially attacks the Pinus monticola?

A. I do not.

Q. Or whether it likewise attacks other white pines?

A. I do not.

Q. I think you stated that you do not know of other beetles that especially attack either the Idaho white pine or the sugar pine?

A. I do not.

Q. I understood you to say, in response to questions from Government counsel, that if a small piece of Pinus ponderosa wood were submitted to you for microscopic examination you could determine whether or not it is a yellow pine in species, but could not say whether it was Pinus ponderosa or any other one of the yellow pine group?

2604 A. Yes, sir.

Q. I gather from that that it is your understanding that it is impossible to distinguish Pinus ponderosa wood from other yellow-pine wood by microscopic analysis.

The WITNESS. What is the question?

(Whereupon the question referred to was read by the reporter.)

A. You gather misinformation in that case.

By Mr. MATTHEW:

Q. Let's straighten it out. I understand you to say that you could not distinguish——

A. That is correct.

Q. Is it practical for some other expert to distinguish the wood of Pinus ponderosa from the wood of other yellow pines?

Mr. BURR. In small quantities, or this little piece?

Mr. MATTHEW. Either in small quantities or the little piece.

Mr. BURR. That is an important distinction.

A. Yes; I believe that they can tell some of the different yellow pines, one from the other.

By Mr. MATTHEW:

Q. Your own limitation is beyond attempting to say that the technical man could not tell the difference, microscopically, between the woods of several yellow pines?

A. I was attempting to say that a man would be able to
2605 point out, through some of the characteristics that he observed under the microscope, that he would be able to point out differences. Whether he could be certain or not, I cannot say.

Q. Well, what are the differences in structure between the wood of Pinus ponderosa and the wood of other yellow pines?

A. The difference is in structure, in general structure; it resembles the yellow pines.

Q. Yes; you so stated, and I asked you what the differences are.

A. Wasn't my response that I couldn't tell them apart?

Q. You might not tell them apart, but you might know differences. Do you know whether there are any differences or not?

A. There are certain characteristics that point them out, but they are not unfailing.

Q. Can you tell us what they are?

A. Generally speaking, the type members of the yellow-pine group, for purposes of this hearing, referred to as yellow pine, as longleaf yellow pine, has greater density and greater specific gravity, contains a larger amount of pitch, is yellower in color, is more contrasted between spring and summer wood.

Mr. BURR. Than Pinus ponderosa?

The WITNESS. Yes.

By Mr. MATTHEW:

Q. Those are the principal differences which you have in mind?

A. Those are the principal differences as referring to this small piece of wood you are speaking of, not as to the trees as a
2606 whole: there are a great many other things in taking the tree as a whole.

Q. I am talking about an examination of this small piece of wood. Have you any other difference in mind with respect to this small piece of wood?

A. No, sir.

Q. I understood you to say, in response to questions from counsel, that shrinkage is the test of the relative durability of the woods. Is that about correct?

A. Shrinkage—I differentiate shrinkage as one of the factors which influence the relative durability of wood.

Q. Isn't this the only factor which you mentioned, in response to the question of counsel, and if I am wrong I want you to correct me now?

A. That isn't the only one I mentioned. I mentioned chemical constituency.

Q. Don't you recall saying, in response to a question from counsel as to the principal factor affecting durability, that relative shrinkage is, in your opinion, the principal factor?

A. I didn't ever hear of such a question addressed to me.

Q. You stated that the relative size of the cells has no bearing on durability, did you not?

A. I did.

Q. Then, in that same connection, did you not state that in your opinion the measure of shrinkage in the wood was the thing that determined durability essentially?

A. What?

2607 Q. The thing that determined relative durability?

A. No, sir; I said that it had an influence on relative durability, but not the thing.

Q. What other factor did you give as having an influence on relative durability?

A. Chemical constituency of the wood.

Q. Any other?

A. I don't recall giving any other.

Q. That is what I was asking, what you actually gave. Now, by shrinkage, do you mean the shrinkage from a green to a oven-dry condition?

A. No, sir; I said the relative shrinkage.

Q. Yes; but by relative shrinkage do you mean relative shrinkage of that kind?

A. I mean the relative shrinkage that would take place between two pieces of wood subjected to the same atmospheric conditions.

Q. Would that be an appropriate test, to take two pieces of wood, one white pine and one ponderosa pine, and submit to a test for shrinkage from a green to an oven-dry condition?

A. It would not.

Q. Why wouldn't that be?

A. Because it doesn't take place in nature.

Q. That is the test the Government has used, is it not, in determining relative shrinkage?

A. It is.

2608 Q. That wasn't the test that you had in mind?

A. No; I have no test.

Q. You say that does not, or is not, anal'gous to the press that takes place in nature. What is the difference?

A. Nature never reduced wood to an oven-dry condition.

Q. Well, what does it do?

A. Merely reduces the moisture content of the material to a degree of equilibrium of the atmosphere.

Q. That process is the same, whether we take Pinus ponderosa or Pinus lambertiana, is it not?

A. That is right.

Q. And wouldn't the relative degree of shrinkage be the same, whether we take the natural test or the Government test, which runs from green to oven dry?

A. The degree of test of shrinkage would be the same.

Q. So, then, we may take, as a fair test of relative shrinkage, the Government test of shrinkage from a green to an oven-dry condition?

A. If you wish?

Q. I am asking you whether that is a fair test for relative shrinkage?

A. For relative shrinkage it is a fair test.

Q. Do you know whether or not the relative shrinkage of Pinus ponderosa, and of true white pines, has been determined by governmental tests?

A. It has.

2609 Q. Do you know whether relative shrinkage of Pinus monticola is greater or less than the relative shrinkage upon ponderosa pine?

A. I do.

Q. Which has the greater?

A. Pinus monticola.

Q. How about strobus?

A. It has less than ponderosa.

Q. And lambertiana?

A. Less.

Q. Do you know whether the relative shrinkage of ponderosa is greater or less than the relative shrinkage of the southern yellow pine as shown by Government tests?

A. Less.

Q. That is, ponderosa is less?

A. Yes, sir.

Q. The relative shrinkage of Pinus ponderosa brings it closer to the true white pines, as we have termed them, than to yellow pines, does it not?

A. Yes, sir.

Q. Mr. Ivory, in the course of your direct examination, you stated, in answer to a general question, as I recall it, that, considered with respect to physical qualities, Pinus ponderosa lumber is more nearly comparable with the lumber from the southern yellow pines

2610 than to lumber from the true white pines, as we have determined it. Is that a fairly correct statement of your testimony?

A. I do not recall that, neither the question nor the answer.

Q. Do you recall any inquiries as to the comparative physical characteristics of Pinus ponderosa lumber, white-pine lumber, and southern yellow-pine lumber?

A. I recall a comparison between certain physical characteristics of the wood, not of the lumber.

Q. Well, let's make it the wood then. Do you recall a general question as to the physical characteristics of the wood?

A. It seems to me the question was rather specific.

Q. Then you didn't intend to answer as in general?

A. I answered the question as presented.

Q. Do you recall your statement in that connection? If you do I wish you would give it to me because I want to ask further questions.

A. It is on the record. I suggest you consult that.

Q. You prefer not to attempt to give it to me now? Then I will ask the questions of my own.

By physical characteristics, and you did refer to some, you had in mind simply the microscopic or cellular structure of the wood?

A. I had in mind chiefly the cellular structure.

Q. Have you made any comparison of these woods with respect to their mechanical properties?

2611 A. Mechanical?

Q. Yes; physical properties in the sense of mechanical?

A. I have.

Q. Did you find, when you understood to compare these woods with respect to their mechanical properties, that the wood of Pinus ponderosa is more nearly comparable with the yellow-pine group than with woods of the white-pine group?

Mr. BURR. I am not quite clear by what you mean by mechanical properties.

Mr. MATTHEW. The witness understands.

The WITNESS. Repeat the question. If I understood it rightly, you may have misspoken.

(Whereupon the question referred to was read by the reporter.)

The WITNESS. The mechanical—a number of the mechanical properties of Pinus ponderosa are not closely comparable with the same properties of the type members of the yellow-pine group.

By Mr. MATTHEW:

Q. Let us assume, Mr. Ivory, that we are attempting to determine whether the wood yielded by the Pinus ponderosa tree is more nearly to be assimilated to the wood of the true white pines than to what you have appropriately termed the type yellow pines.

Mr. BURR. I am ready to stipulate that, and have offered to 2612 do so. I don't think we ought to go into that. I am willing to concede that ponderosa is more nearly approaching the hard dense pine group, yellow-pine group I mean, is more remote from the hard, dense yellow-pine group than it is from the white-pine group. Why go into that again?

Examiner DE BRULER. You concede that?

Mr. BURR. It is conceded in the complaint.

Examiner DE BRULER. All right.

Mr. MATTHEW. I didn't understand it was conceded in the complaint.

Mr. BURR. You will find it there.

Examiner DE BRULER. It is conceded now and I assume that will be sufficient.

Mr. BURR. The complaint says it belongs, from a purely botanical classification, to the yellow pine group, but it goes on and——

(Here followed remarks off the record.)

Examiner DE BRULER. The complaint speaks for itself.

Go ahead with the examination.

Mr. MATTHEW. If it is understood that counsel concedes that if this wood of Pinus ponderosa to be appraised with respect to its

mechanical properties, it falls more closely within the wood of true white pine groups than the wood of typical yellow pines, I think I need ask no further questions.

Mr. BURR. I don't know what you mean by mechanical prop-
2613 erties. You declined to give that information so far. I don't know what you mean in that connection.

Mr. MATTHEW. We have in evidence bulletin no. 556 of the United States Department of Agriculture which is entitled "Mechanical properties of woods grown in the United States." Counsel was not unfamiliar with that term certainly when we offered that bulletin in evidence at the Madison hearing. Counsel can refer to that.

Mr. BURR. That bulletin hasn't gone in, all parts of it.

Mr. MATTHEW. All right.

Examiner DE BRULER. If it is something counsel is not willing to concede, proceed with the cross-examination.

Mr. BURR. My efforts do not seem to be appreciated.

Mr. MATTHEW. Let's make the record clear. You asked me what I meant by mechanical properties, and I refer you to bulletin 556, and particularly to table no. 1, commencing upon page 34, and table no 2, which commences on page 37, relating to the tests of mechanical properties, which will make it clear as to what I mean in employing that term.

Mr. BURR. All right. Proceed.

Mr. MATTHEW. I understand that counsel does not concede the point, so I will submit my question.

Examiner DE BRULER. Go ahead.

By Mr. MATTHEW:

Q. I will reframe that question to save time. Let us assume,
2614 Mr. Ivory, that we are attempting to determine whether wood obtained from Pinus ponderosa more nearly resembles, in the mechanical property, the wood of the true white pines, or the wood of the typical yellow pines. Now, may I ask you whether it more nearly resembles the wood of the true white pines, or the wood of the type of yellow pines?

A. More nearly resembles the wood of true white pines.

Q. I assume that you do not intend to suggest by your testimony that the name which a tree happens to bear in the forest should necessary be the name which is given to the lumber yielded by that tree?

A. Not unless there are possibilities of confusion resulting from not using that name.

Q. Then, you are not contending that the name of the tree in the forest should, of necessity, be the name for the commercial name for the lumber yielded by the tree?

A. No, sir.

Q. In fact, you know there are many cases where the commercial name for lumber yielded by a particular tree is not identical with either the botanical name of the tree or the popular or common name of the tree in the forest?

A. I do.

Q. In the course of your conferences in the East, at which you referred upon your direct testimony, did you find out that the purchasers and users of lumber are familiar with the term

2615 sugar pine?

A. I did.

Q. Was the name quite commonly known and understood throughout the territory which you visited?

A. It was quite commonly known.

Q. In fact, that has been the name under which lumber yielded by the Pinus lambertiana has always been marketed throughout the East, is it not?

A. To the best of my knowledge, that is the name by which it has been marketed by its manufacturers.

Q. There is no confusion that you found in the public mind as to what was meant by the term sugar pine?

A. No, sir.

Q. Did you find that the public understood what is meant by the term pondosa pine?

A. Yes, sir.

Q. And in what year did you say these conferences took place?

A. They extended from 1924 until late in 1927; that is, my conferences as a representative of the White and Sugar Pine Producers. Conferences on standardization were, as I remember, dated back to 1921.

Q. And you say that the term pondosa pine was known to the public during the period in which these conferences took place, from 1921 on?

A. No, sir.

2616 Q. When?

A. 1926 and 1927.

Q. Was the term known to the trade before that time?

A. Not generally, not until it was advertised.

Q. In fact, the term was not coined until about the year 1925, was it?

A. As I recall it was about that time.

Q. Of course you know the term pondosa is merely a corruption of the mechanical name of the botanical name, ponderosa?

A. Corruption?

Q. I would call it a corruption. Did you find that the actual users of lumber were familiar with the term pondosa pine?

A. To whom do you refer as actual users in that case?

Q. Those to whom you referred in your direct testimony. I thought at the time you referred to people having homes built. You referred to one as a builder, later explaining that he was not a builder in the sense that he was a contractor and having a home built. Did you find the people of that class, the ultimate beneficiaries of this lumber, knew anything about pondosa pine?

A. I found some of them knew the name, because they had become conscious of it through advertising. They knew it was a soft western pine, and that is, to the best of my knowledge, all they did know about it.

Q. They didn't identify it with any particular tree, I assume?

A. Not to my knowledge.

2617 Q. The botanical nomenclature of the pines in the United States is not popularly understood throughout the country, is it?

A. The botanical nomenclature—which nomenclature do you refer to, please?

Q. Of the pines in the United States, all of them.

A. Well, all of the pines have a great many different kinds of nomenclature commonly used.

Q. You know what I mean by botanical nomenclature—I mean the botanical Latin names.

A. You are referring now to the Latin names of the woods?

Q. Exactly, and so stated.

A. They are not generally known.

Q. The term white pine is not a botanical or technical name, is it?

A. It is.

Q. Is the term yellow name a technical name?

A. It is.

Q. Why do you say it is a technical name?

A. Because it is used by technical people to distinguish two large groups of the pines.

Q. The terms are both botanical and technical?

A. Yes, sir.

Q. Do you know of any botanist who objected to grouping of white and yellow pines and used other terms?

2618 A. I know there are botanists who do not make that grouping. I couldn't name them offhand without consulting references, just who they are.

Q. You know there are some botanists who consider the terms white and yellow pine quite misleading?

A. No; I don't know that.

Q. You don't know that?

A. No.

Q. You don't know that some think it is much preferable to group them as hard pines and soft pines, or vice versa?

A. I know there are some who do use that classification, but why I am not prepared to say.

Q. Now, Mr. Ivory, isn't it a fact that the terms white and yellow are merely convenient and popular designations of groups of trees?

A. No; it isn't.

Q. Then you stand on the answer that the terms are botanically and technically incorrect in character?

A. Yes, sir. If counsel please, I would like to say that those names have other qualifications, but they do fulfill the functions of botanical and technical terms.

Q. You referred to a condition of confusion on the part of a certain class of the public, in any event, as to the meaning of the various terms. And you referred, I think, to California white pine as one of the terms which had caused confusion. Am I right in so recalling your testimony?

A. Yes, sir.

2619 Q. If the term California white pine were transferred from Pinus ponderosa lumber to sugar pine lumber, would there be any resulting confusion?

A. Your suggestion is one that had not occurred to me, and offhand I would say that it would be quite uncalled for, but were it put into effect you might suggest it to the sugar pine manufacturers.

Mr. MATTHEW. I move the witness be directed to answer my questions.

Mr. BURR. Let's hear the question.

Examiner DE BRULER. Answer that question.

Mr. MATTHEW. I move to strike out the answer on the ground it is evasion.

Mr. BURR. I object to striking it out. Let's have the question read first.

Examiner DE BRULER. Repeat the question.

(Whereupon the question referred to was read by the reporter.)

Examiner DE BRULER. Answer that question.

A. I see no reason for such a transfer.

Examiner DE BRULER. That is not responsive to that question.

The WITNESS. Mr. Examiner, I would like to merely make the statement and explain my answer, if I may.

Mr. MATTHEW. Can't you answer yes or no and then explain your answer?

2620 Mr. BURR. You are entitled to make any explanation you care to, but answer the question first.

The WITNESS. What is the question?

(Whereupon the question referred to was read by the reporter.)

Examiner DE BRULER. Answer the question yes or no.

Mr. BURR. If the examiner please, I object.

A. Yes.

Examiner DE BRULER. The objection is overruled. He has answered the question.

Mr. BURR. I object to further questions along that line. The Commission has no authority to change the name of a tree that is not herein charged with a misnomer.

Examiner DE BRULER. That is a proper question on cross-examination. The objection is overruled.

The WITNESS. Yes. The reason for the answer is, briefly, to begin with, it is a new suggestion, it comes to me first from counsel, but it seems to me that the present confusion resulting from the use of the name California white pine, as applied to the wood produced from Pinus ponderosa would be passed on to a certain extent to the sugar pine, that it would be in that respect at least for some time possibly harmful to the producers of sugar pine to use.

Mr. MATTHEW. Well, I move that the witness' so-called explanation be stricken on the gorund it is not germain to my
2621 query.

Examiner DE BRULER. I think the witness' answer may stand for what it is worth.

By Mr. MATTHEW:

Q. Now, Mr. Ivory, you recognize, of course, that the sugar pine is a true white pine?

A. Yes, sir.

Q. And the greater part of the sugar-pine lumber is obtained from the State of California, is it not?

A. Yes.

Q. So it would not be a misnomer in either the geographic or the botanical, if the term California white pine were used to describe what is now known as sugar pine, would it?

A. In either botanical or what?

Q. Geographical sense.

A. In a botanical sense I see no reason why the name California white pine should be used at all. I see no reason why the name California white pine should be used for sugar pine.

From a geographical sense there might possibly be some justification for it, though usually when a geographical name is supplied in connection with the naming of a tree it has reference to the State in which it was discovered, and sugar pine was discovered in Oregon.

Q. How would it do to call it Oregon pine? It is pine discovered in Oregon. Would that be proper nomenclature for the trade?

A. No, sir; because it would not be distinctive. In botanical
2622 nomenclature it is made to have it distinctive in one way or the other.

Q. You wouldn't say the State of discovery should be the first term in your nomenclature in this instance?

A. In this instance I think there are better means of describing it and naming it.

Q. Then your answer is that you wouldn't take the term "Oregon", would you?

A. No; because there are better means of description.

Q. You wouldn't take it?

Mr. BURR. Isn't it far afield?

Mr. MATTHEW. I think it is not.

Examiner DE BRULER. The objection is overruled, if you did object. Proceed with the cross-examination.

By Mr. MATTHEW:

Q. There is another reason, isn't there, and that is the term "Oregon pine" has already been given to another wood, and has been established for many years? Isn't that another reason in your mind?

A. It is not. We are not speaking now of lumber, but of botanical names of the trees.

Q. Let's talk about it as lumber. I think you are misunderstanding me if your think I am talking about the name.

A. You asked about the botanical nomenclature.

Q. Let's get around in the clear. I started, Mr. Ivory, by asking you some questions about the alleged confusion in the
2623 minds of eastern people as to what is meant by various terms as applied to lumber.

A. That is right.

Q. If you will recall, my next inquiry was whether or not the transfer of the term California white pine from Pinus ponderosa lumber to sugar pine lumber would be productive of confusion. You answered finally that it would, with an explanation. Have I correctly stated your testimony so far?

A. Yes, sir.

Q. Now, I asked you whether, still considering this lumber as lumber, any confusion would result if we undertood to apply the term Oregon pine to the lumber which is now introduced to the trade as sugar pine?

A. There would.

Q. You understood when I asked that particular question I was referring to lumber?

A. Yes, sir.

Q. Not merely to wood in any technological sense?

A. That is right.

Q. Would it be appropriate to term it Oregon pine as lumber?

A. No.

Q. Oregon was the State of discovery, and you reject Oregon again for the same reason that you previously had given?

A. For the reason that there were better methods of describing it.

Q. That is the only reason?

2624 A. That is the reason I gave.

Q. What are the better methods?

A. Something that is more characteristic of the wood itself, or some of the constituents, or something that sets it off and makes it different from other trees and species.

Q. You stick to the essential characteristics and uses of lumber; is that it?

A. No; I include the trees in my last statement.

Q. You finally got "trees" in, but for the most part you were talking about the essential characteristics and uses of lumber, were you not?

A. No.

Q. Well, the record will show whether you were or not. How did sugar pine get its name?

Mr. BURR. If the examiner please, this can't possibly lead up to any investigation of a finding that the Commission can make. I submit to you that it is not proper to go into the various names counsel can in his ingenuity think of as to what sugar pine might be called. The Commission has no jurisdiction over what to name any wood.

Examiner DE BRULER. The objection is overruled and exception allowed. Proceed with the cross-examination.

The WITNESS. What is the question?

(Whereupon the question referred to was read by the reporter.)

2625 Examiner DE BRULER. Answer the question, if you can.

The WITNESS. Are you referring to its scientific name or its common name?

By MR. MATTHEW:

Q. Common name, sugar pine.

A. I was not in on the naming of that wood.

Q. You weren't in on the naming of the other one, either?

A. I can give only hearsay evidence, if you wish.

Q. I will take hearsay on that.

Mr. BURR. I object to hearsay; let's stop somewhere.

Examiner DE BRULER. There is a lot allowed on both sides; I realize that; but we will hear this witness' testimony on that question. Answer the question, if you can.

A. When the sugar pine is freshly cut the sap which exudes from it evaporates fairly fast and leaves a residue that is slightly saccharine, or sugary. It is reported that because of that characteristic the first people to give a common name to the tree out here used the designation sugar pine.

By Mr. MATTHEW:

Q. Your reading and study would lead you to conclude that the term sugar pine has been the common name for this lumber from the time that it was first put on the market until the present day; am I right in that?

A. Yes.

Q. And the wood, I think you have stated, is well and favorably known, particularly for certain uses?

2626 A. Yes, sir.

Q. And has a fine reputation for durability and many other things?

A. It has.

Q. It would be something of a disadvantage to that particular lumber to change the name, in your opinion, would it not?

A. I don't know that; no, sir.

Q. You have no opinion to express on that?

A. No; I haven't.

Q. Now, in discussing these lumber problems, in the course of your conferences throughout the East, did you find that the term Idaho white pine was well known to users of lumber?

A. You are referring or using the same group of users previously referred to, or shall we include——

Q. (Interrupting.) Run the entire gamut of your conferences. I don't mean to restrict you.

A. I would prefer to have some understanding. I recognize that a consumer in one case may be the man to whom we sell, who fabricates it, who resells it; and a consumer in another case may be the man who eventually buys it. Now, having to do with Idaho pine, I didn't discuss it with the ultimate consumers of the material.

Q. Then you don't know whether the ultimate consumers of lumber, as you characterize them throughout the United States, know what Idaho white pine is?

A. No; but I do know that the intermediate group of con-
2627 sumers, such as the fabricators of lumber, and planing mill men, and the retail yards, generally know what Idaho white pine is.

Q. Let's deal with the intermediate group, the fabricators, for instance, they know what Idaho white pine is?

A. Yes, sir.

Q. And what northern white pine is?

A. Yes, sir.

Q. And what sugar pine is?

A. Yes, sir.

Q. And they also know what California white pine is?

A. Very largely; yes, sir.

Q. I suppose they likewise know what Douglas fir is?

A. Yes, sir.

Examiner De Bruler. You needn't answer that question. It is going out of the woods under consideration here.

By Mr. Matthew:

Q. In connection with your advertising for the California White and Sugar Pine Manufacturers Association, I think you stated that sugar pine was recommended very highly for purposes of durability, or where durability was deemed important. Is that right?

A. Yes, sir.

Q. If I don't adequately state your testimony, correct me.

A. Most assuredly.

Q. And you also testified, as I recall it, that California
2628 white pine was offered with a sort of a qualified recommendation?

A. For some outside uses.

Q. Would you mind developing that a little more fully? I don't mean go into it in great detail, but this, I understand, was joint advertising in behalf of the two woods through the association.

A. That is right.

Q. The manufacturers of white and sugar pine, that association, through advertising, recommended sugar pine for what purposes?

A. Recommended it for its durability; any uses where that factor was an important one.

Q. And how about the white pine?

A. It never preached durability of the California white pine. In fact it was mentioned as a species that was not durable in contact with the soil and under extreme conditions, but it was coupled for use for outside purposes where, in some circumstances decay might be expected to occur. But we attempted to safeguard the recommendation by indicating that other things were important there in securing longer life for it in those uses.

Q. You had general charge of that advertising work while you were with the association?

A. No, sir; the advertising work was controlled by a committee; there was an advertising manager and a trade extension manager. We all worked together, but my particular function was trade extension.

2629 Q. I understood you to say in your direct testimony that you had something to do with the advertising campaign.

A. That is right. I think I said that I participated in the preparation of advertising material.

Q. That is what I meant. And in preparing this advertising you were attempting truthfully to represent the uses for which these two woods are best adapted?

A. Yes, sir.

Q. Would you recommend sugar pine for use as mud sills?

A. I would not recommend it for that use because there are other materials much cheaper that have even greater durability for the purpose.

Q. And you would not ordinarily recommend sugar pine for use where it will be in contact with the ground and subject to alternate wetting and drying, would you?

A. I wouldn't recommend it, no; but the reason for doing it would be a combination of reasons behind not making that recommendation.

Q. One reason is it would not be particularly desirable from the point of view of durability where it is in contact with the ground and subject to drying and wetting in turn; isn't that a fact?

A. That would be a very minor consideration in my recommendation there.

Q. Well, would you consider it durable when placed in such a position?

A. Relatively; yes.

2630 Q. Relatively?

A. Yes.

Q. Relative to redwood?

A. Yes; relative to redwood.

Q. Cypress?

A. Relatively; yes. I understand "relatively" in this case is one of minor degree.

Examiner DE BRULER. Please don't get outside of the pine woods.

Mr. MATTHEW. This is not a point where I think counsel will object. We are trying to determine something about durability, Mr. Examiner. I am sure counsel will agree that is an appropriate line of inquiry here.

Q. I want to be sure we understand each other. Do you mean to imply that sugar pine would be more durable than redwood when placed in the position that I have just described?

A. No, sir.

Q. It would be less durable?

A. It would be less durable.

Q. Less durable than cypress?

A. Less durable than cypress.

Q. In your direct examination you referred to a number of rather old structures which were made of sugar pine. Your first exhibit was, I think, the hotel at Calaveras; the Mammoth Hotel; was it not?

2631 A. Mammoth Trees Hotel.

Q. How did you determine when that hotel was built?

A. By a protograph taken and dated back in the '50's and by information furnished by people occupying the residence at that time. I submitted, incidentally, this morning a photograph, or rather a sketch made in the '50's, and that went along with the other photograph this morning.

Q. And how did you determine whether or not the structure had been replaced from time to time in whole or in part?

A. How did I determine it?

Q. Yes.

A. I don't say it was replaced.

Q. I think you said it had not been.

A. Yes, sir.

Q. How did you determine it?

A. I determined it had not been.

Q. I said whether or not it had been. I want to know how you satisfied yourself on that point.

A. In the first place, the sketch in itself shown the original structure there and the recent photograph—that is, taken at the time I was making the investigation—also shows it today, and the building has siding and roof on it and parts which obviously were all of the same general time of manufacture and the same manufacture, manufactured at the same time, as you know there are marks

2632 by which you know those things, just as antiquarians know furniture by the way it was constructed. While I am no

expert on these pines out here, still it is rather easy, in looking at a structure, for you to say whether the wood actually belongs to this period or that period, later or previously.

Q. Could you tell whether it had been done seventy-five years ago or fifty years ago on such an examination?

A. I would like to get that question again.

Q. Could you tell whether the wood had been done seventy-five years ago or fifty years ago by such an examination?

A. Your original question didn't involve that, as I recall. It was whether alterations had been made.

Q. I thought you stated that by examining it you could satisfy yourself.

A. Yes; if there was no diversity in the type of manufacture and material used in the lumber, it was safe to assume that it had all been put in at the same time. That is the thought I had.

Q. I think you stated, Mr. Ivory, that you had not examined the sills of the Mammoth Hotel building?

A. I did. I stated that I had not examined the sills and joists.

Q. Weren't you rather curious to find out whether the sills were the old original sills?

A. The best evidence was that the building was extant or, in fact, inhabitable.

Q. Well, the most severe test of the lumber in that building would be afforded by the condition of the sills, would it not?

2633 A. If they were in contact with the soil; yes.

Q. Were they?

A. No; they were not as far as I could see.

Q. You don't know whether they were of sugar pine or California white pine, or some other wood?

A. Personally I don't believe they were sugar pine. I don't know what they were. I only testified as to that portion I saw.

Q. You have no impression as to whether they might be California white pine?

A. I don't think so.

Q. Was there any California white pine in the building?

A. I couldn't say as to that.

Q. You didn't see any?

A. No, sir.

Q. The only pine you saw in the building was sugar pine?

A. The only pine I indentified in the building was sugar pine.

Q. You were not interested at the time particularly in identifying anything but sugar pine, were you?

A. No.

(Here followed remarks off the record.)

By Mr. MATTHEW:

Q. Did you find any old structures built in whole or in part of California white pine during the period of your study?

A. Yes, sir.

Q. Were some of them about of the same antiquity as your sugar-pine building?

2634 A. I think they were a little after that, but not enough to be really a factor in determining their condition at this particular time. What I mean is this: They must have been built fifty years or more ago, but I couldn't say they came in the '50's exactly or in the '60's. They were barns chiefly.

Q. Did I correctly understand you to testify that the mechanical properties of the heartwood are different from the mechanical properties of the sapwood?

A. Some of the mechanical properties differ; yes.

Q. What is the distinction?

A. Well, the distinction varies with different varieties of lumber. A typical example, to illustrate what I mean, is the greater resiliency that is attributed to the sapwood of hickory. It is maintained that the sapwood of some species may have greater shock-resisting ability than in others; or that the situation may be reversed and such variations do occur in woods to a limited extent.

Q. Let's, for the purpose of my question, keep within the pines. Is there a distinction between the mechanical properties of the heartwood and sapwood of pines?

A. Yes; there is.

Q. Are you familiar with the results of tests made by the Madison Laboratories?

A. Yes.

Q. That is, in that respect?

A. Yes.

2635 Q. Have they not found that the mechanical properties of the sapwood and heartwood of the pine trees are practically identical?

A. They have found a great difference in the durability.

Q. I am talking about the mechanical properties.

A. There are some split differences in the hardness or the resistance of the wood to resist the impression of a small metal ball.

Q. It is so slight as to be almost negligible, is it not, that difference?

A. I don't think it is negligible.

Q. In general, was it not found that the mechanical properties of sapwood were identical with the mechanical properties of heartwood?

A. You say in general?

Q. Yes.

A. I think your question is too loose for me to give an answer that would be intelligent.

Q. You wouldn't be willing to say that, as far as the mechanical properties are concerned, the mechanical properties of heartwood and sapwood are identical?

A. Which do you want me to take into consideration—specific gravity, volume of shrinkage, modulus of elasticity, hardness, and height of drop to cause complete failure?

Q. We will rest there for the moment.

2636 A. Your question again?

Q. Whether or not the sapwood and heartwood are not practically upon a parity with respect to those mechanical qualities?

Mr. BURR. What kind of wood?

Mr. MATTHEW. All the pines.

Mr. BURR. I submit that that is hardly a fair question.

By Mr. MATTHEW:

Q. I will ask as to each pine in turn. We will take California white pine, Pinus ponderosa.

A. I believe that there is a sufficient difference there in the shrinkage of the two, the shrinkage factor of the two, to warrant saying they are not mechanically alike.

Q. I suppose you are not advised as to what the precise difference might be?

A. No, sir.

Q. Can you readily distinguish the lumber yielded by the sugar pine tree from the lumber yielded by other true white pine trees, and I use the words "true white pine" in a botanical sense?

A. In the large amounts, yes; in small amounts requiring microscopic investigation; no.

Q. Sometimes it is difficult to distinguish individual boards of sugar pine from individual boards of California white pine, is it not?

A. That is true.

Mr. MATTHEW. I think that is all.

2637 Redirect examination by Mr. BURR:

Q. I think you said that as to durability, where placed in contact with the ground, that you regarded redwood or cypress as more durable than sugar pine?

A. Yes, sir.

Q. Under those conditions do you regard sugar pine or ponderosa the more durable?

A. Sugar pine.

Q. Referring to the Mammoth Trees Hotel, did you examine any thing there except the exterior of the building?

A. No, sir.

Q. When you were with the Forest Service did you have an opportunity to collaborate in the preparation of statistics?

A. Of what nature do you have in mind?

Q. With regard to the technology and characteristics of various types of trees?

A. No; but I was in contact with work of that nature being done.

Q. Do you regard Government figures as being the last word on the subject of mechanical properties of wood, or would you regard your practical experience as having some bearing on those matters?

Mr. MATTHEW. I object to that.

Examiner DE BRULER. Objection sustained.

Mr. BURR. What is the ground of the objection?

Mr. MATTHEW. As speculative and theoretical.

2638 Examiner DE BRULER. Read the question.

(Whereupon the question referred to was read by the reporter.)

Examiner DE BRULER. Objection sustained.

By Mr. BURR:

Q. The blister rust has not reached California as yet, has it?

A. I have no knowledge of it being in California.

Q. Have you had any direct experience with that scourge?

A. I have seen results of the blister rust on two or three occasions, isolated trees.

Q. Where was that, what part of the country?

A. In the eastern portion, in New York State.

Q. How long ago was that?

A. When I was in college, about 14 years ago.

Q. Did you ever make a technical study of blister rust?

A. My study of that was very cursory and made during a course of tree diseases.

Q. Do you know when blister rust first reached this country, approximately?

A. I do not recall.

Q. I believe you testified that the words "white" and "yellow", when applied to these groups of pines, were both botanical and technical terms. Will you explain that, please?

A. Well, they are botanical in that the term—that is, in that they represent a group of classification, a grouping or classification,

2639 of the pines, differentiating one against the other. Therefore they—just as the pine itself is botanical, yellow becomes botanical and so does white.

They are technical in that they are used by technical men in making that very differentiation.

Q. Are those terms used popularly also in connection with references by nontechnical people, to the pines?

A. They are.

Q. They are then not only botanical and technical, but they are also popular divisions, are they?

A. They are.

Q. Are there other classes of wood that are divided similarly into groups, or is that confined to the pine lumber and trees only?

Examiner DE BRULER. Let's not go on to any other woods, please.

Mr. BURR. It is a matter of common knowledge.

(Here followed remarks off the record.)

Mr. BURR. That is all.

Recross-examination by Mr. MATTHEW:

Q. Do you recall testifying, to some extent, about the variability of lumber of sugar pine and of California white pine, respectively?

A. Yes, sir.

Q. The range of the woods—are you familiar with the sugar pine that comes from the Grant's Pass district in Oregon?

A. Only by hearsay. I have never handled any of it and
2640 never bought or sold any of it.

Q. Well, is your hearsay of such a character that you can say that you have some knowledge of the character of the lumber that comes from the Grant's Pass district?

Mr. BURR. I object to that attempt to bring in hearsay here. It is going too far.

Examiner DE BRULER. To what lumber does that refer?

Mr. MATTHEW. Sugar-pine lumber.

Examiner DE BRULER. Go ahead and answer the question the best you can, whatever your knowledge is.

A. The hearsay that I have in regard to that lumber is that it is not as well manufactured or as well graded, and in that respect it is not as equivalent of the lumber produced from the mills cutting sugar pine chiefly.

By Mr. MATTHEW:

Q. What I would like to find out specifically is this: Whether or not the sugar-pine lumber obtained from that district is not harder and flintier and, in those respects, less desirable than the sugar pine obtained from the California forests?

Examiner DE BRULER. State what you know about it.

Mr. BURR. He doesn't know there is sugar pine there of his own knowledge.

Examiner DE BRULER. State what he knows.

Mr. BURR. If he knows, it is only by hearsay, and I am going to object.

2641 A. I have heard it variously described as both soft and hard.

Mr. BURR. I object to hearsay. I think the respondents have witnesses enough to prove that.

Examiner DE BRULER. The answer may stand as it is.

By Mr. MATTHEW:

Q. Do you know a common defect in sugar pine from certain sections of California known as shake?

A. You are speaking of the tree as it grows in the forests now?

Q. Well, primarily of the effect upon the lumber yielded by the tree.

A. I know of no effect upon the lumber as produced by the mills that is a result of shake in the tree.

Q. There is no shake in the lumber which is yielded by the tree which has been affected by shake?

A. Perhaps, but put it this way: Shake is a defect wherever it occurs in lumber, no matter what species it occurs in, and is recognized as such and causes the lowering in grades or qualities of material that comes from it.

I am not cognizant of any mills cutting a tree, or trees, of a shake type, wherein the quality of their grades is influenced, where the relative quality of their grades is compared with other grades at variance.

Q. Then, I assume you don't know whether shake is a more common defect in sugar-pine lumber than in California white-pine lumber?

A. I do not know that; no, sir.

Mr. MATTHEW. That is all.

2642 Redirect examination by Mr. BURR:

Q. What is shake?

A. Shake is a separation of the growth along the lines of the annual ring, caused, well, nobody knows why exactly, but presumed to be the result of frost, or wind, or injury, or something occurring in the life history of the tree.

Q. It occurs in the timber; is that true?

A. In the standing trees.

Q. It is a vertical fissure, is it?

A. It is vertical and concentric with the center of the tree.

Q. If a sugar-pine tree is found to be shaky—what do you call them—a shaky tree—what is the term, what is the adjective?

A. Mr. Examiner, there is a tree called "a shake tree" which has no shake in it.

Q. How is this tree designated?

A. A ring shake tree.

Q. When you find that a tree has been ring-shaked, is that resulting wood put on the market, or is that discarded as lumber?

A. It is cut up into lumber; and if, in the process, the shake is such that it destroys the parallel edgings and surfaces of the lumber, then the lumber is reedged, or resawn, or reworked in some such manner so that the shake is not present in the final wood.

2643 If it is of a small nature, limited in its length, and can be included within a piece, it becomes a defect that causes it to be reduced to a lower grade than it might naturally fall in if its other defects only were considered.

Examiner DE BRULER. I think he has explained that fully.

The witness may be excused.

(Witness excused.)

Mr. MATTHEW. I think this might be an appropriate time, in view of the testimony of this last witness, to offer for the record "Simplified Practice Recommendation, R. 16-29, on Lumber, Fourth Edition." It is the most recent issue of this particular publication from the United States Department of Commerce, dated 1929, and the

effective date appears to be July 1, 1929. I offer it particularly for the matter which appears upon page 28.

Mr. BURR. May I have an opportunity to consider it?

(Here followed remarks off the record.)

Examiner DE BRULER. Have you any objection, Mr. Burr?

Mr. BURR. I want to see what it is.

Mr. MATTHEW. Out of deference to counsel, I will defer the offer until tomorrow morning.

Examiner DE BRULER. This is the end of your witnesses, Mr. Burr?

Mr. BURR. So far as the hearing in San Francisco is concerned, the Government is prepared to desist, not to say cease.

2644 Examiner DE BRULER. That is what I understood.

Mr. MATTHEW. May I call Mr. James?

ROY E. JAMES was thereupon called as a witness and, having been first duly sworn, testified as follows:

Direct examination by Mr. MATTHEW:

Q. Mr. James, what is your place of residence?

A. Los Angeles, California.

Q. What is your business?

A. Wholesaling and retailing lumber for resale to woodworking factories.

Q. By what company are your services engaged?

A. W. E. Cooper Lumber Company.

Q. And in what capacity?

A. I am secretary of the company.

Q. And how long have you been identified with that company?

A. Seven years.

Q. Continuously?

A. Yes, sir.

Q. How long have you been in the lumber business in California?

A. Seven years.

Q. Have you had any other experience in the lumber industry?

A. Yes, sir.

Q. Will you relate briefly?

2645 A. I started in the office of Brooks & Ross Lumber Company at Schofield, Wisconsin, approximately 25 years ago, and was with them several years. Later I went with Mr. Cooper, the same Mr. Cooper that I am now associated with, in his wholesale office in Milwaukee, and we ran that office for about two years, when that was discontinued and I took an interest and managed retail yards for him for about ten years.

Q. What lumber was carried in those yards?

A. At that time it was largely hemlock for piece stuff; yellow pine and Idaho white pine in commons; yellow pine for finish.

Q. Did you deal in northern white pine?

A. Very little.

Q. Will you continue, please, with the rest of your lumber experience?

A. After the war I was salesman and sales manager for one of the mills in Wisconsin for about four years previous to coming to California.

Q. What kind of a mill; that is, manufacturing what lumber?

A. Largely hard woods.

Q. Continue, please.

A. I then came to California and was associated with the W. E. Cooper Lumber Company.

Q. Are you familiar with northern white pine lumber?

A. To a certain extent; yes, sir.

Q. Are you familiar with Idaho white pine?

A. The only experience I have had in that was in a retail
2646 way where we handled the common boards in a retail yard.

Q. In what lumber do you deal at your Los Angeles yards?

A. All kinds of hard woods used in that territory, white and sugar pine from California, spruce and cedar—woods that are in the grades that are used by wood-working factories, not in building lumber, common lumber.

Q. You don't carry Douglas fir, for example, so-called Oregon pine?

A. No, sir.

Q. You do handle California white pine, as it is known as sugar pine?

A. Yes, sir.

Q. Do you obtain any of the California white pine from outside the State?

A. Southern Oregon.

Q. That is, in the Klamath Falls district?

A. Largely from the Klamath Falls district.

Q. Are the terms sugar pine and California white pine well established in the Los Angeles lumber trade?

A. They have been the terms that we have always used in that territory since I have been there, the only terms that I have ever known.

Q. Do your customers understand what they are getting when you supply either sugar pine or California white pine?

A. They do.

2647 Q. Have you had any complaint of any character respecting California white pine supplied to your customers by your company?

A. No, sir.

Q. Any complaints as to its durability or as to the quality or utility of the wood?

A. No, sir.

Q. You said that you had both a wholesale trade and retail trade.

A. Yes, sir.

Q. Will you explain a little more in detail the nature of your retail trade?

A. We sell in small quantities to the smaller wood-working factories, such as small cabinet shops, and small furniture factories, truck body manufacturers, and the smaller factories who are not equipped to buy in carload quantities.

Q. When you sell in carload quantities, to what trade do you sell the bulk of your product?

A. In the shop grades, I presume.

Q. What particular pine wood is demanded and used, for the most part, by your retail trade?

A. It depends on the use it is going to be used for. We sell out of the yard in a small way; I would say, we sell more white pine than sugar pine; that is, taking in the common boards which we sell.

Q. Does sugar pine normally command a price differential above California white pine in the Lost Angeles market?

2648 A. It does.

Q. That is grade for grade?

A. Yes, sir.

Q. Is there any particular industry which seems to prefer sugar pine?

A. Yes, sir.

Q. And what is that, if you please?

A. Patternmakers, for one.

Q. Yes.

A. In our territory the sash and door factories buy more sugar pine than white pine; that is, referring to sash and door people. We sell more white pine to the manufacturers of cabinets, bee hives, and other purposes like that.

Q. On the whole, do you dispose of more California white pine or sugar pine to your trade?

A. In footage, we sell considerably more white pine.

Q. I assume, Mr. James, that your company is equally interested in selling sugar pine and California white pine? That is, you are as anxious to press the sale of one wood as you are to press the sale of the other?

A. We are; absolutely.

Q. And you have no particular interest one way or the other?

A. No, sir; no particular interest.

Q. To what purposes do you ordinarily recommend that California white pine be used if you are called upon for a recommendation?

2649 A. For the purposes that I mentioned; such as cabinet manufacturing, bee-keepers' supplies—that is where the bulk of it goes, to that class of trade.

Q. Have you found that you encounter any difficulty in selling sugar pine in your territory because of the name California white pine which is used under which to dispose of the lumber yielded by the Pinus ponderosa trees?

A. No, sir; none whatever.

Q. Is the use of that name California white pine in any respect a disadvantage to sugar pine in a market way?

A. We experience none.

Q. So far as you can determine, is there any confusion in the minds of your customers as to just what sugar pine is and what California white pine is?

A. I can recall no instances. They have been buying it for several years and so most of them know whether they want white or sugar.

Q. Are you familiar with a type of pine timber known as Australian olears?

A. I am not; I never sold any of it.

Q. Is California white pine in use to a greater or less extent than sugar pine for box lumber?

A. We sell more white pine in our territory.

Q. That is, upon the request of your customers?

A. Those that we have sold to prefer the white pine to the sugar pine.

2650 Q. Do you find that your customers are interested at all in the particular territory from which lumber may originate?

A. Yes, sir; very much.

Q. Some of them are interested, for example, in obtaining lumber from the Klamath Falls district?

A. We have a great number of customers who insist on getting their white pine from that district.

Q. And have you others who prefer lumber from other districts for particular purposes?

A. Some. We have occasionally a customer to whom texture is no objection, and he will take white pine coming from central California.

Q. Then there is some discrimination shown by customers in the buying of lumber from the different districts?

A. There is in that respect.

Mr. MATTHEW. That is all.

Cross-examination by Mr. BURR:

Q. Mr. James, your customers are largely fabricators, are they?

A. Yes, sir.

Q. Do you sell to the man who builds a house?

A. No, sir; very seldom, if any.

Q. You do sell to retailers, do you?

A. We sell them some common boards and sugar-pine drain boards.

Q. What percentage would you say you sell to retailers?

A. In footage?

2651 Q. In percentage of total sales.

A. Very small percentage.

Q. Do you understand the California white pine to be a genuine white pine?

A. To be what?

Q. A genuine white pine.

A. Not necessarily; no, sir.

Q. Do you understand sugar pine to be a genuine white pine?

Mr. MATTHEW. You mean monticola?

Mr. BURR. I mean in the common designation of the word white pine, as was testified to by the last witness that the word "white" meant not only the botanical distinction but also meant a popular distinction.

Q. Do you classify California white pine as a genuine white pine?

A. I do not consider it so; never understood it was.

Q. You referred in your testimony constantly to the word white pine without the word "California." Is that the way the trade uses it?

A. In our trade practically all of the pine comes from California and southern Oregon and we do not go to the trouble of calling it California white pine. They designate it as white pine and sugar pine—cut it as short as possible.

Q. Do your customers come in and ask for white pine?

A. They do.

Q. They don't ask for California white pine?

2652 A. No, sir.

Q. And by that you understand them to mean California white pine, of course?

A. Yes, sir.

Q. Is that true?

A. Yes, sir.

Q. Now, then, do you understand that sugar pine is a genuine white pine?

A. I have understood that it was, botanically; yes, sir.

Q. In other words, the word California white pine means not a genuine white pine, and the words sugar pine refer to a genuine white pine. Is that true?

A. Botanically; yes, sir.

Q. You do know something about the northern white pine, do you?

A. Yes, sir.

Q. You have handled it?

A. Yes, sir.

Q. In your eastern business?

A. Yes, sir.

Q. Do you regard that as being a more closely akin, related to the sugar pine or to the California white pine?

A. More likely sugar pine.

Q. You think your customers understand that California white pine is not a genuine white pine?

A. We have never had the question brought up.

Q. Do you think your customers understand that sugar pine is a genuine white pine?

2653 A. Is a true white pine?

Q. Yes.

A. I don't know the question has ever come up or that it has been discussed. I do not think that there would be one out of one hundred that would know the different names of the woods, the botanical names.

Q. But it doesn't follow that they might not know the common classification of white pines and yellow pines, does it?

A. No.

Q. Did you ever have anybody ask for yellow pine, meaning California white pine? You never had that happen, did you?

A. The only instance that I recall is that once in a while we get a specification from the school board requesting a price on yellow pine.

Q. And by inquiry have you found that out to mean California white pine?

A. Yes, sir.

Q. Do you ever sell California white pine for pattern purposes?

A. No, sir.

Q. Why is that?

A. I don't consider it is the wood for that purpose.

Q. Why not?

A. Because the sugar pine is a softer wood and is more adapted for that purpose.

Q. Do you find you are able to make a greater profit on sugar pine or on California white pine?

2654 A. No difference.

Q. The sugar pine goes to a higher rate and you sell it for a higher rate?

A. Yes, sir.

Mr. BURR. That is all.

Redirect examination by Mr. MATTHEW:

Q. Mr. James, when you purchase lumber from one of the manufacturers, producers of California white pine lumber, under what name is it invoiced to you?

A. The majority of the white-pine mills invoice it as California white pine. In some instances they add in parenthesis "Pinus ponderosa." Others put in the trade name.

Q. The term California white pine always appears on the invoice?

A. Practically so, with one or two exceptions, possibly one or two mills.

Q. Do you find that your customers are interested particularly in the botanical names of the trees, or in the names of lumber, or primarily in the quality and use of the lumber?

A. The quality and use to which it is to be put.

Mr. MATTHEW. That is all.

Mr. BURR. Just one question: Do your invoices sometimes not read "white pine" without the word "California"?

The WITNESS. I don't recall an instance.

Examiner DE BRULER. You are excused

(Witness excused.)

2654-A (Here followed remarks off the record.)

Examiner DE BRULER. We will adjourn until January 31, 1930, at 10:00 o'clock a.m.

(Whereupon, at 5:00 o'clock p.m., an adjournment was taken until January 31, 1930, at 10:00 o'clock a.m.)

2654-B Docket No. 1620 to 1689, inc.

SAN FRANCISCO, CALIFORNIA, *January 31, 1930.*

Met pursuant to adjournment 10:15 a.m.

Before Ellis De Bruler, examiner.

Appearances:

Eugene W. Burr, for the Commission.

McCutchen, Olney, Mannon & Breene (Mr. *Mr.* Allen P. Matthew and Carl I. Wheat) for the respondents.

*Colloquy*

Examiner DE BRULER. If the parties are ready, we will proceed.

Mr. MATTHEW. If the examiner please, I think that shortly before the adjournment of the session yesterday afternoon I had offered for the record a copy of the report of the United States Department of Commerce bearing the caption "Lumber, Fourth Edition, Simplified Practice Recommendation R 16-29", dated July 1, 1929.

Examiner DE BRULER. Are there any particular portions of the bulletin you wanted to introduce?

Mr. MATTHEW. As I recall, counsel asked me to specify the particular matters in the bulletin which I wished to introduce.

Examiner DE BRULER. Yes.

2655 Mr. MATTHEW. I may say that I have no objection to its being received for all purposes for any use which either the Commission or the respondents may make of it, but I desire to specify the following in particular:

Examiner DE BRULER (interrupting). I understand it to be the desire of the Commission that only certain portions as are relative to the issues be referred to.

Mr. MATTHEW. That is agreeable to me. I offer it for the text which appears upon page III, as roman numerals, in the introductory portion of the pamphlet; also page IV, roman numerals, immediately following; also page V, roman numerals, and page VI, roman numerals.

I may state that upon those pages we find a list of the associations, manufacturers, individuals, and others who are listed here as having accepted the simplified practice recommendations which are found in the pamphlet. There are on page VI a list of those who are stated to have accepted the recommendations "in principle."

I offer it further for the text appearing upon pages 1—these numbers which I am now giving are Arabic numbers—pages 1, 2, 3, 26, 27, and 28.

In order that my purpose may be as specific as possible, may I direct attention to the fact that upon page 1, in the introductory paragraph, we find the recommendation that nomenclature and other matters listed there should be established as follows: Then
2656 follows the various recommendations under the caption of "American Lumber Standards."

And upon page 28, and that is what I desire specifically to bring to the attention of the examiner at this time, we find that the standard commercial name "California white pine" is the preferred name for the Pinus ponderosa and Pinus jeffreyi.

I make that tender.

(Here followed remarks off the record.)

Mr. BURR. If the examiner please, I think the only part to which I shall take objection is the part on page 27 and 28. You didn't offer 29?

Mr. MATTHEW. No.

Mr. BURR. I object to that part insofar as it relates to anything besides the true pines. I think this is subject to the same objection that counsel is trying to bring in here the misnomers, or supposed misnomers, in cedars and junipers, cypress, Douglas fir, true firs, and all of these other trees that have nothing to do here with the issues. And it seems to me that all that should be offered, from page 27 and 28, is that portion on page 28 under the little caption "Pines." I object to the introduction of the other material on pages 27 and 28.

I further object to the material with regard to size classification merely for the purpose of not having the matter encumber the record unnecessarily. I don't think it is very vital.

2657 Mr. MATTHEW. If the examiner please, as to the objection which counsel has made, which is addressed to the matter appearing upon page 27: Of course, this is obviously initially, and I take it the examiner will give it some consideration at this point. we are not confronted with the question of putting a lot of matter upon the transcript of the record. We have a pamphlet which is to be received for certain purposes. But I object fundamentally to the attempt to limit my tender so that it will exclude the trade names, or standard commercial names, of trees which appear upon page 27 of that pamphlet. I, of course, acquit counsel readily from any conscious attempt to misunderstand my purpose. We are not trying other woods; that is perfectly obvious. But one of the great broad

generic issues here is that whether or not there is any impropriety, whether or not there is a tendency to confusion in the fact that a commercial name for lumber may differ either from the botanical name or from the popular name of the tree from which it is produced. For example, it is no indictment of the manufacturers, or the distributors, of Oregon pine, so called, that it happens to come——

Examiner DE BRULER (interrupting). Let me ask, do you expect to go into that question—that has been ruled on—when you call your witnesses?

Mr. MATTHEW. Do I expect to go into that?

Examiner DE BRULER. Yes.

2658 Mr. MATTHEW. I expect to, and there is no question about it, and what Your Honor's ruling will be, of course, I do not at this time know; but I do not wish the impression to gain lodgement in Your Honor's mind that we are suggesting that somebody else is just as bad as we are accused of being, or that there are other misnomers in the industry, misnomers, so called. Our point is that it is entirely proper to have a commercial name for lumber which may be entirely different from the name of the tree in the forest, entirely proper, and one of the bits of evidence going to that proposition is found in this pamphlet, recommendations of the Department of Commerce, following conferences which were detailed at great length by an expert witness for the Commission yesterday, that there be certain recommended commercial names.

Examiner DE BRULER. I will let that in with the understanding that it be subject to Mr. Burr's motion to strike upon getting a ruling from the Commission.

Mr. BURR. If the examiner please, it seems to me that the consistent ruling at this time, in harmony with Your Honor's ruling yesterday is this: That this also should be excluded, as the other kindred matter was excluded, pending the examiner's ruling. In other words——

Examiner DE BRULER (interrupting). As I understand it, that is so intermingled that it cannot be separated.

Mr. BURR. Not at all! I invite your attention to

2659 page 28. You will find there is a heading there which says——

(Here followed remarks off the record.)

Examiner DE BRULER. Any part of this exhibit, which will be marked "Respondents' Exhibit No. 31", will be accepted that refers to pines and the remainder of it rejected.

Mr. BURR. Do I understand Your Honor to specifically reject all parts of page——

Examiner DE BRULER (interrupting). That is a general ruling that only that is admitted which relates to pines.

Mr. BURR. I think the exhibit should be marked as to what counsel has offered.

Mr. MATTHEW. If the examiner please, before that ruling becomes final, I think it is important that there be some discussion upon this record as to the limits of the rights of the parties in this case.

Your Honor will recognize that I am not wanting indefinitely the rulings of the examiner throughout this case, and I do not wish to seem unduly persistent in urging that a position which we take receive favorable recognition, but it is important that the purpose of our tender be understood, and that the effect of the limited ruling which counsel for the Commission has earnestly pressed upon you, should likewise be understood.

It is impossible clearly to appreciate the issues involved in this case which, of course, expressed narrowly are as to the proper
2660 commercial nomenclature of lumber yielded by the Pinus ponderosa tree, without having some appreciation of the commercial practice in designating lumbers yielded by other trees. If it is proper to admit the commercial names of other kinds of pine lumber, such as the various yellow pines, if you will, the various pines shown upon page 28, to which counsel has offered no objection, why is it not equally appropriate to broaden the list to include all of the pines of the coniferae, if you please? Why not firs, and larch, cedars, and other members of that general family?

One of the important lines of evidence which we expressly wish to urge upon the Commission, which we expect to argue eventually at Washington—I assume this case will reach the state of argument some day—is that it is not only proper, but essential, that lumber receive a commercial name which designates its quality and the uses to which it is best adapted, and that the mere acts of botanical nomenclature or of the popular names which happen to be given to the tree as it is in the woods, should not be the criterion for commercial nomenclature. That is the great broad issue which is bound to be in this case, and I think Your Honor should not restrict your ruling as narrowly as counsel has insisted.

Examiner DE BRULER. I will adhere to the ruling until we hear from the Commission on that subject, as an appeal has been taken to the Commission.

Mr. MATTHEW. Will the examiner permit an exception to be noted to the limitation upon our tender?

2661 Examiner DE BRULER. Decidedly so.

Mr. MATTHEW. And let it be understood that we may, if we are so advised, ask a reference to the Commission upon the point?

Examiner DE BRULER. Sure. This is your exhibit for identification no. 31?

Mr. MATTHEW. For the record.

Examiner DE BRULER. Then it will be received and so marked "Respondents' exhibit no. 31," as to the pines.

(Whereupon the pamphlet referred to was received in evidence and marked "Respondents' exhibit no. 31.")

Mr. BURR. It has been received subject to that limitation.

Examiner DE BRULER. Yes; that is right.

(Here followed remarks off the record.)

Mr. MATTHEW. I think it is now perfectly apparent, in view of the telegraphic advice which Your Honor has just received, that our exhibit no. 31 should be received for all of the purposes for which I did offer it, including the nomenclature appearing on page 27 and——

Examiner DE BRULER. That is not my understanding of the instructions and your offer is denied.

(Here followed remarks off the record.)

Mr. MATTHEW. I will call Professor Starker.

T. J. STARKER was thereupon called as a witness and, having been first duly sworn, testified as follows:

2662 Direct examination by Mr. MATTHEW:

Q. Mr. Starker, will you please state your full name and your place of residence?

A. T. J. Starker, Corvallis, Oregon, Oregon State College School.

Q. What is your position there?

A. Professor of Forestry.

Q. In the Oregon State College?

A. Oregon State College.

Q. What has been your education and your experience in forestry matters?

A. I received my bachelor's degree in forestry at the Oregon State College in 1910, received my master's degree at Ann Arbor, Michigan, and worked during the summer time while securing my college education for the Forest Service.

Immediately upon graduation I passed the examination for the technical grade of what they call the forest examiner, junior forester now, passed that grade and took employment with the district 6, Portland, Oregon, office. I spent about two years in timber reconaissance work, about five years in charge of timber sales in eastern Oregon, in work of the W. Eccles Stoddard Lumber Company sale, Baker White Pine Lumber Company sale, Oregon Lumber Company, and Nibley-Mimnaugh Lumber Company sales. I

2663 was then transferred to the Portland office and spent approximately three years there. Took the lumber census one year, was liaison officer between the Forest Service and the Spruce Division during the war and had charge of the gathering of aeroplane spruce cruises, for available amounts of aeroplane material.

In about 1918 I took a position as traveling secretary for the Western Pine Manufacturers Association, with headquarters in Portland, Oregon.

Q. What was the Western Pine Manufacturers Association?

A. That is an organization similar to the California White and Sugar Pine Manufacturers Association which operates in this ter-

ritory, and at that time had a membership of some 53 sawmills scattered from Bend, Oregon, to Leavenworth, Washington, east through the Spokane territory to Missoula, Montana. I believe that is the easternmost point.

I visited the mills many times during my connection with the Western Pine Manufacturers Association.

I also had charge of the Box Bureau, which was a branch of the association work.

Q. What was the nature of your duties as manager of the Box Department Bureau?

A. Within the Western Pine Manufacturers Association we had a smaller organization. Many of the mills belonging to the main association did not operate box factories, so that the mills which did have box factories attached to their plants formed a
2664 separate membership known as the Box Bureau and they paid their dues on a basis of the amount of stock that went into the boxes.

In 1922 I took a position as assistant professor at the Oregon State College, where I have been ever since, and was promoted the next year to associate professor, and the next year to full professorship.

Q. What subjects do you teach at Oregon State College?

A. Sylviculture, dendrology, wood identification, technology, lumber manufacture.

Q. Just what is meant by dendrology, Professor?

A. Dendrology is tree botany, to put it shortly.

Q. To what extent are you familiar with the lumber-producing sections of Oregon, Washington, and California.

A. Well, as I say, when I was connected with the Western Pine Manufacturers Association I travelled approximately fifty percent of my time visiting the mills of the membership and so became fairly well acquainted with the different mills and their operations, and the products that they produced.

I also forgot to state that one summer when I was with the Forest Service I had charge of the enforcement of the Weeks law, which is a cooperative agreement between the Forest Service and the Department of Interior in the protection of the lands taken back under the O and C land grant. So I travelled all that summer and——

Q. (Interrupting.) Are you familiar with the Klamath Basin section?

2665 A. Yes; I have visited mills at Klamath several times and McCloud, through that country.

Q. Do you know the lumber-producing section in the vicinity of Lakeview, Oregon?

A. One summer since I have been at the Forest School I spent in charge of a temporary reconnaisance party of the United States Forest Service and cruised several hundred thousand acres—I have forgotten the exact amount—in the Lakeview district east of Lakeview.

Q. And the Lakeview district is in southern Oregon, somewhat in an easterly direction from the Klamath Basin?

A. Yes.

Q. Have you some familiarity likewise with the redwood belt in California?

A. It is my custom, in order to acquaint my students with the various lumber-producing regions, to take them on a trip each spring. We have made two trips into the redwood region.

Q. Have you made any special study of the lumber which is yielded by Pinus ponderosa?

A. Well, as I say, in connection with my association work, I visited these plants and with the Forest Service was connected with two mill-scale studies. Mill-scale study, I want to make it clear for the record, is a method the Forest Service has of going at the determination of grades produced from different grades of logs.

2666 The logs are scaled on the mill deck usually by the best scaler available, and the lumber produced from that particular log is kept separate from other logs and is graded by as good a grader as the Forest Service can secure, and then a tabulation is made of the grades resulting from certain grades of logs.

Q. Then you know this tree in the forest and you know the products of the tree, do you, Professor?

A. Yes.

Q. You are familiar with the botanical classification of the pines?

A. Yes.

Q. Can you tell us just how the botanic classification is made; that is, how the grouping is determined?

A. Well, of course, I don't know what the original botanists, how they made their differentiation, but most keys in books on dendrology separate the pines on the basis of the number of needles in the fascicle or bundle. Primarily, of course, botany is based on the floral characteristics; but in trees like the conifers, the floral characteristics are very hard to distinguish, and whether or the original botanist used that or not I am not sure.

Q. Taking the botanical classification as it exists today, what are the criteria which determine the grouping of the several pines?

A. As I say, most dendrologists base their key on the number of needles in a bundle.

2667 Q. Is that true in the classification of the white pines and yellow pines, so called?

A. Yes.

Q. Are most white pines five-needle pines?

A. Yes.

Q. Is that true of all of the so-called white pines?

A. There are two pines which have five needles, which botanists do not put in the white-pine classification—Pinus torreyana and Pinus arizonica.

Q. In what class are those pines placed?

A. The hard pines, or yellow-pine group.

Q. Are all yellow pines characterized by three needles?

A. They are not.

Q. What exceptions are there?

A. There are many exceptions. Norway pine, for instance, has two needles; some of these southern pines in the southeast have two and three needles. If you only make two groups, you have the Pinus monophylla—and they are sometimes broken up into the pinon class—and Pinus quadriofolia. In other words, the pines vary from one needle to eight needles per bundle.

Q. In botanical nomenclature is any consideration given to the quality of lumber yielded by the tree, or to the uses which that lumber may be especially adapted?

A. I think not.

Q. Pinus ponderosa is classified by the botanists as being
2668 within the yellow-pine group, so called, generally?

A. Yellow-pine group; yes.

Q. As far as the color of its lumber is concerned, does it properly belong in the yellow-pine group?

A. The color of the lumber of Pinus ponderosa is a creamy to reddish cast, but it hasn't that distinctly reddish-yellow characteristic of the true southeastern pines—the Pinus palustris, slash pine.

Q. Is it frequently lighter in color than the lumber of so-called white pines?

A. In the Forestry Building at Corvallis we have a complete collection of indigenous American woods and some foreign woods, and about seven years ago we collected these specimens and the Pinus monticola board is a very much redder color than the Pinus ponderosa board. That is merely one example.

Q. May I ask you, Professor, whether the term "white pine" and "yellow pine" are true botanical terms?

A. I would say not.

Q. What is their nature?

A. They are just a handy method of dividing pines.

Q. Are the terms either botanical or technical in character?

A. They are more for popular consumption.

Q. Have you with you, Professor, copy of bulletin no. 556, which has been received in evidence in these proceedings?

A. Yes; I have a copy.

2669 Mr. MATTHEW. May I explain to the presiding examiner that this bulletin no. 556 is a bulletin of the United States Department of Agriculture entitled "Mechanical properties of woods grown in the United States." This bulletin was received in evidence at the hearing at Madison before Examiner Sheppard.

Examiner DE BRULER. It is already in evidence?

Mr. MATTHEW. It is already in evidence; yes.

Q. I will ask you, Professor, if you have made any analysis of the statistical data found in that exhibit relating to the mechanical properties of woods, and, particularly, of pine lumber?

A. I have.

Q. What is the nature of the analysis which you have made?

A. I merely extracted from this bulletin the outstanding mechanical properties of three yellow pines, being Pinus ponderosa, and three white pines.

Wood technologists base many of the properties of wood upon its specific gravity. That is in the first column.

I might say, in explanation, that there is only one way to judge the specific gravity accurately and that is in its oven-dry condition. In other words, if it had any moisture in it it might be variable, but in an oven-dry condition—by that I mean wood which has been in an oven at least 100 degrees Centigrate or 212 degrees
2670 Fahrenheit until it ceases to lose weight—the specific gravity of Pinus ponderosa is .42.

Mr. BURR. If the examiner please, can't we shorten the record by just referring to the exhibit, if counsel is going to offer that?

Mr. MATTHEW. This will be brief.

Mr. BURR. I don't think it ought to go in the record twice.

Examiner DE BRULER. I don't care to interfere with the manner in which counsel wishes to introduce that in the record.

By Mr. MATTHEW:

Q. Proceed.

A. Pinus ponderosa has specific gravity of .42 of what an equal volume of water would weigh. You will notice that it is less than the specific gravity of Pinus monticola.

Q. Have you dealt similarly with the statistical data showing the volume and shrinkage from green to oven dry, the modulus of elasticity, hardness, and other elements which you found in that table dealing with mechanical properties?

A. I have. Volume shrinkage for Pinus ponderosa is again less than Pinus monticola. And the modulus of elasticity for Pinus lambertiana shows a less measure of stiffness than Pinus ponderosa. In hardness and end grain, Pinus ponderosa is exceeded by——

Mr. BURR. I object. The record will show all these things by the exhibit. Why put it in twice?

2671 Mr. MATTHEW. Let him finish the sentence.

Examiner DE BRULER. I don't like to interfere with the manner in which counsel produces his record. Objection overruled. Proceed with the examination.

By Mr. MATTHEW:

Q. Proceed, Professor.

A. In hardness and end grain, the Pinus ponderosa is exceeded by Pinus lambertiana and Pinus monticola.

Q. You have set up, in comparative form, the data to which you have just referred?

A. Yes.

Q. I will ask you this general question: In relation to the comparative mechanical properties of the wood, does the lumber yielded by the Pinus ponderosa belong more appropriately in the white-pine group or in the yellow-pine group?

A. These mechanical properties of Pinus ponderosa, in every test, it falls within the limits as set by the white-pine group, and is very far removed from the average of the yellow pine.

Q. In your opinion, were a sufficient number of tests made, as shown in bulletin no. 556, to obtain results which may be regarded as reasonably reliable and informative?

A. I know not, of course, of the selection of this material. The number of trees listed, of course, is indicated here and with Pinus ponderosa there were 25 different trees tested, which is next to the highest, Pinus palustris being 34.

2672 Q. You have shown that on your statement, and it appears in the bulletin?

A. Yes.

Q. I think we need not go into that further. This statement [indicating] is compiled by you personally?

A. Yes, sir.

Q. And is it correct to the best of your knowledge and belief?

A. It is.

Mr. MATTHEW. We desire to offer this statement [indicating] in evidence, concerning which this witness has just testified.

Examiner DE BRULER. That will be respondents' exhibit no. 32, offered in evidence, and it is accepted.

(The statement referred to above was thereupon received in evidence and marked "Respondents' Exhibit No. 32.")

By Mr. MATTHEW:

Q. Professor Starker, have you, upon my request, made any review of the Commission's exhibit no. 32-A, as received in evidence in this proceeding?

A. I have.

Q. You are familiar with the exhibit and have analyzed it?

A. Yes, sir.

Mr. MATTHEW. May I add, Mr. Examiner, that that exhibit was received at the Madison hearing, and was offered on the part of the Commission.

2673 Q. Professor, that exhibit deals with the comparative specific gravity of the various pine woods?

A. Yes.

Q. And likewise with the variability of such specific gravity in individual specimens?

A. Of individual species, not specimens.

Q. I should have said that; yes. Have you made any analytical comparison of the specific gravity of the various kinds of pine lumber shown on that exhibit?

A. I have.

Q. Have you undertaken to compare the specific gravity of the Pinus ponderosa lumber with the specific gravity of other pine lumbers with respect to variability in range?

A. Yes, sir.

Q. Will you please state briefly the results of that analysis?

A. This exhibit was prepared by the Forest Products Laboratory, and I will deal with table 2 first. It lists the three white pines first. Their average specific gravity there is .355. The last three species listed as the three southern pines, or three of the southern pines. Their average is .492.

Q. Are these three southern pines the most important pines from the point of view of commercial lumber production?

A. Pinus palustris is the outstanding southern pine, as I understand it. Echinata is probably second; teda is also important.

2674 Yes; they are three of the most important. Their average is .492. The variation between the white pines and Pinus ponderosa is .018. The variation with the true southern pines, or the southern pines without the "true", is .119, or approximately six times greater variation.

In table 3, which is merely a variation of table 2, inasmuch as the specimens were taken at different heights in the tree, I did the same averaging and, to make it short, will say that Pinus ponderosa varies from the true white pines by .011; the variation with the southern pines is .133, or a difference in variation of 13 is to 1.

Q. What conclusions do you derive from that analysis as to the place which the Pinus ponderosa lumber occupies in the scale is to be more nearly assimilated to one group than to the other?

A. It has very little variation from the true white pines, and a very wide variation from the true yellow pines. That is very clearly indicated on the second sheet of the Commission's exhibit, as a line drawn perpendicular would fall very nearly through the center of the four first listed woods.

Mr. MATTHEW. The witness is now referring to a chart which was received in evidence at the same time and offered by counsel for the Federal Trade Commission and received as Commission's exhibit no. 32-B.

The WITNESS. One interesting thing that I picked out of this exhibit that of all the pines, all the seven pines tested, the

2675 softest or the specimens with the least specific gravity, were of Pinus ponderosa wood.

By Mr. MATTHEW:

Q. That concludes your comment on that exhibit?

A. Yes.

Q. Is there anything in these tests dealing with the mechanical properties of the woods which bears upon the suitability of the Pinus ponderosa lumber for pattern making?

A. I am not a pattern maker. I visited pattern shops. One of the things they insist upon is shrinkage, and, as indicated by these United States Forest Service tests, Pinus ponderosa has a less volume shrinkage from green to oven dry than some of the white pines.

Q. Does that element bear upon the suitability for pattern-making purposes?

A. Yes. In other words, its shrinkage is less; and, as I say, I visited certain pattern shops and they use it.

Q. When you stated that they insist on shrinkage, you mean they desire a wood which has as little susceptibility to shrinkage as possible?

A. Yes; that will allow shrinkage and swelling and thus deform their pattern after it is made.

Q. Have you seen patterns made out of Pinus ponderosa lumber?

A. Yes.

Q. Where?

A. Spokane.

2676 Q. Professor, there has been some testimony in this record as to the relative durability of Pinus ponderosa logs and Pinus lambertiana logs, respectively, when they are on the ground in the forest. I will ask you to state whether, in your opinion, any data or impressions as to the relative durability of the wood under those conditions can afford a criterion as to the durability of the wood when in the form of lumber and in use.

A. Well, any observations taken in the woods under those conditions would be very open to suspicion, and when the wood is used commercially I wouldn't say that this enters in.

Q. Will you explain just why not a little more clearly?

A. Well, two trees may fall at the same time in the woods and one may be rotten when it fell; one may have much more sapwood than the other; one may fall in a very moist place and, therefore, not decay rapidly. Another is subjected to alternating wet and dry conditions. There are so many factors—one is on a north slope and one on a south slope—there are so many factors that enter into decay that unless there were the same conditions prevailing in both cases the resulting conditions might be in error.

Q. Take the case of dead standing timber in the forest and the relative decay of different trees—can we obtain from any such information a proper criterion by which to determine the durability of the wood as lumber and in use?

A. Wood in use?

2677 Q. Yes, as lumber. That is, in place in a building either on the inside or the outside under normal conditions of the use of lumber?

A. I wouldn't test it that way if I were going to use a piece of lumber.

Q. The purpose of my inquiry is this: Have these illustrations any real relation to the durability, either absolute or relative, of lumber?

Mr. BURR. I suggest that is a leading question.

Examiner DE BRULER. Objection overruled.

A. I wouldn't recommend either one, any of the pines as I know them, for durability, and when I speak of durability I mean in the technical sense in contact with the ground.

By Mr. MATTHEW:

Q. I am not sure your answer is quite responsive. My question is, whether these tests, if we may call them tests, have any real bearing upon the determination of the durability of the lumber?

A. When you speak of durability, there might be a general conclusion drawn, but I say it would be open to criticism, because these factors, various factors, are not shown.

Q. Are you familiar with any data obtained from careful tests of scientific experiments of any kind, which would enable you to state whether, in your opinion, sugar pine lumber is more or less durable than California white pine lumber?

2678 A. The Forests Products Laboratory send us a copy of all their technical notes and we had one listing the various woods with a percentage, I believe, based on white oak——

Mr. BURR (interupting). Is that the one that was objected to and didn't go in?

Mr. MATTHEW. The witness is referring to 173, that was withdrawn.

Mr. BURR. Don't go into that.

Mr. MATTHEW. I didn't intend to. The answer may go out. I don't think it is responsive.

A. I know of no such tests.

By Mr. MATTHEW:

Q. Coming back, for a moment, to the question of nomenclature of lumber, I desire to ask you, Professor, whether there is any warrant for the assuming that a name, which appropriately designates a tree in the forest, is the most appropriate term for the designation of the lumber which the tree yields?

A. No.

Q. Why not?

A. As I stated before, the botanical classification is based on flowers, or fruits, or a number of needles in a fascicle, and botanists in general have not delved into the qualities of the wood.

Q. Now, passing from botanical nomenclature to merely the popular nomenclature, is the common or provincial name, if I

2679 may so term it, necessarily properly indicative of the lumber?

A. No.

Q. Why not?

A. The tree under discussion, Pinus ponderosa, is known by the Forest Service as western yellow pine. I believe in the popular mind, which is rather a transient thing perhaps, when they think of yellow pine they think immediately of a hard, dense, structural piece of material which Pinus ponderosa is not.

Q. The popular name of the tree may be given to it for many reasons, having no relation to the character or quality of the lumber?

A. Yes, sir.

Q. Are there many popular names for trees, pines and others, which are inaccurate and which vary in different localities?

A. The best summation is the check list, which lists these names, and there are many.

Q. The check list you are referring to is the check list of the Forestry Department of the United States Government, compiled by George B. Sudworth?

A. Yes.

Q. Is lumber uniformly or commonly marketed under trade names which correspond at all with botanical names?

A. No.

Q. Is it uniformly marketed under trade names that correspond with the common names of the trees in the forest?

2680 A. Some are and some are not.

Q. How long have you been familiar with the term "California white pine", Professor?

A. I probably became acquainted with that term when I went with the Western Pine Manufacturers Association in 1918; probably knew it before.

Q. Is the term well established and well known?

A. I think so.

Q. If this name were replaced by a name which suggests yellow pine, would it in your opinion be calculated to cause confusion, or would it be in the interests of eliminating confusion?

Mr. BURR. May I interpose an objection?

Examiner DE BRULER. Objection overruled.

A. Yes; I think it would cause confusion.

By Mr. MATTHEW:

Q. Why?

A. As before stated, the lumber dealers, when we say "yellow pine" to them, expect an entirely different article than that which is produced by Pinus ponderosa.

Q. To what particular uses, Professor, is Pinus ponderosa lumber best adapted?

A. Well, one of its outstanding uses is in the shop or cutting-up type for the manufacture of sash and doors, moldings, and the interior trim; much of it is used in exterior trim, moldings, cornices,

porch work, that is the upper parts of porch work—
2681 not flooring—and things of that character.

Q. Are there uses generally speaking identical with those with which the lumber of so-called true white pines is employed?

A. I am not very familiar with sugar pine, but Idaho white pine is a very poor shop type of tree as produced in the woods today.

Q. Why is that?

A. It doesn't produce the cutting type of lumber.

Q. What is the physical characteristic of the tree which makes it impossible to produce the shop type of lumber in any volume?

A. It has too many scattered small knots, while the Pinus ponderosa knots are much larger and, therefore, there are clear cuttings between the knots.

Q. In your opinion, Professor, is the trade in any respect confused by giving to this lumber yielded by the Pinus ponderosa tree a trade name which suggests white pine?

Mr. BURR. I think that is objectionable because that is the very thing that is to be determined.

Examiner DE BRULER. I think that was gone into by counsel on the other side. Objection overruled.

Mr. BURR. I withdraw the objection.

A. I think the people who consume Pinus ponderosa lumber know what they are getting when they get California white pine.

By Mr. MATTHEW:

Q. You have stated, Professor, that in your opinion, which is based upon analysis in part of the mechanical properties of
2682 these woods, the lumber yielded by Pinus ponderosa trees falls more closely within the lumber of the white-pine group generally than in the lumber yielded by the yellow-pine groups?

A. Yes.

Q. I will ask you to state whether, in your opinion, a trade name which suggests white pine is appropriate for this lumber?

A. I think so. You said trade name?

Q. I mean by trade name, a commercial name by which the lumber may be introduced in the industry and offered to purchasers. And I will ask you this further question, whether in your opinion there is anything misleading in the term which is employed to designate this lumber, California white pine?

A. No.

Q. Why not?

A. As I pointed out, its properties, as a wood, are within the bounds of the true white pines, its uses are very similar, and it is very dissimilar to the yellow-pine group in its wood.

Q. Are its natural uses likewise such as to bring it within the white-pine group of lumbers?

A. It is used for practically all of the purposes that the white-pine group is used for and, with the exception that I already noted, it produces better shop than Idaho.

Q. Do you know whether California white pine and sugar pine are commonly segregated into grades of common lumber?

A. I am not aware of that fact.

2683 Q. Are you familiar with the pine known as lodgepole pine?

A. Yes.

Q. What is that pine?

A. Lodgepole is Pinus contorta, and lumbermen also call it black jack, a tree that never gets very large, but in my experience with the Forest Service my instructions were, and I think I followed the instructions, to mark every tree that was merchantable, that is, that would produce a log of the minimum size. It never grows large.

Q. There has been some testimony here, Professor, as to the mechanical proprerties of sap and heartwood respectively. I will ask you to state whether, in your opinion, there is any difference between the mechanical properties of the sap and heartwood of the pines, particularly we will say, of the Pinus ponderosa?

A. I would have to go at that through a technical note which deals largely with hickory. Mr. Ivory mentioned it yesterday.

(Here followed remarks off the record.)

By Mr. MATTHEW:

Q. Forgetting hickory for a moment, I will ask you to state the basis for any conclusion which you have reached as to the mechanical properties of sap and heartwood, respectively.

A. In the summation of this technical note, which I just referred to, the Forest Products Laboratory said that as the result of some, either hundreds of thousands or a million tests, that they

2684 had found no difference between heart and sapwood when of the same character. In other words, as brought out under the discussion of durability of two logs in the woods, there are many variable factors, so that you would have to have the same number of rings and the same structure, etc., but there is no change in its mechanical property from sapwood to heartwood.

Mr. BURR. Let me ask a question: Those tests were all hickory?

The WITNESS. No.

Mr. BURR. What were they?

The WITNESS. I think in all woods. This particular note was on hickory pointing out to the lumber man that he was in error in picking out white hickory handles all the time because the red hickory handles out of the heart was just as good if of the same class of material.

Mr. BURR. But these large number of instances——

The WITNESS (interrupting). Many woods.

Mr. BURR. Many woods?

The WITNESS. As I understand it; yes.

By Mr. MATTHEW:

Q. Including the pines?

A. I think so.

Mr. BURR. Has that been published?

The WITNESS. Yes. I don't know the number. It is a technical note.

2685 Examiner DE BRULER. Does that include the pines or not; do you remember?

The WITNESS. There was no specific reference to pines in it.

Examiner DE BRULER. Was there any specific reference to woods?

The WITNESS. Yes; hickory.

Examiner DE BRULER. That is all, was it?

The WITNESS. But it stated the number of tests, and that was in the hundreds of thousands; it might have been a million.

By Mr. MATTHEW:

Q. Professor, there has been a great deal of testimony in this case as to the relative proportions of sapwood and heartwood in the different kinds of pines, Pinus ponderosa being contrasted with certain of the white pines. Have you prepared any chart which illustrates the relative proportions of sap and heart wood?

A. I have.

Q. Will you produce it, please?

A. (Witness produces chart.)

Q. What suggested the preparation of that chart which you have just produced?

A. If you remember, Mr. Examiner, at Spokane Mr. Lawrence introduced two charts showing the percentage of sapwood in Pinus monticola and Pinus ponderosa. I may be in error in the dimensions that he put on there, because it is from memory and I

2686 didn't put it down, but I am fairly sure that he used 1¾ inches for a sap ring of Pinus monticola and 3 inches for Pinus ponderosa. If those figures are right, that would indicate that Pinus monticola had 30 percent volume of sap and Pinus ponderosa had 48 percentage of sap; 30 percent of sap in Idaho and 48 percent sap in Pinus ponderosa.

But where I would disagree with Mr. Lawrence is that the logs don't come to the mill in equal size, and so I prepared an addition on the chart based on the fact that in Pinus strobus the logs come to the mill 20 or 25 logs per thousand, and the Pinus montincola in the Couer d'Alene region comes to the mill 15 logs per thousand, and Pinus ponderosa comes to the mill about 5 logs to the thousand. Some California operators would disagree with my 5 logs to the thousand, I understand, because their logs average larger than that.

Examiner DE BRULER. This is your testimony?

The WITNESS. Yes. But on that basis Pinus strobus would indicate a 60 percent of sap, Pinus monticola 53 percent, and Pinus ponderosa 55 percent.

I might state, Mr. Examiner, while at Ann Arbor I visited the white pine mills at Manistee, Michigan, and they were sawing logs 3 inches in diameter, hauling them 125 miles, and so crooked that when the head saw went through there were three pieces on the head rig instead of two. In that case the smaller the log the larger the amount of sap, the percentage of sap would be.

2687 By Mr. MATTHEW:

Q. And conversely, Professor, the larger the log the diameter, the lower the percentage of sap to the total amount of wood in the tree?

A. It would gradually decrease.

Mr. BURR. Did you say 3 inches in diameter they were sawing?

The WITNESS. Yes.

Mr. BURR. Do you call that a log?

The WITNESS. They were hauling them 125 miles, as I remember.

(Here followed remarks off the record.)

The WITNESS. Out of those logs they were making slack cooperage.

By Mr. MATTHEW:

Q. Your note refers to Pinus strobus in that connection?

A. They were sawing 4- or 6-inch logs.

Q. Of strobus?

A. Yes.

Mr. BURR. Is that chart being offered?

Mr. MATTHEW. I desire to offer in evidence the chart which the witness has testified about.

Mr. BURR. Before it is received, may I ask a few questions?

Mr. MATTHEW. Certainly.

By Mr. BURR:

Q. Now, where did you get that middle figure, Professor?

2688 A. Col. Greeley testified, as I remember, that the logs in the New England States were coming to the mill 20 or 25 logs per thousand. Professor Cheney testified that on a particularly good tract of timber, Pinus strobus, the logs were being cut from 4 inches to 24 inches.

Q. You mean in New England?

A. And also my experience at Manistee indicates they are quite small.

Q. That isn't virgin timber, is it, such as still exists in Minnesota?

A. I am not aware of Minnesota, but in Michigan there are only two tracts of virgin white pine left, as I understand it, one of 70 acres, the Grayling tract, and the other, I have forgotten the name—260 acres.

Q. There is still virgin strobus in quantity in Canada, is there not?

A. I think so.

Q. Now, that doesn't represent virgin Pinus strobus?

A. No; I think not.

Q. Do you think that the sap ring in the second growth of strobus is one and three quarter inches on that small size?

A. Well, I am not very familiar with Pinus strobus, but Mr. Lawrence testified, when he offered those exhibits, that it will vary very little as to the size of the tree, and I think that is true.

2689 Q. You think the sapwood is a constant in the white pines as the trees grow older?

A. Not exactly constant, it will probably decrease as the size gets larger, but it is slight.

Q. Decreases not only in proportion, but also in actual width, do you mean?

A. No; in proportion. It will vary very greatly between these. These are average figures [referring to chart] as thus arrived at.

Q. Where did you get the fourth figure, beginning at the left hand of the chart?

A. I think it was Mr. Klop that testified that the logs coming into the Couer d'Alene area would average about 15 logs per thousand.

Q. Well, there is other testimony, you are aware, that they are very much larger than that, is that not true?

A. I didn't hear it.

Q. You are aware that that is a very small Pinus monticola tree for virgin timber, are you not?

A. Yes.

Q. The monticola lumber on the market is largely virgin monticola, isn't it?

A. They get some small logs all through the Couer d'Alene region.

Q. You wouldn't say that is an average for virgin monticola being cut in the inland empire, Professor, would you?

2690 A. I based it on that testimony that the logs coming into the Couer d'Alene region was a large percentage of the logs logged in that area, about 15 logs per thousand.

Q. You wouldn't regard that as a typical size for virgin monticola, would you?

A. For that region, yes.

Q. For that region?

A. Yes.

Q. Are you familiar with selected logging, Professor?

A. During the war we selectively logged spruce, yes.

Mr. MATTHEW. Just a moment! I have no objection to counsel eliciting information, but this is not the time for cross-examination.

Mr. BURR. If the examiner please, it seems this leads up to a proper objection that this is not a representative chart and would not tend to clarify the issues.

Examiner DE BRULER. The chart may be admitted as a part of this witness' testimony and exception noted.

Mr. BURR. I think I have the right to ascertain whether it is valuable and appropriate.

Examiner DE BRULER. You have the right, but the chart will be admitted as part of the testimony.

Mr. BURR. I would like the record to show that my objection was timely and I desire to have it considered as being prior to the

2691 ruling, although it should appear in the record as subsequent to the ruling.

Examiner DE BRULER. It is admitted subject to the question.

Do you offer this as your exhibit no. 33?

Mr. MATTHEW. Yes; we offer it as an exhibit.

Examiner DE BRULER. It may be admitted as part of this witness' testimony, and it will be marked "Respondents' Exhibit No. 33."

(Whereupon the chart referred to was received in evidence and marked as "Respondents' Exhibit No. 33.")

Mr. MATTHEW. I think it should be understood that the chart which has been received at the earlier hearing showing Pinus monticola logs as being 21 inches in diameter was itself not representative.

Examiner DE BRULER. Those charts are part of the records and speak for themselves.

Mr. BURR. May the record show that I object on the ground that the witness' testimony shows that it is grossly misrepresentative of the actual situation?

Examiner DE BRULER. The record will show that is your statement.

By Mr. MATTHEW:

Q. Before leaving this chart, which has been received in evidence as respondents' exhibit no. 33, let me ask you, Professor, whether the two figures which appear in the left-hand portion
2692 of the chart, showing a cross-section of Pinus monticola and Pinus ponderosa, are your figures, or whether they were merely reproduced from the chart offered in evidence on the part of the Government?

A. I will say they are from memory, and to the best of my knowledge and belief they are the ones, the widths used by Mr. Lawrence's exhibit.

Q. I will ask you this: Whether in your opinion a diameter of 21 inches is a representative average diameter for Pinus monticola logs as they go to the mill in the Pinus monticola section?

A. Too large.

Q. Professor Starker, would an 8-inch board—that is, a board 8 inches in width—be a representative board of the lumber of Pinus ponderosa tree?

Mr. BURR. For what purpose?

Mr. MATTHEW. Well, for the determination, for example, of relative heart and sap.

A. I don't believe I am qualified to say whether that is true or not.

Q. You don't know whether it is a representative width or not?

A. I don't know, but——

Mr. MATTHEW. I wouldn't ask you to speculate about it.

If the examiner please, I have a few more questions of the professor which again meet with the objection, I have no doubt,
2693 on the part of counsel. I desire to ask them, in any event, for the purpose of the record, and I hope Your Honor will recognize their propriety.

Q. I asked you in the early part of your examination about the relation between commercial names of lumber yielded by various

trees and the common or botanical names of such trees. I will ask you to state if you know of any instances where the prevailing commercial name of lumber yielded by pine trees differs from the botanical or common name of the tree?

Mr. BURR. Are they pines?

Examiner DE BRULER. He said pines.

A. The mills in the inland empire cut Pinus contorta, but never bill it out that way.

Q. You mean they never bill it out under that name?

A. Never, or very seldom and it would be the exception. They bill it out as lodgepole pine, or blackjack. It is thrown into the Pinus ponderosa lumber. It makes a superior grade of common lumber because it is small knotted and tight knotted as a rule. And in the southern pines, as I understand it, the commercial grade of longleaf may include the lumber from seven or ten southern pines. The same way with shortleaf, depending upon its characteristics, whether it falls into what is commonly known in the trade as commercial longleaf.

Q. What particular characteristics determine whether the lumber shall be graded as longleaf commercially or as shortleaf commercially?

2694 A. Longleaf is harder and denser, more of the structural type, than shortleaf. The tree, Pinus palustris, growing on good sites will develop a wide growth ring and will be weaker in character than that which grows on the drier, sandier type of land.

Q. Have you any illustration taken from the group of pines where the prevailing commercial name differs from the botanical or common name of the tree?

A. Of course, the trade name "Oregon pine", is not a pine at all.

Mr. BURR. That is not a pine. I object to that question and answer on the grounds already stated.

Examiner DE BRULER. It has been definitely settled that is not a pine.

Mr. BURR. I move to strike.

Examiner DE BRULER. The objection is sustained.

Q. (By Mr. MATTHEW). Let me ask——

Mr. BURR (interrupting). It is understood that that is not only sustained, but stricken from the record?

Examiner DE BRULER. Yes.

Q. (By Mr. MATTHEW). I will ask the witness as to other coniferae.

Mr. BURR. I object to it on the same ground.

Examiner DE BRULER. Does it relate to pines?

2695 Mr. MATTHEW. It takes in all cone-bearing trees.

Examiner DE BRULER. The objection is sustained, unless it is confined to pines.

Mr. MATTHEW. Will the examiner allow me an exception?

Examiner DE BRULER. Exception allowed.

Q. (By Mr. MATTHEW.) I desire to ask the witness whether he is familiar with the tree which is quite commonly known as Douglas fir?

A. (Motion to strike answer physically granted.)

Mr. BURR. I object and——

Examiner DE BRULER (interrupting). Objection sustained and exception allowed.

Mr. BURR. I move to strike the question and answer.

Mr. MATTHEW. You have no right to strike physically from the record my questions to which you object.

Examiner DE BRULER. The objection is sustained and exception allowed.

Mr. MATTHEW. And made of record.

Mr. BURR. Does the court mean——

Examiner DE BRULER (interrupting). I passed on that. Go ahead.

Mr. BURR. May I not be heard?

Examiner DE BRULER. Go ahead.

Mr. BURR. Does this mean that this is to remain on the record although the examiner grants us a motion to strike?

2696 Examiner DE BRULER. He has a right to ask any question he may see fit, and I must rule on it, and——

Mr. BURR (interrupting). Before the answer.

Examiner DE BRULER. Yes.

Mr. MATTHEW. This must be clear, if I am going to save my exception it must be saved of record.

Mr. BURR. But not when the answer is in. I move to strike the answer completely from the record.

Mr. MATTHEW. It is beyond the power of the examiner, without my consent.

Mr. BURR. I don't think so.

Examiner DE BRULER. Let's proceed with the hearing.

Q. (By Mr. MATTHEW.) Do you know whether the lumber which is yielded by the tree commonly known as Douglas fir is marketed under various commercial names?

Examiner DE BRULER. Don't you answer those questions until time is given for objection.

Mr. BURR. I object.

Examiner DE BRULER. Objection sustained. I think we all understand this.

Mr. BURR. I think so.

Examiner DE BRULER. The objection is sustained, and I don't want you to answer those questions.

Mr. BURR. I am going to renew my motion to strike the answer made in analagous case on the previous occasion.

2697 Examiner DE BRULER. I didn't understand he answered.

Mr. BURR. He answered, that is the trouble.

Examiner DE BRULER. I can correct this record if your answer did go in. Did you answer "yes"?

The WITNESS. I think I said "yes."

Examiner DE BRULER. That answer is stricken then.

Mr. BURR. Physically stricken?

Examiner DE BRULER. Physically stricken.

Q. (By Mr. MATTHEW.) Are you familiar with a commercial lumber which is marketed under the name of Port Orford cedar?

Mr. BURR. I interpose the same objection.

Examiner DE BRULER. Objection sustained and exception allowed.

Mr. MATTHEW. Before the examiner proceeds further with these rulings, may I remind Your Honor of this point: That these were questions which I was putting upon the cross-examination of Mr. Weyerhaeuser and which the Commission now says should have been allowed on cross-examination. Now, if these very questions should have been allowed on cross-examination they are certainly pertinent when I am putting on the witness in opposition to the Government's case.

Examiner DE BRULER. Without arguing this further, the objection is sustained. I will not let that evidence in. You have your exception on the record.

2698 Mr. MATTHEW. Without seeming unduly persistent, again may I make this clear to Your Honor: That if the opposing witness, Mr. Weyerhaeuser, had answered those several questions upon cross-examination unsatisfactorily to me, certainly I would not be precluded from offering opposing evidence. And I understand that I am to have the right to recall Mr. Weyerhaeuser and ask him those questions.

Examiner DE BRULER. You have the right, yes.

Mr. MATTHEW. Then if I ask those questions and he answers them, as I understand it, in a way that will not present the facts as I believe them to exist, am I precluded from showing that his answers are wrong?

Mr. BURR. I think so.

Mr. MATTHEW. I think not.

Examiner DE BRULER. That is anticipating what Mr. Weyerhaeuser might swear to on cross-examination. The objection is sustained and exception noted.

Q. (By Mr. MATTHEW.) Are you familiar with other lumbers which are marketed under the name of cedar?

Mr. BURR. I object to that, if the court please.

Examiner DE BRULER. Objection sustained and exception noted.

Q. (By Mr. MATTHEW.) Do you know whether or not there is any commercial cedar lumber offered to the market under that

2699 name which is yielded from trees which are not botanically, or by common name, cedars?

Mr. BURR. I object on the same grounds.

Examiner DE BRULER. Objection sustained and exception noted.

Q. (By Mr. MATTHEW.) Do you know whether or not in general practice there are a great many kinds of commercial lumber offered to the trade under commercial names which are entirely distinct

from the botanical names and the common names of the trees from which they are produced?

Examiner DE BRULER. If that is limited to pines it is perfectly proper.

Mr. BURR. Read the question.

(Whereupon the question referred to was read by the reporter.)

Mr. BURR. I think that is subject to the same objection, if the court please.

Examiner DE BRULER. That answer should be limited to pines.

Mr. MATTHEW. I asked him the question as to pines a while back, I think.

Examiner DE BRULER. If that is intended to go outside of the pines, it is objectionable.

Mr. MATTHEW. I asked about a question and it is a question which is practically the correlative of a question which counsel was allowed to put to his witness yesterday.

2700 Examiner DE BRULER. The objection is sustained and exception noted.

Mr. MATTHEW. In that event, I move to strike from the record all of the testimony given by Mr. Weyerhaeuser upon his direct examination respecting the alleged harmful effect of so-called misnomers of lumber upon the lumber industry.

Mr. BURR. At this time I offer to stipulate that the matter of misnomers in the lumber industry, insofar as they relate to misnomers in other varieties than that alleged in this complaint, shall be stricken wheresoever it appears in the record, including the testimony in the East, New York, and elsewhere.

Mr. MATTHEW. If Your Honor please, I cannot consent to that stipulation, and I desire to withdraw the motion I last made, and in taking that position may I state the whole question, I think, will have to come before the Federal Trade Commission as to our rights on this general question of commercial nomenclature of lumber. So I think the record should be left where it is and we will seek a ruling from the Commission.

The WITNESS. Do you want an answer on pines alone?

Examiner DE BRULER. That has been sustained now.

By Mr. MATTHEW:

Q. If you had not completely answered as to pines alone, will you continue?

A. The check list which has been offered recognizes three
2701 types of names: the scientific or botanical name, the common name as adopted by the Forest Service, many common names and trade names. Under Pinus strobus they list nine trade names; under Pinus monticola they list three trade names; under Pinus resinosa they list seven trade names; under Pinus ponderosa they list seven trade names; under Pinus echinata they list four trade names; under Pinus palustris they list two trade names and twenty-nine common names.

Q. Do these trade names, in many instances, differ widely from the common or botanical names of the trees?

A. Usually don't coincide at all.

(Here followed remarks off the record.)

Examiner DE BRULER, We will [redacted] an adjournment until 2:00 o'clock this afternoon.

(Whereupon at 12:05 p.m. a recess was taken until 2:00 o'clock p.m.)

2702 AFTER RECESS

2:00 P.M.

Examiner DE BRULER. We will proceed with the hearing.

T. J. STARKER resumed the stand, and further testified as follows:

Direct examination (continued) by Mr. MATTHEW:

Q. Professor Starker, there have been some inquiries as to the turpentine or rosin content of Pinus ponderosa trees, and as to the practicability of extracting turpentine or rosin from ponderosa trees in a commercial way. Have you had any experience, or have you obtained any information respecting the commercial practicability of extracting turpentine or rosin from Pinus ponderosa trees?

A. I have.

Q. And what was the nature of your experience or information, and how was it obtained?

A. The Forest Service, in approximately the year 1914 or 1915, carried on a series of experiments throughout the Pinus ponderosa region trying to determine the practicability of tapping Pinus ponderosa for resin similar in character to the long leaf and slash pines of the South. I was in charge of the experiment on the Whitman National Forest in eastern Oregon for 2 years of this experiment. The results were very poor, as far as the product was concerned. We got some resin, but way below any commercial possibility.

2703 Q. What did you determine as to whether or not it was commercially or economically practicable to utilize Pinus ponderosa for the extraction of resin or turpentine?

A. I had never been in the southern pine region and my instructions were definitely outlined, based on the practice down there, and we followed that as near as possible, boxing the trees each two weeks, and when we would come around to weigh up at the end of the period each two weeks, some of them would be practically dry and some would have some resin. In other words, the labor expended was not commensurate with the results.

Q. Did you determine to your satisfaction whether or not the process was commercially practicable, or otherwise?

A. To my own satisfaction, yes; and the report that came out, I think, indicated that it was not commercially feasible.

Q. Was that your conclusion?

A. It was my conclusion, and the office of products also.

Mr. MATTHEW. I think I have no further questions on direct of Professor Starker, but I would ask leave at this time, and I believe it

would be an appropriate juncture, to refer to certain matters in Statistical Bulletin No. 21, Commission's exhibit no. 34, which we would like to have in evidence.

It is understood between counsel, as I understand it, that we can call attention to the features which we desire to have considered in evidence in this case and, in addition, to those features which were specified at a prior hearing.

2704 Mr. BURR. That is my recollection.

(Here followed remarks off the record.)

Mr. MATTHEW. I ask that my associate, Mr. Wheat, be allowed to call attention to those features.

Mr. WHEAT. In Commission's exhibit 34, United States Department of Agricultural Statistic Bulletin No. 21, entitled "American Forests and Forest Products", in addition to the tables mentioned by the counsel for the Federal Trade Commission at the Spokane hearing, we desire to direct, on behalf of the respondents, the Commission's attention to the following tables on the following pages: Table 18 on page 18; table 21 on page 20; table 55 on pages 62 to 65, inclusive; table 60 on pages 74 to 83, inclusive; table 61 on pages 84 to 93, inclusive; table 74 on page 116; table 75 on page 117; and table 126 on pages 215 to 217, inclusive.

(Here followed remarks off the record.)

Mr. WHEAT. In addition to those above mentioned, we understand that counsel for the Federal Trade Commission has asked the Commission's attention be directed also to table 128 on pages 221 to 223, inclusive; and table 133 on pages 240 and 241. In case our recollection on that matter is incorrect, we desire, on behalf of respondents, to have those last two mentioned tables considered by the Commission.

(Here followed remarks off the record.)

Mr. BURR. It is my understanding that Commission's exhibit

2705 34 for identification merely, and respondent's exhibit 34 for identification, just offered, are identical; that Commission's exhibit no. 34 comprises certain pages heretofore marked Commission's exhibit for identification no. 34, and that respondents' exhibit no. 34 for the record will comprise certain pages of respondent's exhibit no. 34 for the record; the two exhibits for identification being identical with the two exhibits for the record being wholly distinct.

Examiner DE BRULER. That statement is approved by the examiner.

Mr. WHEAT. I will discuss this exhibit with counsel and see that the exhibit is designated properly.

(Here followed remarks off the record.)

Mr. MATTHEW. You may cross-examine.

Cross-examination by Mr. BURR:

Q. Professor, if I recall your experience it touches more lightly on the southern territory than on the north and northwest, does it not?

A. Very slightly on the south.

Q. And it touches more lightly on California than it does upon the inland empire and as far south as Bend; am I correct?

A. Yes.

Q. You have not had anything like as much experience in the California and in the southern yellow pine belt as you have in the other districts; is that true?

2706 A. That is true.

Q. Now, with regard to the matter that you testified to this afternoon, is it your understanding that the attempt to extract turpentine from Pinus ponderosa was made in the early days before transportation reached California and for local turpentine necessities?

A. I know of no such experiments.

Q. I was referring to the use of Pinus ponderosa for turpentine in the early days in California before transportation with eastern or southeastern turpentine was available.

A. It is possible that the early settlers did that.

Q. What forest did you say you made that experiment in?

A. Whitman National Forest; that is out from Baker, Oreg., about 50 miles.

Q. Which direction?

A. Southwest in the Sumpter Valley Railroad.

Q. What is the character of ponderosa forests over there? Is that of a heavier and more dense type of ponderosa, or is that of a clear and larger growth?

A. Well, the areas that we were cutting produced some very fine quality logs.

Q. Would you say they were rather better than the average of texture of logs of the Pinus ponderosa or less than an average?

A. Oh, I think probably at that time they were better than the average.

2707 Q. Now, did you ever know of any experiments to use any of the genuine white pines for turpentine purposes?

A. I think that the early settlers way back, the pilgrims, and those people, I think they tried it.

Q. Tried it on the strobus, did they?

A. I think so; I am not absolutely sure of that.

Q. Do you know whether they got any turpentine from them?

A. I don't know what the results were.

Q. That was made in colonial times?

A. Yes, as I remember reading, they did try it.

Q. I believe you are professor of sylviculture?

A. Yes.

Q. And professor of dendrology also, is that true?

A. Yes, sir.

Q. And how many do you have there in the staff on forestry? Don't give the names, just how many have you?

A. About six.

Q. You are a full professor, are you?

A. Yes, sir.

Q. Are there other full professors or are you in charge of the department?

A. Well, our school is divided into three departments; we have a dean, and we have the professor of logging engineering, who is in charge of logging engineering; and I am the head of the technical forestry and lumber manufacture, our lumber manu-
2708 facturing department being very small.

Q. I believe you testified to the effect that the criterion as to the white pines of the north have needles, was not an infallible test, but that a couple of the varieties of pines that are commonly classed as white pines do not have the precise number of five needles, am I right?

A. No; I said that some five needle pines, two to five needle pines, are not classed as white pines.

Q. And those are torreyana and arizonica?

A. Yes.

Q. Those then have how many needles?

A. Five.

Q. And yet are not white?

A. Botanists do not so classify them.

Q. Is there any botanical classification that does fit all of the so-called classed white pines and does not fit any of the yellow pines?

A. Well, there may be, but not to my knowledge. For instance, some keys are based on whether the sheath that surrounds the bundle is deciduous or whether it remains intact, but as I remember there are some exceptions there.

Q. Do you mean deciduous or do you mean it drops once and for all when it gets good size?

A. It remains intact only temporarily.

Q. You mean by deciduous, falling?

A. Yes, only once. The needles of the pine remain on for
2709 varying periods of time.

Q. I understand that. The larches drop once every season?

A. Every year.

Q. How long do the needles stay on the white pines as a rule; do you know?

A. Up at Spokane one of my ex-students tried to determine the knowledge of his former professor and asked me about how long Pinus lambertiana needles remained on. I had never made a study of it particularly, and I guessed five years, and he had a tabulation which indicated that roughly 15 percent fell in two years and another percentage in three years, and about 47 percent in four years, and 35-odd percent in the fifth year, etc., up to about seven years.

Q. I am getting in deeper than I anticipated. There are varying times on the white pines?

A. Yes.

Q. That is, the life of needles that come in at one year will stay on varying periods?

A. Yes.

Q. When you say the sheaths of those needles fall once and for all, is that it?

A. Yes; that is the way I understand it.

Q. That isn't what I meant by deciduous; that is what you meant, isn't it?

A. Yes; I think the soft pines lose theirs the first year, and
2710 the hard pines, in some instances, lose theirs in the second year, or remaining intact, I mean.

Q. Isn't that true of all white pines?

A. I think all the soft pines lose their sheaths, as I remember the key, but all the hard pines do not remain intact. I may be confused there.

Q. When you say hard pines, do you include ponderosa among those?

A. Yes, sir.

Q. In other words, does not that, or is not that an unfailing test botanically of those classed as genuine white pines?

A. No; because in the hard pines certain of the hard pines lose their sheaths, as I remember the key.

Q. Are you sure of that?

A. Not absolutely, but it would be easy to get Sargent and prove it. I am sure there are some exceptions one way or the other.

Q. Are you sure whether Sudworth does not class that as an unfailing test?

A. I never saw it keyed by Sudworth. Sargent's key is the one I am referring to.

Q. Are you sure that Charles S. Sargent does it that way?

A. There are exceptions one way or the other.

Q. You are familiar with Elliott?

A. More or less.

Q. You are pretty sure that is not an unfailing key, then?

2711 A. There are exceptions.

Q. Are you familiar with the criterion as regards the bundles of vascular fibres in the needle itself as in white pines, as classed with so-called, classed as yellow pines?

A. I never went into that very much.

Q. You wouldn't be sure, then, that there isn't an infallible test that differentiates the yellow pine, so-called, from the white pine, so-called, in that vascular fibre matter, vascular bundling?

A. No.

Q. I am talking about the—it is the bundle of fibres in the needle?

A. That is the way we designate that fibro-vascular bundle.

Q. Are you familiar with any tests based upon the tracheids?

A. That is in the structure of the wood itself?

Q. Yes.

A. Yes; the yellow pines can be told with a magnification of some 250 or 350 magnifications; they can be separated from the true white pines by the dentate marks.

Q. As a dendrologist, would you say it is possible to determine a small piece of Pinus ponderosa from the genuine white pines infallibly?

A. Pinus ponderosa?

Q. Yes; microscopically.

A. You could separate it in to the yellow-pine group, maybe.

2712 Q. Is it possible to determine by a small piece of wood infallibly whether it is sugar pine or whether it is monticola?

A. No, sir.

Q. Is it possible to determine strobus microscopically from either of the other two in a small quantity?

A. No, sir.

Q. Is it possible for you to determine the difference between Pinus ponderosa and echinata, microscopically?

A. No, sir, I can't.

Q. How about teda?

A. That would depend on the smallness of the piece, what you are talking about.

Q. Yes; but on a small piece you couldn't infaliibly tell the yellow pine, so-called?

A. It would be hard, yes.

Q. You can always tell a piece of yellow pine from a piece of white pine, and vice versa, can you not?

A. Microscopically, with that amount of magnification; yes. It is usually apparent, those dentate marks.

Q. Now, the botanists in their books all use the common names, as well as the Latin names, do they not, for these species?

A. All botanists?

Q. Yes; don't they, in writing a book for use by ordinary men, or by students on the subject, don't they always use the common names along with the botanical names?

2713 A. It is quite common practice.

Q. The botanical name being the accurate means of identification among scientists?

A. Sometimes the scientific names are listed in an appendix.

Q. Isn't echinata lighter in color than palustris on an average?

A. I think so.

Q. It is nearer to the range as regards color to the Pinus ponderosa than it is to the harder pines of the South; is that true?

A. I don't think so; no, sir.

Q. The common name is Arkansas soft pine, is it not?

A. That is one of the trade names, commercial names.

Q. Do you regard it as a soft or hard pine, or as a medium pine?

A. Well, all woods vary.

Q. Yes.

A. And that particular region, I understand, produces a rather soft quality of Arkansas soft pine; yes.

Q. That is not as soft as Pinus ponderosa, would you say?

A. Not as soft?

Q. I mean, is it as an average ponderosa or as the more typical white pine, so-called, of the ponderosa? You are now refreshing your memory from what exhibits?

A. This exhibit that I offered this morning gives the actual facts. There is no use my offering my experience against technical information.

2714 Mr. MATTHEW. That is exhibit 32, respondents' exhibit 32?

Mr. BURR. Yes, sir.

Q. In exhibit for the respondents no. 32, you referred to the physical and mechanical properties of pines, and you took those from a certain table of book 556 of the Department of Agriculture, did you not?

A. Yes, sir.

Q. You use some six different mechanical properties; is that true?

A. If you count hardness, both end and side grain, too, it is six.

Q. And some 23 were given in that bulletin?

A. Yes.

Q. You use but six?

A. Yes, sir.

Q. Why do you use but six?

A. If you read the bulletin, the authors, as I understand it, rather stress certain ones and minimize others. I might say that I picked these out as representing the tests that usually are considered in the use of lumber. In other words, a technologist can take the specific gravity of a wood and almost tell you its strength, with certain reservations.

Q. You use it with reference particularly to the character and qualities that lead up and conduce to strength or the lack of strength; is that true?

A. Both are shown, yes, modulus of elasticity, and it shows that the white pine group and Pinus ponderosa are rather weak.

2715 Q. Neither Pinus ponderosa or the genuine white pines are sold upon the basis of strength, isn't that true? In other words, they are not strong structural woods for bridge purpose?

A. They are not.

Q. The particular qualities that you have outlined here make a rather unfavorable showing as regards strength for all these soft pines, isn't that true?

A. Just what I said; yes.

Q. You are not then comparing the mechanical characteristics as to which the white pines and Pinus ponderosa are shown particularly unfavorable, or are particularly interesting to those who wish

to decide which of those soft pines they would prefer to use, is that true?

A. The white pines, including Pinus ponderosa, are not sold particularly on their merit of strength.

Q. Anybody who buys them for strength is in an unfortunate predicament?

A. Disappointed.

Q. Let me ask you this: As regards the habitat of monticola, where does that begin and where does it terminate, taking it in a direction from east to west?

A. Oh, a little bit in Montana, west to the coast.

Q. West to the Puget Sound?

A. Yes.

Q. West to the Pacific?

A. West to the Pacific.

2716 Q. And how far east into Montana do you find that?

A. No' very far.

Q. Well, then, those five specimens of monticola shown on the respondents' exhibit 32, as illustrative of the characteristics of monticola, are taken from the extreme eastern boundary of the range of that species, is that true?

A. My experience indicates, I believe, that.

Q. Will you answer the question yes or no, if you can, and then explain afterwards?

A. Yes; it is taken from the eastern part of its range.

Q. Now, please explain if you desire.

A. There are some very fine quality Idaho white pine, or Pinus monticola, secured, brought into the mills at Missoula, Montana.

Q. Do you know what stand of monticola those five species were taken from?

A. Pardon?

Q. Do you know what kind of a stand they were?

A. No, sir.

Q. You weren't in on those figures?

A. I don't know the stands that any of these specimens were taken from.

Q. Would you, as a scientist, say that five trees taken on an extreme boundary of a range was fairly indicative of what that tree would produce?

A. It would be subject to criticism.

2716-A Q. Referring again to respondents' exhibit no. 32, I notice here that there were 25 trees taken from Colorado, Montana, Arizona, "W", and California. Is that "W" indicative of Washington?

A. Yes, sir; Washington.

Q. You don't know where any of these stands were taken?

A. No, sir.

Q. And you don't know whether bull pine or soft texture was used?

A. No, sir.

Q. You don't know whether those samples were collected by the association or by the forestry men, do you?

A. I could tell you this: That the usual practice is to have the Forest Service men select the logs.

Q. Did you get that from hearsay?

A. No, sir; during the war the Madison Laboratory wired our office, the Forest Service in Portland, to secure for them a large carload of Douglas fir, and I was delegated to go out and select those logs.

Q. When was that?

A. During the war. So I went out and picked out three Douglas fir logs——

Examiner DE BRULER (interrupting). Are you going into Douglas fir now?

Mr. BURR. No; I am trying to find out how they do this. We will not ask about the character and qualities of Douglas
2717 fir. I will object to the question.

Mr. MATTHEW. You want to object to your own question?

Mr. BURR. Yes; I can do that on the ground that it is not—what is the question?

(Whereupon the question referred to was read by the reporter.)

By Mr. BURR:

Q. Will you be kind enough to confine that to the proposition—did you get that from hearsay?

A. Not from hearsay, because the laboratory asked me to get certain trees and I am giving you that as an example.

Q. Did they prohibit your getting the assistance of the association men on that occasion?

A. No, sir.

Q. Did they tell you how to get those trees?

A. No, sir.

Q. Those specimens?

A. No, sir.

Q. Did you know, as a matter of fact, that the Madison Forest Products Laboratory frequently has its men secure the advice and the active assistance of the various associations in taking out the specimens that they use for material and data which go into these statistics such as respondents' exhibit no. 32 has reproduced? Do you know whether that is true or not?

A. I know while I was with the Western Pine Manufacturers Association they never asked me to pick out any.

2718 Q. How long were you with them?

A. Three years.

Q. Now, Mr. Starker—Professor, I should say——

A. Leave off the handle.

Q. I prefer the handle. If you have a military handle I will use it also. Now, the five specimens of resinosa of the Norway pine, would you regard that as a satisfactory exhibition for purposes of scientific treatment, five specimens merely?

A. The same thing would apply wherever five is used; this is the best available information we have.

Q. Have you ever found that your practical experience led you to believe that the Government's statistics were in error on certain points?

Mr. MATTHEW. I object on the ground that it is purely speculative.

Mr. BURR. It is cross-examination.

Examiner DE BRULER. I think that the witness can take care of himself. He can take care of himself on his answers.

A. Yes.

By Mr. BURR:

Q. I think you testified that their entire body of information, data, as far as they had them on the question of durability, was withdrawn, didn't you?

A. I think they sent us a note that they were withdrawing that particular information; yes, sir.

2719 Q. Now, as regards the U.S. figures, would you regard the experience of pattern manufacturers and the ability of manufacturers of the genuine white pines to sell to pattern makers as worth more or less than the Government figures with regard to texture under the circumstances that you have just narrated?

A. If you are questioning me as a salesman, I am not a salesman.

Q. No; but if you knew that the pattern makers preferred genuine white pines to ponderosa, on account of their texture, etc., would you regard that practical experience as more important than the Government figures as to texture and the like?

Mr. MATTHEW. Including the shrinkage?

By Mr. BURR:

Q. Including shrinkage?

A. I will answer "no", and say that there are many misconceptions among practical men.

Q. Are there not many misconceptions among scientists that have to be corrected at times?

A. Yes, sir; I think we are not exempt.

Q. I think you testified that down logs and their apparent liability to decay was not a very great indication of the durability of the lumber underweather conditions. That is true, isn't it?

A. Yes.

Q. If, over a wide range of territory and a wide range of experience, it was found that the down logs of one species almost

2720 uniformly outlasted the down logs of another species, and neither of those species of lumber had been fully tested as to their durability, would you not, as a practical man, rather prefer the species that had shown durability as a log?

A. Surely. May I qualify that?

Q. Certainly.

A. I consider that none of the pines should be used in contact with the soil, and as used scientifically the word "durability" means in contact with the soil.

Q. Well, the contact with the weather is not so strong a test where it is not in contact with the soil as contact with the soil; is that true?

A. That is true.

Q. However, there is a difference in durability between woods where exposed to the weather, if neglected as to paint, somewhat; is that not true?

A. There are many factors which will enter in.

Q. Can't you answer the question yes or no?

A. Yes; but there are many factors which go to influence the presence or absence of decay. I don't pose as a pathologist, but I think that the laboratory technicians have developed the fact that wood which is kept drier than 18 percent moisture will not decay; neither will wood which has a saturation of 60 percent decay. So that in certain locations, for instance, the moisture content would determine whether it would decay or not.

2721 Q. Well, are you through?

A. That is enough.

Q. Isn't it true that if the paint is deficient that water will often run inside of the paint and, therefore, increase the exposure of wood, which is protected in parts only by paint, to a point where the durability is again affected adversely to the extent that you have determined, as to your amount of moisture that is necessary in order to produce decay?

A. Paint may increase the liability for decay.

Q. And may bring a certain portion of the exterior coating of a house up to a point where it will have that factor of moisture which you have said induces decay; isn't that true?

A. It might.

Mr. MATTHEW. I think the witness mis-spoke himself. He stated paint will increase the decay.

The WITNESS. I didn't mis-speak. Paint will sometimes increase the possibility of decay.

By Mr. BURR:

Q. On certain conditions?

A. It will hold the water.

Q. It sometimes prevents evaporation and surface exudation of the moisture to the point where the wood is jeopardized?

A. Yes, sir. On the other hand, I might explain if it is thoroughly painted it helps to keep the moisture out.

2722 Q. If you expose a perfectly painted surface to the weather, any wood will be impervious to moisture and, therefore, will last indefinitely; isn't that true?

A. No, sir.

Q. Isn't that true? I thought it was.

A. No, sir.

Q. You mean to say that a wood that was one hundred percent painted, joints and everything, so that no moisture got in, and was thoroughly dried before it was installed, that that wood would be more liable to decay than the other?

A. Moisture will get in through paint.

Q. I see. I didn't understand that to be the fact.

A. Well——

Q. (interrupting). You may explain.

A. Moisture goes through paint to a slight extent; it is not impervious entirely.

Q. Have you made a study of this effect of painting?

A. No, sir.

Q. Are shop grades the only ones used in planing mills? I am referring now to the smaller planing mills.

A. No; they will use clears, I think, even commons for backs of cupboards.

Q. They use select grades, many of the smaller mills, do they not?

A. They use some clears.

2723 Q. They use some of these small knotted common grades for planing mill purposes, do they not?

A. I said they would use some commons; the majority is shop, of course.

Q. Particularly the small knotted varieties they would use, rather than the large knotted commons?

A. That would be better for their purpose.

Q. Just what instructions do you give with regard to classification of Pinus ponderosa to your students? Do you put that with the yellow pines or white pines?

A. I expected that question. I make a diagram.

Q. You do make a diagram?

A. Yes, sir. I put Pinus ponderosa over here [indicating] and Pinus monticola over here [indicating] and I list the common and trade names in it, and the Forest Service name under each one.

Q. You have some duplicates on the common names, do you not; one common name appears in various columns, isn't that true?

A. Yes.

Q. Let me ask you, do you call jeffreyi a ponderosa or separate species?

A. It depends on which book you pick up.

Q. I am asking you, suppose you write a book, where you put it?

A. I would put it Pinus ponderosa. You have two schools of botanists.

Q. I think we have already shown that. Now, the classification between yellow and white pines is not purely a common classification; it is a classification recognized by the botanists very
2724 generally, isn't it?

A. Well, they tried to make a key that will fit.

Q. And in tracing that key down, do you start with a general or with a particular in the key, do you start with a general or the particular?

A. As I said, they usually start with the number of needles in a bundle.

Q. And do you start with a particular differentiation of the species and lead down to a common genus, or do you start with the genus and branch off?

A. Genus.

Q. A bundle of species?

A. The pines of one genus.

Q. Certainly, I understand that. You start off in your classification with a genus, or do you lead back to the genus after having started with the species?

A. You can go clear back to the vegetable kingdom and come up to the genus.

Q. And you come down the line from the general to the particular?

A. Yes.

Q. Those white pines are classed by botanists and then they branch off into the various species?

A. Yes, sir.

Q. And they class the Pinus ponderosa with the yellow pine rather than with the other, do they not?

A. Yes, sir.

2725 Q. Are you familiar with the commercial practice in the southern pines?

A. Except by study.

Q. Not on the grounds?

A. No, sir.

Q. Where did you see, if you did see, lumber bought as longleaf yellow pine, which contained scattering shortleaf?

A. Never saw it.

Q. Isn't that entirely in the commonest grades?

A. Not as I understand the structural grades.

Q. That is hearsay with you, and not observation, is it?

A. From study.

Q. Is it not understood that the density rule applies to a grade of structural timber known as dense southern yellow pine structural timber, and not to longleaf pine?

A. They have a grade "dense structural" and I think they also have a grade "structural".

Q. Well, to which does that density rule apply?

A. If a short-leaf member would come under the specifications of the number of rings per inch, I think it would be included commercially in the longleaf grade.

Q. Wouldn't it be included in the dense southern, yellow, rather than in the longleaf?

A. As I say, I have no experience down there and that is my impression from study in the southern pines.

Q. Which is?

2726 A. That it would be included, if the piece of wood is commercially fit, in the estimation of the grader to fit into a particular grade, there is where he will put it regardless of its botany.

Q. Then, he doesn't put it into the grade of longleaf, but puts it in the grade of dense; is that true?

A. You are getting beyond my depth, Mr. Burr.

Q. Well, what I was trying to get at is this: Is it not true that in that grade of dense structural material that they have the dense pieces of both longleaf and the shortleaf? Is that true?

A. I can't make it any clearer than what I said, that in the judgment of the grader he will take the wood and judge it on its merits and put it in the classification where he thinks it fits, regardless of its botany.

Q. And a softer piece of palustris, which didn't have the density necessary for strength, would also, as well as certain pieces of short leaf, be excluded from the grade of dense structural timber, isn't that true?

A. That is the way I understand it.

Q. The word "long leaf" doesn't enter into the density rule, it applies to either variety, doesn't it, if dense enough to go into the dense grade?

A. Commercial long leaf may include short leaf, as I understand it.

Q. And commercial long leaf, if not dense enough, will be excluded from that grade, even——

2727 A. (interrupting.) It may be sold as short leaf, commercial short leaf.

Q. Depending upon the density?

A. Yes, sir; that is, if that is the particular object they are after—density.

Q. Now, is there any difference, in your judgment, between a piece of given density as between palustris and teda? I am referring to strength, if they have this same density, is there any difference in strength?

A. With the same density the rule is that they will have approximately the same strength.

Q. And put it in the same grade category?

A. That is the way I understand it.

Q. Do you know why the Forest Service selected the common name "yellow pine"?

A. I do not.

Q. Has it always been on the check list?

A. I think the old check list carried western yellow pine.

Q. You don't know of any time when it was called bull pine or yellow pine, without "western"?

A. I rather think the old check list carried western yellow pine. I never checked up on it. I know the new one does.

Q. Does the name California white pine appear on the check list? That is on there now, isn't it?

A. It is listed among the names, yes; but not as the pre-
2728 ferred common Forest Service term.

Q. When you state the botanical name is not the best name for commerce, are you criticizing the name pondosa? You don't intend to do that, do you?

A. Yes; I do.

Q. You don't think that is the right name?

A. No, sir.

Q. Were you working for the association at Portland when that name was adopted by most of your members?

A. No, sir.

Q. You weren't consulted on that?

A. No, sir.

Q. Do you think it ought to be pondosa?

A. A commercial name?

Q. Yes.

A. No, sir.

Q. You think that word "pondosa" is objectionable?

A. I dislike it very much.

Q. Are you criticizing the term sugar pine for that type of lumber when you say that you think that the common name for the tree ought not to be used for lumber?

Mr. MATTHEW. He didn't say that.

A. Sugar pine is well established in the trade, and I see no objection to it whatsoever.

By Mr. BURR:

Q. Isn't pondosa well established with the trade?

2729 A. I will say yes; but I have had some argument with my friends about how good it is established.

Examiner DE BRULER. I think that line of questioning has gone far enough.

By Mr. BURR:

Q. Professor, there is a great multiplicity of names given to a great many of these species in different parts of the range, isn't there? I am now referring to trees?

A. Referring to their trade names?

Q. Pine trees are given quite a number of different names, aren't they?

A. They are.

Q. And various pine lumber in different localities are given different names, aren't they, for the same species of trees from which they originate?

A. Yes, sir.

Q. As a practical man, aren't you in favor of giving the same name for the same species throughout the lumber commercial world?

A. I am not.

Q. You think that one given species should have different names in different parts of the territory where it is used?

A. Yes, sir.

Q. You think there is no advantage in having a uniform nomenclature of the pine trees?

A. I think it would be a disadvantage.

2730 Q. Is that a disadvantage to the trade or to the ultimate consumer?

A. It would be a disadvantage to the purchaser because he would not know from what part of the country the lumber originated. If I might cite an example, we will take Idaho white pine. I think it is a protection to the consumer to brand the stuff that comes from Victoria, and British Columbia, and coast Idaho, or coast white pine.

Q. Well, why not put a prefix in front of the trade name? In other words, if there is a ponderosa produced in the State of Washington that is superior we will say, to that produced in Idaho, for the sake of illustration, if the name pondosa were given to that ponderosa produced in various different parts, it could be called the "Washington pondosa", or the "Idaho pondosa", or the "Klamath pondosa", giving the same name to the species, and yet, at the same time, giving the producer an opportunity, if he has a specially high grade in that particular locality, to give it his own name, or local name, in addition to the trade name. Then would not the buyer and the ultimate consumer be able to know that that was the ponderosa species and yet at the same time to get the advantage of such distinction as there might be in different stands of that in different parts of its range. Wouldn't that be practical, Professor?

A. You could work it out that way. I noted my objection to pondosa.

2731 Q. I was using that for the purpose of illustration. It might be true of sugar pine; it might be true of sugar pine that somebody might say, "We are selling this high-grade Madera sugar pine" or "Tuolumne sugar pine", and take advantage, or say "This is the Jones sugar pine", if that was a trade name, and try to build up a good will along the trade name, in addition to the words sugar pine. Isn't that feasible?

A. Yes.

Q. Now, within that limitation, isn't it advantageous for one species of pine to have one species name, rather than a diversity of species name?

Mr. MATTHEW: That is, for the commercial lumber?

By Mr. BURR:

Q. For commercial purposes, yes, sir; don't you see any advantages in that?

A. Yes; I think that would be an advantage, maybe.

Q. Then, suppose an architect, moving from one place to another, where he is familiar with one name, finds in another locality another name in vogue for the same species. Don't you think that causes confusion in his mind?

A. You say architects?

Q. Yes, architects.

A. They would have to be educated.

Q. Whereas if it was the same uniform name for the species, that process of education would be much simpler?

A. Architects, my contact with architects indicates that they
2732 are not educated as to lumber.

Q. And I think there is a good excuse with this multiplicity of names, don't you agree with that?

A. No, sir; I wouldn't base it on that.

Q. At least that would contribute to confusion in his mind, would it not, where the same species is given many, many different names in the t[illegible]?

A. No, sir.

Q. You don't think that contributes at all?

A. No; I don't think so.

Q. Do you think, if you asked for white pine and find that Idaho white pine is a true white pine, and find that California white pine looks like Idaho white pine, you think there is no confusion in his mind when he is offered California white pine as genuine white pine?

A. I would consider California white pine a genuine white pine as regards its quality of wood.

Q. But if it were not a genuine white pine you think it would be confusing?

A. If it is hard in texture, you couldn't make particular cuttings, or moldings; it would be confusing, but its quality makes it a white pine commercially.

Q. Looks like an Idaho white pine?

A. Some species very much so.

Q. Assuming, for the purposes of your answer, that you
2733 are incorrect and that California white pine is not a genuine white pine, is not that a confusing term when it is offered to a man who sees it looks like Idaho white pine, and it is offered to him with the name "white" attached to it?

Mr. MATTHEW. I object to counsel suggesting that.

By Mr. BURR:

Q. The record shows it is not a genuine white pine, and the botanists do not class it so. Assuming that the botanists are correct, and it is not a genuine white pine, will you answer that question, is it not confusing?

A. If you are going to base it on botany, I will say yes.

Mr. MATTHEW. The witness distinguished between botany and the quality of the tree and I object to your questions implying the contrary.

Mr. BURR. That is all, sir.

Redirect examination by Mr. MATTHEW:

Q. You referred to Idaho white pine, particularly with respect to variations throughout its range, and distinguished particularly between the coast white pine of the monticola species, and the interior white pine of the same species. In what respects does the lumber from these two territories differ?

A. Well, your coast white pine grows in a climate that is very mild and your growth rings will be wider and be of coarser grain than that which grows in the mountains, for instance, of Idaho
2734 and it may carry more color in its heartwood.

Q. Is it quite the common commercial practice to identify the lumber which comes from the coast section as coast white pine, or coast Idaho white pine?

A. That is the way the wholesalers sell it.

Q. That is the practice of the wholesalers?

A. Yes.

Q. And that term is used in order to distinguish the lumber from that territory from the Idaho white pine from the interior?

A. Yes, sir.

Q. Is that, in your opinion, a desirable differentiation?

A. It protects the purchaser.

Q. Is there any warrant, in your opinion, from the point of view of the purchaser, for insisting upon a single commercial name for all of the lumber yielded by a particular species of trees throughout its entire range?

A. I think it would be a disadvantage to the purchase.

Q. There has been some testimony, in fact quite a good deal of testimony on the part of witnesses for the Government, that the ponderosa tree, by virtue of its enormous range, geographically and otherwise, yields lumber with marked different characteristics. Do you recognize that there is that differentiation?

A. There is considerable variation in Pinus ponderosa; yes sir.

Q. Do you think it would be to the advantage of the purchaser, or user of lumber from this tree, if a single commercial name were impressed upon it, or is it preferable to have different
2735 names which more or less indicate the quality and utility of the lumber from different areas?

A. That would be preferable.

Q. Which would be preferable?

A. To have the commercial name indicate from what region it was produced.

Q. In your opinion would the purchaser or user of this lumber be benefitted if the present commercial name of California white pine were replaced by a name which suggested yellow pine?

Mr. BURR. I object to that as immaterial because we don't contend it should be.

Examiner DE BRULER. The objection is overruled. You may answer the question.

Mr. BURR. I think it would be a mistake to put the word "yellow" in there.

Examiner DE BRULER. He may answer the question.

A. Yellow, in connection with pine, would indicate a hard, dense, rather strong wood, which I have indicated Pinus ponderosa does not possess those qualities.

By Mr. MATTHEW:

Q. Do you wish to be understood as testifying, or intimating in any respect that the Pinus ponderosa tree is not ordinarily classified by botanists as being within the yellow-pine group?

A. Botanists usually put it in the yellow-pine group.

Q. And you intended to so testify upon your direct examination?

2736 A. Yes, sir.

Mr. MATTHEWS. That is all.

Recross-examination by Mr. BURR:

Q. There are variations in the ponderosa tree in different parts of California, aren't there, similar to those which you testify as being the case throughout its range, considered as a whole?

A. There are variations in the pine grown in California.

Q. Some of it is rather of a harder type and some of it is the real soft type, is that true?

A. I think so; yes. Any tree is nature's product, and there are variations in every tree.

Q. And there are rather more in Pinus ponderosa than there is genuine white pine, isn't that true?

A. Pinus ponderosa grows over a larger area than any other commercial tree, and you might expect it would; I think it varies considerably.

Q. And it grows in a greater variety of soil and altitude in the same locality, doesn't it, than most of the white pine?

A. I have great admiration for Pinus ponderosa in its ability to grow in many places.

Mr. BURR. I think that is all.

Mr. MATTHEW. That is all.

(Discussion off the record.)

2737 Examiner DE BRULER. That is all with this witness.

(Witness excused.)

Examiner DE BRULER. We will take a five-minute recess.

(Whereupon a five-minute recess was taken.)

Examiner DE BRULER. If counsel are ready, we will proceed with the hearing.

Mr. BURR. If the examiner please, at the request of opposing counsel, I have asked Mr. Ivory to return for further cross-examination. I also have a very few questions that I would like to ask him as part of a return to my direct examination, to which opposing counsel has consented.

Examiner DE BRULER. Very well.

Mr. BURR. Mr. Ivory, will you resume the stand, please.

E. P. IVORY resumed the stand and testified further as follows:

Direct examination (continued) by Mr. BURR:

Q. Mr. Ivory, you testified on cross-examination, I believe, that you inspected a certain building at Grub Gulch that you found to be made from ponderosa and on the same location I believe you examined a sugar-pine building near the same site as to which you testified. Will you state what condition that building, made from Pinus ponderosa, was found to be in?

A. The building made of Pinus ponderosa was a barn or shed used for implements and grain. We were advised by the
2738 owner of it that——

Mr. MATTHEW (interrupting). I object to what he was advised by the owner. That is hearsay.

Mr. BURR. I think that is so.

Examiner DE BRULER. Objection sustained.

By Mr. BURR:

Q. Will you state the condition it was in?

A. The building was in usable condition. The side walls, which consisted chiefly of common boards, stood up lengthwise, were sound with the possible exception of a small portion at the bottom near the ground, which was decayed.

Q. I believe you testified that there were certain elements, or physical characteristics, I should say, in wood which has to do with the durability where exposed to conditions of moisture. And I believe you testified that the shrinkage of the wood was one of those characteristics. Are there any others?

A. Yes. I believe that the relative density of heartwood, rather, relative density of summerwood and springwood have an influence; it is somewhat correlated to shrinkage; furthermore, the percentage of sapwood as against heartwood has an influence because sapwood tends to shrink slightly more than the heart of the same board and causes a distortion and a stress that may result in checks, thereby reducing the resistance of that particular piece of lumber to decay.

Q. Now, referring to the consideration of spring and sum-
2739 mer wood, I wish you would apply that test to the sugar pine and to the Pinus ponderosa.

A. There is very little difference between the density of the springwood and the summerwood in sugar pine, whereas there is a con-

siderable contrast in that respect in Pinus ponderosa. As regard percentage of heartwood and sapwood, the sugar pine has less sapwood, lumber cut from it is less apt to contain sapwood; therefore, it is superior in that respect.

Q. Are you sufficiently familiar with the other white pines to state whether they are similar to Pinus ponderosa, or similar to sugar pine, in the respect of summerwood as against springwood, as regards the sap and heart situation to which you have just testified?

A. They are more similar to sugar pine.

Q. Does the situation as regards spring and summer wood, and heart and sap wood, tend towards greater durability in the Pinus ponderosa or in the genuine white pine?

A. It tends towards greater durability in the genuine white pines.

Mr. BURR. You may cross-examine.

Cross-examination (continued) by Mr. MATTHEW:

Q. Mr. Ivory, it is a fact, is it not, that in the early mining days of California Pinus ponderosa lumber was used very extensively

2740 in the building of miners' cabins and other structures?

A. I presume that to be the case.

Q. Well, don't you know it to be a fact, through your investigations?

A. No, sir.

Q. And you don't know that many of those early miners' cabins were constructed of Pinus ponderosa are still standing and in very good condition?

A. I recall none that I have seen and identified as containing Pinus ponderosa.

Q. You know it to be a fact, do you not, that the flumes used in mining were very largely constructed of Pinus ponderosa in the very early days of California, and that many of those flumes are still standing and in quite good condition?

A. I do not know that to be a fact.

Q. Do you know that Pinus ponderosa was largely used for mine props, installed in mines, in the early days of quartz mining in California?

A. I do not know that.

Q. And that many of those mine props are still in good condition?

A. I do not know that.

Q. You testified that you were some time the manager of trade extension, I think that was the term, for the California White and Sugar Pine Manufacturers Association?

A. Yes, sir.

2741 Q. And during that time you had some responsibility for the promotion work of the association?

A. Yes, sir.

Q. During that period you were engaged in promoting the sale and distribution of California white pine and sugar pine alike?

A. Yes, sir.

Q. I show you an article entitled "California White Pine" printed, reprinted from the "Timberman" of Portland, Oregon, dated June 1925, and over your name, and ask you if you recall writing that article?

A. (Examining article.) I do.

Q. I direct your attention to the following paragraph from this article entitled "California White Pine by Edward P. Ivory", under the captain "Early Use": "California white pine played an important part in the development of California. The miners used it very extensively in building their cabins and also in the construction of fumes for the early gold mining operations. Many of these reliecs remain to attest its durability. Later when quartz mining was undertaken this species was used for mine props. It has been used in great quantities for irrigation purposes."

I will ask you whether you recall writing the text which I have just read?

A. I do.

Q. And you believed at the time that that was a fair state-
2742 ment of the facts which are therein set forth?

A. That was hearsay evidence reproduced under the direction of the committee consisting of four members of the California White and Sugar Pine Manufacturers' Association, and was obtained from data publications then on file at the California White and Sugar Pine Manufacturers' Association, and——

Q. May I ask that the answer be stricken out on the ground it is not responsive and that the witness be directed to answer the question.

Mr. BURR. I think it should stand.

Mr. MATTHEW. I ask to have the question read and ask for a ruling.

(Whereupon the question referred to was read by the reporter.)

Examiner DE BRULER. You can answer that.

The WITNESS. I believe, sir, I have answered that.

Examiner DE BRULER. You can answer that yes or not. You were asked whether you believed it or not.

A. Yes; at the time I believed that to be the facts.

By Mr. MATTHEW:

Q. Do you repudiate it now?

A. Just what do you mean by repudiation?

Q. What I mean is, are you willing to stand upon those statements as correct and fair statements of facts, or do you now disclaim their accuracy?

2743 A. Just what do you mean by "disclaim their accuracy" please?

Q. Well, I think my question is very clear. Is this a correct statement, in your opinion, "California white pine played an important part in the development of California." Is that true?

A. Are you asking as a question of opinion or a question of fact?

Q. Whether you believe now that that is a correct statement of facts?

A. Yes; I believe that to be a correct statement of facts, but do not know that it is true.

Q. Do you believe it to be a correct statement that the miners used California white pine very extensively in building their cabins and also in the construction of flumes for the early gold-mining operations?

A. It is my opinion that the miners did use it.

Q. Then that is a correct statement of facts, in your opinion?

A. I wasn't there; I couldn't testify to that fact.

Q. In your opinion, it is an accurate, correct statement of facts, is it?

A. In my opinion, that is the correct statement of facts; yes.

Q. "Many of these relics remain to attest its durability." Is that a fair and correct statement of facts in your opinion?

A. I have not seen and identified any of these relics.

Q. In your opinion is it a fair and correct statement of facts?

A. Yes; I believe that some of those exist today.

2744 Q. Is it a correct statement that "Later when quartz mining was undertaken this species was used for mine props"?

A. From my own observation I can't say that that is exactly the case, but knowing the varieties of wood that are available to those operating such quartz mines, I believe that they do use that species.

Q. And that they did use it in the early quartz-mining days?

A. I believe they used it in the early quartz-mining days.

Q. Likewise, do you believe it to be a correct statement of facts that "It has been used in great quantities for irrigation purposes?"

Q. Then it comes to this, Mr. Ivory, does it not, that at the time when you wrote this article, from which I have quoted this paragraph, you believed that you were fairly and correctly presenting facts, and you believe today that you were fairly and accurately presenting the facts. You were entirely sincere in getting that out?

A. I was sincere in that.

Q. I don't question that at all, and you are not disclaiming it now.

A. I am not disclaiming it as a matter of probability; no, sir.

Q. Well, these are statements, are facts, and not mere matters of probability, are they, Mr. Ivory? These are categorical

2745 statements to the effect that the California white pine was used very largely in the early mining days.

A. What do you mean by "facts" in this case, something to which I can swear to personally, or observation, or something which I believe inferentially to be true, or which I heard as a matter to be true? Will you please explain that, and then I think I can answer.

Q. If I can help you I will be glad to. You testified at some length the other day about the durability of sugar pine as evidenced

by a number of sugar-pine structures which you have seen, and photographed, in the State of California.

A. Yes, sir.

Q. I assume that you were not there when those structures were erected?

A. No, sir.

Q. And I assume likewise that you were not there when these structures of the California white pine were erected, but as a student of this industry you have made an effort to inform yourself as to the antiquity of structures built both of California white pine and of sugar pine. Am I right?

A. Yes, sir.

Q. And you have attempted fairly, and without color, to present the facts as you have gathered them. Am I right in that?

A. When the words "without color" are included, I am afraid——

Q. (Interrupting.) Then you were coloring the story a little bit when you wrote that particular paragraph concerning which

2746 I have been interrogating you?

A. In an advertising or publicity sense, there is a certain amount of color, or picturesqueness, thrown into the story in that paragraph.

Q. Will you take out the color and picturesqueness from that particular paragraph and let us have it as it should be in order to fairly present what should be presented to the public?

A. Does counsel wish me to rewrite the paragraph?

Q. Yes; take out the color and picturesqueness.

A. I would say that in its method of presentation it is largely color and picturesqueness.

Q. Will you take it out?

A. Those are qualities of style rather than fact.

Q. The only criticism you offer now is to the literary style, which you think was a little bit too good? You are merely criticising the literary qualities?

A. I am not criticising; I am saying that in the preparation of advertising literature it is customary to endeavor to give it color and picturesqueness. This all comes from the question as to whether or not I prepared certain material without color, and I referred you back to the statement that when you included that it would be difficult to answer your question. That is what was in my mind.

Q. Do you claim there is any misstatement of fact in the paragraph which I have read to you and concerning which I have interrogated you?

2747 A. Will you again elucidate what you mean by "facts"?

Examiner DE BRULER. You know what that means. You may answer.

The WITNESS. If Your Honor please——

Examiner DE BRULER. Read that question.

(Whereupon the question referred to was read by the reporter.)

Examiner DE BRULER. Answer that yes or no.

The WITNESS. No. I have already testified on each of these things separately.

Mr. BURR. I think he is entitled to make an explanation, if Your Honor please.

Examiner DE BRULER. I think it has been dragging out long enough. He answered "no" and I think he has been given every opportunity to explain.

Mr. BURR. What?

Examiner DE BRULER. He has been given opportunities to make explanations.

By Mr. MATTHEW:

Q. Do you recall writing the paragraph in this same article to which I now direct your attention, the third paragraph from the commencement of the article?

A. (Examining article.) I do.

Q. Is that, in your opinion, a fair statement of the facts, and does it truly reflect your views at the present time?

A. It does.

2748 Mr. BURR. I would like to have a look at that, please.

Mr. MATTHEW. Very well. Here it is. [Handing article to Mr. Burr.]

(Here followed remarks off the record.)

By Mr. MATTHEW:

Q. The paragraph to which I have just directed your attention reads as follows: "There are 37 pine species in the United States, and just as the oaks are divided into white and red oak groups, so the pines are divided into white and yellow pine groups. Botanically, California white pine falls in the yellow pine group chiefly because it has three long needles in each bundle, whereas the white pines have five. The physical properties and uses of the wood cut from this tree, however, align it with the white pine group and set it apart very distinctively from the yellow pine group."

I understand that that represents your views as at the present time?

A. Yes, sir.

Q. And if there is anything in your testimony yesterday which suggests anything in conflict with the statements in the paragraph which I have just read, you would want to have this paragraph prevail, would you?

A. Just what testimony do you refer to, please?

Q. As to the distinction between the two groups of pines, and the lumber yielded by the two groups of pines?

A. You have the record. Will you please submit it and

2749 let me judge it.

Q. You know I haven't the record, so I won't press the question. I show you a paper entitled "Information Sheet No. 1 of the California White and Sugar Pine Manufacturers' Association"

dated February 1927, and apparently representing a revision of a previous paper of the same character, and ask you whether you recall this paper during the period of your connection with the association?

A. (Examining paper.) I was not employed by the association at that time.

Q. But that is a revision of a prior paper? Do you recall any of the language of this paper?

Mr. BURR. If the examiner please, I think it is hearsay unless this witness—for the purpose of correcting this witness' testimony.

Examiner DE BRULER. I don't know what you are talking about yet.

Mr. MATTHEW. Your point may be in order later on, but not right now.

Mr. BURR. What is the question?

(Whereupon the question referred to was read by the reporter.)

Examiner DE BRULER. You asked him what he knows about a certain paper handed him.

2750 By Mr. MATTHEW:

Q. I asked if he recognizes any of the text of this paper as having come from, or being identical with the text of a previous publication of the association while he had the position of manager of the trade extension.

A. (Examining paper.) I do.

Q. Was some of the material in this paper written by you or under your direction?

A. Some of it was written by me; yes, sir.

Q. Can you state whether or not any portion of the text of page 2, and particular of the first three paragraphs, column 1 of that page, was written by you?

A. This second paragraph is not especially familiar to me as having come—the second paragraph is not familiar to me right now, as having been written by me.

The third paragraph does appear familiar. I believe that it represents material that I wrote, but being a revision. I cannot say positively.

Q. But your best impression is that it is the material which you wrote?

A. My best impression is that it conveys ideas anyway that I had written in somewhat similar language; there may be minor variations.

Q. Do you recall the text of this paragraph on page 1, under the caption "Characteristics"?

A. I do. It was prepared under the direction of the trade
2751 extension committee of the California White and Sugar Pine Manufacturers Association. In fact, it was a statement of, one might almost say, policy of advertising prepared by them to be used.

Q. Did you write it?

A. I do not recall writing this paragraph.

Q. Is your best judgment that you did write the text of this third paragraph on page 2?

A. Yes, sir; my best recollection is that I did.

Q. The text of this third paragraph, on page 2, of this Information Sheet No. 1, dated February 1927, reads as follows: "Physical properties of California white pine, as demonstrated in tests made at the U.S. Government Forest Products Laboratory, Madison, Wis., and its uses, closely align California white pine with the botanical white pines. In fact, in many of its most important qualities and uses California white pine is more typically a white pine than are some species which botanically are classified as white pines."

Does this material which I just read represent, in your opinion, a fair statement of the facts?

A. It does.

Mr. MATTHEW. That is all.

Redirect examination by Mr. BURR:

Q. Mr. Ivory, when you were with the California White and
2752 Sugar Pine Manufacturers Association as extension manager, it was your business to aid the sales of both sugar pine and California white pine, so-called; is that true?

A. True.

Q. Did you get outside matter that appeared in the advertising columns of various publications?

A. I assisted in its preparation.

Q. Did you assist in the preparation of news articles that appeared in various trade journals with regard to both of these varieties?

A. I did.

Q. Do you recall whether or not you wrote advertising material and news articles that praised the durability of sugar pine, and gave specific illustrations of that durability?

A. I did.

Mr. MATTHEW. I object to that as immaterial and improper cross-examination.

Mr. BURR. If the examiner please, the question of comparative durability has been in issue a long time and I desire to show by this witness the comparative importance and the comparative bearing that should be given to the cross-examination of this very witness this afternoon, as regards the California white pine and sugar pine.

Examiner DE BRULER. That is cumulative; it was gone into thoroughly by this witness.

2753 Mr. BURR. I want to show the bearing of what has been called to his attention upon his real views at this very time that he has testified about.

Mr. MATTHEW. Cross-examination is one thing and——

Examiner DE BRULER (interrupting). I know.

Mr. MATTHEW (continuing). And direct and redirect examination happen to involve something entirely different. I merely am testing

the propriety of certain statements made by the witness, or completeness of the statements, when he was on the witness stand before. Of course, now, this is not only immaterial, but improper cross-examination, to ask the witness if he has written certain articles on sugar pine. It doesn't make any difference whether he has written them or not.

Examiner DE BRULER. I understand that.

Mr. BURR. If the examiner please, it seems it is important here and perfectly competent to show that although he has written certain articles with regard to California white pine, that the references to durability are not to be considered as contradicting what he has already said about the superior durability of sugar pine.

Examiner DE BRULER. Mr. Burr, I think the question of durability has been gone into repeatedly and repeatedly, and it is all cumulative. I shall rule that this witness shall not be further
2754 questioned along that line. We have to stop some time in the examination of these witnesses.

By Mr. BURR:

Q. Will you state whether the paragraphs which counsel has invited your attention to were paragraphs designed to primarily increase the sales of California white pine in favor of your members?

A. Primarily, the function of my whole work there was just what you point out.

Q. And your share in the preparation of these articles was done for that purpose, was it?

A. It was.

Examiner DE BRULER. I think the examination of this witness has gone far enough.

Mr. BURR. I am about to say I am through.

Examiner DE BRULER. I will be glad to hear it.

Mr. BURR. That is all.

(Witness excused.)

Mr. MATTHEW. May I call Mr. Brennan?

J. J. BRENNAN was thereupon called as a witness, and having been first duly sworn, testified as follows:

Direct examination by Mr. MATTHEW:

Q. Mr. Brennan, your services are engaged in the California Fruit Exchange?

2755 A. Yes, sir.

Q. In what capacity?

A. President of the California Fruit Exchange.

Q. And throughout what period have you been president of that company?

A. I have been president since 1926.

Q. And throughout what period have you been an executive officer of the California Fruit Exchange?

A. Since 1914.

Q. And continuous to the present time?

A. Yes, sir.

Q. What is the California Fruit Exchange?

A. The California Fruit Exchange is a group of 7,500 growers, incorporated in 1901 to market their own products?

Q. Is it a voluntary and nonprofit corporation?

A. Yes, sir.

Q. Just how does it operate, briefly?

A. The company is capitalized with $100,000 worth of stock, of which there has been $81,000 sold. Any member can buy two shares of stock.

The California Fruit Exchange at this time handles between 10,000 and 15,000 cars of fruit a year. It is handled on a purely consignment basis. We are a selling company; we don't buy. We make a flat charge, the same as the commercial operator does,
2756 of seven percent. At the end of every season we pay back to our growers everything above the cost of operation which has been, in the past twelve years, four percent paid back to the growers out of the seven percent charged for handling the business.

Q. That seven percent commission is a commission based upon the amount realized from the sale of the fruit at destination?

A. Yes, sir.

Q. Then, as the exchange operates, you are upon a nonprofit basis and the growers are paying your services in marketing and distribution of their fruit substantially at cost, or approximately at cost?

A. Cost.

Q. Can you state whether or not the California Fruit Exchange has been found to be a nonprofit and cooperative corporation by any tribunal or bureau of the Federal Government?

A. The Federal Government investigated us five years ago, and one of the internal-revenue men put a tax up against us of $65,000. We went on to Washington and were able to get back every cent of the tax, and the only tax we pay the Federal Government today is a tax on the stock.

Q. You do not pay any income tax upon any of the income of the California Fruit Exchange?

A. No, sir. I might tell you further how we operate and how we purchased our mill.

The California Fruit Exchange operates in this way: At the end of any season, when we find out what the earnings are,
2757 we declare an earning of four percent on every man's gross. At the annual meeting, which is held on January 14th every year, the directors refund back to their growers one percent of the four percent. Then we keep the balance of the money in the fund until the heavy borrowing of that season is over. In November of that next year we pay him a second one percent, and the other two percent is held in a withholding fund for five years. So at all times we have in our withholding fund, repayable to growers, $1,700,000, about.

Q. Does the California Fruit Exchange own and operate any lumber manufacturing plants?

A. We do.

Q. Where are they located?

A. At Gray Eagle and Blairsden, in Plumas County, and fifteen to twenty thousand acres of timberland.

Q. And for what purpose do you own and operate that plant?

A. To stabilize the shook product to our growers and to be able at all times to have a supply on hand for our growers.

Q. What do you do with the lumber which is not used in box shooks or supplied to your growers for other purposes?

A. In order to comply with the Government requirements on conserving timber, we sell our upper grades of timber and use our poorer grades of lumber for box.

Q. Then is this merely a by-product of your general operation?

A. That is all.

2758 Q. And such profit as you may obtain from the sale of lumber commercially is simply included in the income of your operation, which is finally brought down to a cost basis in the manner you have described?

A. The income from our mill every year is put with the earnings of the fruit and goes to make up the four percent that is paid to the growers.

Q. I assume you are not a technical lumber man?

A. I know nothing about the lumber business. I am a peach grower.

Q. Do you know whether or not the lumber which is marketed commercially from your mill is offered to the trade under the name of "California white pine"?

A. I think it is.

Q. Such profit as you make from the sale of your lumber commercially is purely incidental to your other operations?

A. Yes.

Q. And was found, by the Bureau of Internal Revenue, to be necessary to conduct your operations economically?

A. Yes.

Q. And the operation slightly reduces the cost of box shook to your growers?

A. Yes.

Mr. MATTHEW. That is all.

Mr. BURR. With the consent of opposing counsel, I wish the record to show that Mr. Brennan's testimony, beginning at the beginning and throughout, is part of Commission's case

2759 docket no. 1626, against the California Fruit Exchange, and is not a part of the other cases, docket 1620 to 1169, inclusive.

Mr. MATTHEW. That is agreeable. That is a special situation.

(Here followed remarks off the record.)

Examiner DE BRULER. Very well.

Mr. BURR. That is agreeable?

Examiner DE BRULER. Very well.

Cross-examination by Mr. BURR:

Q. Mr. Brennan, where are the members of the California Fruit Exchange?

A. All over the State of California.

Q. Have you any outside of the State of California?

A. No.

Q. This lumber of the better grades does not go into the boxes, but is sold in order to comply with the conservation requirements; and where do you ship that?

A. Well, that is something that I cannot tell. I suppose it is shipped all over the world. It is handled through the sugar and white pine people, some of it.

Q. To whom do you dispose of it?

A. Well, I don't know how it is handled. It is handled through our Mr. Rowe. We have a superintendent.

(Here followed remarks off the record.)

2760 Mr. BURR. Counsel for the defense says that it is shipped in interstate commerce, if Your Honor please.

Mr. MATTHEW. That is, to a large extent.

Mr. BURR. As well as intrastate commerce.

Mr. MATTHEW. Yes.

Mr. BURR. I think I have no further cross-examination.

Examiner DE BRULER. That is all. Stand aside; you are excused.

(Witness excused.)

Mr. MATTHEW. I will call Mr. Johnson.

W. P. JOHNSON was thereupon called as a witness, and having been first duly sworn, testified as follows:

Direct examination by Mr. MATTHEW:

Q. Mr. Johnson, where do you reside?

A. In Los Angeles.

Q. What is your business or occupation?

A. I am now with the W. E. Cooper Lumber Company as field purchasing man for sugar and white pine and spruce requirements.

Q. This is the same W. E. Cooper Lumber Company of which Mr. James is an officer?

A. Yes, sir.

Q. How long have you been connected with the lumber business in general?

2761 A. About twenty-four years.

Q. Will you briefly describe your experience in the lumber industry?

A. In my younger days, during the first two years, I was in Wisconsin among the pine and hardwood mills, after which I ventured out to California and Oregon, where I have been since, in and around most of the Oregon and California mills.

Q. And with that particular companies in California have you been identified?

A. When I first came to California I was purchasing and shipping for a Chicago firm, sugar and white pine for a period of two years. Later I was associated with the McCloud River Lumber Company, with the Standard Lumber Company, and the Sugar Pine Lumber Company, chief inspector of the California Sugar and White Pine Association for five and one-half years; and the last year and a half with the W. E. Cooper Lumber Company, of Los Angeles.

Q. You have had experience in the buying end and in the marketing end, and likewise some experience in the mills?

A. I have.

Q. And you have likewise had similar experience in the forests?

A. Not in a technical way.

Q. What is your familiarity with the pine forests, if any?

A. Well, I can detect sugar pine from our California white pine, spruce.

Q. Well, you have visited the forests frequently?

2762 A. Yes, sir.

Q. And you have been on the scene of the actual sawmill operations?

A. Yes.

Q. Both in California, Wisconsin, elsewhere, Oregon?

A. Yes, sir.

Q. You know the northern white pine?

A. Yes, sir.

Q. And I assume you are likewise familiar with the California white pine and with sugar pine?

A. Yes, sir.

Q. How long have you been familiar with the term "California white pine"?

A. Since my coming to the West, which was twenty-three years ago—twenty-two years ago.

Q. Has that been the common commercial name under which the lumber from the Pinus ponderosa tree has been marketed?

A. Until about four or five years ago it was practically the only name by which it was known, California white pine.

Q. And has sugar pine always been marketed under the name of sugar pine in the entire period of your contact with the industry?

A. Yes, sir.

Q. Have you ever known it to be offered to the trade under the name of "California white pine", or any other name, including the word "white"?

2763 A. No, sir.

Q. Are you able to compare these three lumbers, namely, northern white pine, California white pine, and sugar pine, with respect to their qualities and uses to which they are severally adapted?

A. Yes; I am.

Q. Will you state that generally?

A. In a general way?

Q. Will you state generally whether they are used for the same or for different purposes?

A. The northern pine is familiarly known as growing around the Great Lakes in the grades of common, selects, and better; their use is very similar to the California white pine. The percentage of shop was small, but what they did get went into the making of doors, the same as California white pine or sugar pine.

Q. Are there any important differences between the uses of California white pine and sugar pine?

A. In some cases there are.

Q. And what are those particular points of difference?

A. In some cases white pine is more desirable for doors; in some cases sugar pine is more desirable for doors. It depends entirely on the user of them. He tells you what he wants.

Q. Well, both California white pine and sugar pine are used quite generally in sash and door manufacture?

A. Yes, sir.

Q. For interior trim and similar purposes?

2764 A. Yes, sir.

Q. Are these two names, California white pine and sugar pine, well established in the trade?

A. Very much so. In fact, if I may qualify this, until a lot of these later trade names, botanical names, rather, came out, the trade was realy not confused during my time in the East; it was firmly fixed in their minds as to what they were going to get. If he bought California white pine or if he bought California sugar pine, he knew what he was going to get. But that condition, I don't think, prevails today, which is largely attributed to the fact that there has been so much talk about this botanical term, or misnaming, and for that reason he is possibly confused.

Q. What particular term have you in mind, as a botanical name, for lumber?

A. I have reference to some of my experience with the association when I was in the East.

Q. What particular term have you in mind, you said that there was some botanical term for lumber which had recently come into existence?

A. Pondosa.

Q. Has the introduction of this term, in your opinion, caused confusion to the trade?

A. Yes; I think it has.

Q. Will you state why?

A. Because that wood has always been known as western white pine.

2765 Q. I think you stated prior to the introduction of this term, "pondosa pine," the term "California white pine" was well

known to the trade and there was no confusion between California white pine and sugar pine?

A. No, sir.

Q. Do you find that sugar pine is preferred by some of your customers for various uses and California white pine for other uses?

A. Yes, sir.

Q. It is customary for our company to give to the trade just what it requires?

A. Absolutely.

Q. Do you find any complaint in the trade with respect to California white pine?

A. None.

Q. Have you any complaint respecting confusion between the two woods?

A. None.

Q. Any complaint as to the durability of California white pine?

A. None.

Q. Are you familiar with the reputation of sugar pine for durability?

A. In a measure, yes.

Q. And what is that reputation insofar as you are familiar with it?

A. What I would give you in this respect would be general belief.

2766 Q. Well, that is all I mean—is it good or bad or indifferent?

Mr. BURR. Among what class, the public?

Mr. MATTHEW. The trade with which he is familiar.

A. May I ask you to put the question again?

By Mr. MATTHEW:

Q. What is the reputation of sugar pine with respect to——

Mr. BURR (interrupting). Ask him if he is familiar with it first.

Mr. MATTHEW. He said "yes" to that.

Examiner DE BRULER. He is qualified.

By Mr. MATTHEW:

Q. I am asking now what that reputation is, is it favorable or otherwise?

A. Favorable.

Q. And are you familiar with the reputation of California white pine as to durability?

A. Yes, sir.

Q. And is that favorable or otherwise?

A. Favorable.

Q. Is there any difference between the repute of the two types of lumber as to this factor?

A. None.

Q. You say you know the trees to some extent in the forest. May I ask if you ever had charge of any sawmill operations in California?

2767 A. Well, I have had charge of several, but the more recent one was one in the San Joaquin Valley for the Sugar Pine Lumber Company.

Q. That was a sawmill of the Sugar Pine Lumber Company?

A. Yes.

Q. At what point, please?

A. Pinedale.

Q. In what county?

A. Fresno County.

Q. And what was the nature of your responsibility there?

A. I was superintendent of the entire plant.

Q. How long were you there, Mr. Johnson?

A. Five years.

Q. Then you are familiar with the cutting of sugar pine?

A. Yes, sir.

Q. Was there likewise some California white pine which was cut at your mill during that period?

A. Yes, sir.

Q. Are the two trees found in the same forest in that particular area?

A. Yes, sir.

Q. Have you had an opportunity to observe the comparative resistance of these two species of trees to decay when the trees are down in the forest, or otherwise?

A. Yes, sir; I have.

2768 Q. What opportunities have you had in that respect?

A. Insofar as decay is concerned—making a comparison——

Q. (Interrupting.) First, what opportunities have you had, I am now asking?

A. To observe the logs as they come to the mills to be sawed.

Q. Have you noted them on the ground in the forest?

A. Yes.

Q. Have you milled any logs of both species as they have been down in the forest for some time?

A. Yes; I have.

Q. What has been your experience as to the comparative resistance of logs of the two species to decay under those conditions?

A. Do you have reference to decay?

Q. Yes.

A. In the matter of comparison there is by far greater rot in the heartwood of the sugar pine than there is in the California white pine from that district, not merely because sugar pine predominates in volume.

Q. Have you finished your answer?

A. Yes, sir.

Q. Why is it there is a greater percentage of heartwood of the sugar pine than in the heartwood of the California white pine?

A. That I cannot say.

Q. That has been your experience?

2769 A. That has been my experience.

Q. Have you found that the sapwood of either species is more resisting to decay than the other when the logs are down in the forest?

A. I think——

Q. (Interrupting.) Under apparent similar conditions?

A. I think they are both on a very equal basis; they compare the same in the same climatic conditions.

Q. They are susceptible to rather rapid decay when on the floor of the forest?

A. I would have to say yes, and modify it, because a tree that has fallen from a smaller tree carries much more sap than one of the larger trees and, naturally, it would decay more in volume that the larger tree, the sapwood.

Q. The greater proportion of sapwood the greater the relative amount of decay in the entire trunk?

A. Yes.

Q. Have you had any experience in sawing logs cut from standing timber which has been dead for some time before cutting?

A. Yes, sir; I have.

Q. Have you observed the comparative resistance of the two species of lumber here in question to decay under those conditions?

A. I have.

Q. What has been the result of your observation?

2770 A. Well, on a comparative basis with the sugar and California white pine, there is much more decay in the sugar-pine log than there is in the white pine.

Mr. BURR. You are talking about standing timber?

The WITNESS. Fallen logs.

Mr. BURR. I thought you said dead standing.

Mr. MATTHEW. Standing dead timber now. I think we covered fallen logs before.

Q. I am asking about the standing dead timber. Do you so understand me and is it the same answer?

A. Yes; the same answer, the same as before.

Q. Are you familiar with a grade of lumber which has been referred to here as Australian clear?

A. Yes; I am.

Q. Is that confined to California white-pine lumber?

A. No, sir.

Q. What other lumber is classified or graded as Australian clear?

A. I believe they have it in several of the wood species, but also in the sugar pine.

Q. Do you know of any particular lot of sugar pine now in existence falling within the grade of Australian clear?

A. Yes; I think one of the southern mills has a large accumulation of sugar pine, Australian clears.

Q. What mill?

A. The Sugar Pine Lumber Company.

Mr. BURR. Of the Australian grade in the clears?

2771 The WITNESS. Yes, sir.

By Mr. MATTHEW:

Q. Are you familiar with the defect in lumber known as shake?

A. Yes; I am.

Q. Do you know whether or not either one of these two species is more affected by shake than the other?

A. Yes, sir.

Q. And which one?

A. Sugar pine.

Q. Is that actually carried into the lumber or is the effect of shake eliminated in the process of sawing?

A. That defect does not come out in sawing.

Q. Is it a defect which is contained in the finished product out of the mill?

A. Yes, sir.

Q. Are you familiar with the sugar-pine lumber yielded in the northern part of this range, say, in the Grant's Pass District in Oregon?

A. Yes, sir; I am.

Q. Does the quality of lumber differ materially from the sugar pine as yielded from the southern Sierra operations?

A. I will have to say yes and no on both of those, and then modify it. The sugar pine cut from where it is grown at an elevation around 2,500 to 3,000 feet is of a harder texture, while there is some that is grown at 5,000 foot elevation is of a

2772 nice choice quality.

Q. Then there is quite a variation in the quality of sugar pine over its range?

A. Yes, sir.

Q. And dependent, in a measure, on the elevation at which it grows?

A. Yes, sir.

Q. Mr. Johnson, I assume that your company is equally interested in selling both sugar pine and California white pine? That is, you are anxious to sell all you can of each species of lumber?

A. Yes, sir.

Q. Have you found that sugar pine encounters any sales resistance by virtue of the fact that California white pine is the common commercial name for the lumber yielded from Pinus ponderosa trees?

Perhaps I should reframe the question if that isn't clear.

Are you hampered at all in the sale of sugar pine because of the use of the term California white pine?

A. None whatever.

Q. Is the sugar pine, in a market way, prejudiced in any respect by the existence of this term "California white pine"?

A. None whatever.

Q. If the term "California white pine" for this lumber were replaced by some term in which the name "white" did not appear, would the market opportunities of sugar pine, in your

2773 opinion, be improved?

A. It would not.

Q. Will you state whether, in your opinion, these two lumbers are selling upon their merits, and that they are well known to the trade by virtue of their merits, and the uses to which they are adapted?

A. Yes, sir.

Q. Do you find that your customers have any interest in the botanical names of trees?

A. None.

Q. Are they interested in the common names of the trees in the forests in connection with the lumber, or are they interested rather in the quality and the use to which the lumber may be put?

A. The trade is so well versed on what they are going to get, when they order either one of the wood species, that this isn't an issue with us.

Q. Are there any differences in the practices which are followed in the manufacture of these two woods?

A. Yes; I believe there is.

Q. What are those differences, briefly?

A. Well, in the manufacture of sugar pine we endeavor to confine the sapwood to thinner thicknesses, whereas on the white pine, due to the fact that it has more sap, it seasons with less degrade.

2774 Q. Have you completed your answer?

A. No. Whereas, white pine can be cut from thicker lumber, including the sap, with less degrade on account of the sap.

Q. Just why should that be?

A. Well, from my experience the pieces in sugar pine cut 10, 12, and 16 quarter that has both heart and sap wood invariably degrade considerably.

Q. Is there any difference in the process of seasoning?

A. Yes; there is.

Q. Just what is that?

A. On kiln drying you mean, or air drying?

Q. Either.

Mr. BURR. I wonder if I could beg counsel's indulgence to permit me to have read back the last three or four questions and answers?

Mr. MATTHEW. Certainly.

(Whereupon the preceding four questions and answers were read by the reporter.)

By Mr. MATTHEW:

Q. You may proceed.

A. In kiln drying sugar pine it is dried on a quite different schedule than the white pine, due to its heavy moisture content and

the resistance of transfusing the moisture from within the board; whereas the white pine carries a much less moisture content and is dried on a different schedule.

2775 It would take some time to explain the reason why.

Q. I know. Does it make any particular difference in the result, as far as the manufactured product is concerned?

A. I think not.

Q. Does it have any particular effect upon the susceptibility of either lumber to warp, twist, in the stack?

A. If it is properly manufactured; no.

Q. Have you noticed any material difference between the two lumbers when they are properly manufactured, seasoned, and stacked in this respect?

A. Well, what we term "commercially seasoned" sometimes is not so when it reaches destination.

Q. I am asking for your best judgment as to properly manufactured and seasoned lumber.

A. There should be no difference.

Q. The remanufacturing of box lumber for the purpose of making fruit or other containers, is there any difference in value of these two woods?

A. Yes; there is.

Q. And just what is that difference and what accounts for it?

A. One cuts up with less waste than the other.

Q. Which one is that?

A. The white pine.

Q. Why is it?

A. Because the sugar pine contains larger knots and carries a greater percentage of what we term "dry rot."

2776 Q. Did you participate in the formation of the grading rules of the California White and Sugar Pine Manufacturers Association?

A. I did.

Q. Will you please outline the effects, or characteristics, of the different grades of these two species of lumber?

Mr. BURR. One moment!

Mr. MATTHEW. Not in great detail.

Mr. BURR. One moment, if the examiner please. At various times in the trial of this case I think it has been ruled in the east, and I think the present examiner's rulings have been more or less in harmony with that more categorical ruling in the early stage of the case against the reception of these grading rules. I don't think the Commission wants to go into those technicalities, and I don't think they are pertinent here. Major Sheppard so ruled, and I think that question is entirely incompetent in this case.

Mr. MATTHEW. I think counsel misunderstands my purpose. I am not intending to go into grading rules as such. I merely want to state something that was regarded as a defect in the species of lumber.

I will leave off the reference to grades—just say what are the defects?

Mr. BURR. Defects are technically defined. We don't want them here. There are many defects of all descriptions. It doesn't seem we want to trespass on that phase of the lumber business. I object to it as incompetent.

2777 Mr. MATTHEW. Let me reframe my question.

Q. Are typical defects in the two species of lumber different?

A. Yes, sir.

Q. What are those differences?

A. In the three and four common grades the old northern pine—you want a comparison of all?

Q. I am asking for sugar pine and California white pine?

A. I will come to that then. In the three or four common grades we have a greater amount of dry rot in those grades in the sugar pine than we do in the white pine. In the factory grades we have larger knots with more waste in the sugar pine than we do in the white pine. In the select and finish grades we have more pitch pockets in the sugar pine than we do in the white pine.

Q. Are you familiar with the grading of northern white pine?

A. Yes, sir.

Q. Can you contrast the defects which are characteristic of northern white pine with the defects of California white pine?

A. The defects in the northern pine as compared with the California white pine in the grades, in the shop and better grades, the knot defects are smaller in the northern pine, and in the common grades there is by far more dry rot in the three and four common grades in the northern pine.

Q. When you were in charge of saw-milling operations here in California, did you follow approximately the same methods in handling sugar pine and California white pine through the

2778 mill, or was there a difference in the methods?

A. In the manufacturing?

Q. Yes; or have you covered that?

A. I have covered that.

Q. Have you found any appreciable difference in the percentages of sound or unsound logs in these two varieties of trees, or have you covered that?

A. I think I have covered that.

Q. You testified about the relative susceptibility of the windfallen logs of the two species to decay. Were you able, in any instances where you did observe such logs, to determine how long they had been dead or how long they had been lying on the ground?

A. No; my guess would be about the same as anybody else's.

Q. Were you able to determine the relative commercial value of logs of the two species which were wind fallen?

A. Yes, sir.

Q. What was that determination?

A. Logs that we could detect that had been down for some time, due to the fact that the sapwood was decomposed, making it unmerchantable, but after sawing the sap off we found sound and commercial lumber in both the sugar and white pine.

Q. You saw no difference between the two?

A. No difference.

Q. Have you ever had occasion to see sugar pine used for mud sills?

2779 A. Never have.

Q. Have you ever seen any California white pine used for mud sills?

A. I don't know whether you term it mud sills, but I think you will find, in fact I know several of the, what we call small circular mills, use nothing but California white pine for their mud sills.

Q. You don't know the result of their experience?

A. Yes; I do.

Q. What are the results?

A. They have been very lasting; I know one has been in for twenty-seven years.

Q. Have you ever had any complaints as to either of these woods with respect to their durability, or respecting the proper seasoning of the lumber, or otherwise?

A. Yes; I have.

Q. What was the nature of the complaints?

A. Insufficiently seasoned lumber.

Q. Have these complaints been made with respect to either or both species?

A. Largely sugar pine.

Q. Can you account for the fact that the complaints are largely directed to the sugar pine?

A. About the only reason I can give is that the manufacturer doesn't want to leave it stay piled long enough and it takes too long to dry, than it does for the white pine.

2780 Q. That is due to the heavier moisture content of sugar pine?

A. Yes, sir.

Q. Have you had any experience with either wood when used for pattern purposes?

Mr. BURR. I object to that as hearsay.

Mr. MATTHEW. I asked if he had any experience.

Examiner DE BRULER. The objection is overruled. He asked if he had any experience.

The WITNESS. In the use of pattern lumber?

By Mr. MATTHEW:

Q. Yes.

A. Yes, I have.

Q. What has been your experience?

A. You mean in its use now?
Q. Yes.
A. The only experience I can state is in the nature of complaints on pattern lumber that I have had to readjust that have been shipped from the California mills.
Q. Do you furnish lumber for pattern purposes to the trade?
A. You mean the people I am with now?
Q. Yes.
A. Yes; we do.
Q. And the sugar pine is sometimes furnished for pattern purposes?
A. Yes, sir.
Q. Is California white pine sometimes furnished?
A. We haven't done it, our company. Our present company
2781 hasn't done it.
Q. And sugar pine, for the most part, has the call of the trade for pattern purposes?
A. In the Los Angeles district; yes.
Q. Is that true in other districts with which you are familiar?
A. I think not.
Q. I am calling for your own experience. You don't know as to it elsewhere?
A. No.
Q. In selecting pattern lumber from either sugar or white pine logs, you differentiate in either case between heart and sap wood?
A. Yes, sir.
Q. In which case?
A. In the sugar pine.
Q. What do you do in case of sugar pine?
A. We try to have our pattern lumber in sugar pine free from sapwood.
Q. What do you do in the case of California white pine?
A. The practice is that it carries a greater amount of sapwood and is accordingly included in pattern lumber.
Q. I think you said you had relatively little call for California white pine for pattern purposes in your district?
A. Yes.
Q. I will ask you finally to state, Mr. Johnson, whether
2782 you have any business interests in any lumber-producing concern?
A. No, sir.
Q. And you have no interest in this controversy except as you have appeared here as a witness?
A. None whatever.
Q. I may ask you also whether in your opinion a change in the name here under consideration, namely, California white pine, and its replacement by any other name, would or would not occasion any confusion or difficulty in the lumber trade?

Mr. BURR. If the examiner please, by any other name—some names might and some names might not. That is very indefinite and speculative.

Examiner DE BRULER. Objection overruled. The witness may answer.

A. I am satisfied not.

By Mr. MATTHEW:

Q. That it would not cause confusion if the name were changed?

A. Yes.

Mr. BURR. Would not cause confusion if a change were made?

The WITNESS. I didn't get the question right.

Mr. BURR. Read the question.

(Whereupon the question referred to was read by the reporter.)

The WITNESS. To that I would answer "yes" decidedly.

2783 By Mr. MATTHEW:

Q. Why would such confusion result?

A. Because, from my experience in the East on the Atlantic coast and out here, the trade is familiar with the trade name of California white pine and designate from which district they want stock, and the trade themselves tell you from which district they want this California white pine to come from, based on their past experience.

(Here followed remarks off the record.)

Examiner DE BRULER. We will take an adjournment until 10:00 o'clock a.m. February 1, 1930.

(Whereupon, at 5:10 o'clock p.m., an adjournment was taken until Saturday, February 1, 1930, at 10:00 o'clock a.m.)

2784 Docket No. 1620 to 1669, inc.

SAN FRANCISCO, CALIFORNIA, *February 1, 1930.*

Met pursuant to adjournment, 10:15 o'clock a.m.

Before: Ellis De Bruler, examiner.

Appearances:

Eugene W. Burr for the Commission.

McCutchen, Olney, Mannon & Greene (by Mr. Allen P. Matthew and Carl I. Wheat) for the respondents.

Examiner DE BRULER. Are you ready to proceed, gentlemen?

Mr. BURR. I think so.

Examiner DE BRULER. Proceed as rapidly as possible.

(Here followed remarks off the record.)

Mr. BURR. We have an exhibit here more or less pending.

(Here followed remarks off the record.)

Mr. BURR. I now request, if the examiner please, inasmuch as opposing counsel are proposing to use other parts of Statistical Bulletin No. 21, of the Department of Agriculture, dated October 1927, in addition to those which are already incorporated in the

record as Commission's exhibit no. 34, with certain designa-
2785 tions of letter number from "A" to "H" inclusive, I now request that the pamphlet which I supposed was marked as a whole, no. 34 for identification, be so marked, and that the designation no. 34 on the outside cover be changed to no. 34 for identification in order that the pamphlet may be remarked for purposes of respondents' no. 34, respondents' exhibit for identification and those portions which the respondents desire to offer be marked each page as "Respondents' Exhibit No. 34" for identification and those portions which the respondents desire to offer be marked each page as "Respondents' Exhibit No. 34" for the record A, B, C, E, and so.

Examiner De Bruler. It may be received and so marked.

(Whereupon the document referred to was received and marked "Respondents' Exhibit No. 34" for identification, and further designated at "Respondents' Exhibit No. 34A, 34B, 34C, 34D, 34E, 34F, 34G, and 34H" for the record.)

Mr. Matthew. It is my understanding that the exhibit should be received as such and not merely marked for identification, and that the Commission has offered certain parts of that exhibit and the respondents have offered certain other parts, and such have been received and are of record.

Examiner De Bruler. That is understood.

Mr. Wheat. In further explanation I might say that this document is both Commission's exhibit no. 34 for identification, and respondents' exhibit no. 34 for identification.

Commission's exhibit no. 34 for the record includes the
2786 following tables:

Comm. Ex. 34A: Table 9, page 9.
" " 34B: Table 10, pages 10 and 11 (present growth figures only).
" " 34C: Table 12, page 12.
" " 34D: Table 57, page 66.
" " 34E: Table 57, page 67.
" " 34F: Tables 82 (page 124) to 135, inclusive.
" " 34G: Table 128, pages 221–223, inclusive.
" " 34H: Table 133, pages 239–241, inclusive.

Respondents' exhibit no. 34 for the record includes the following tables:

Resp. Ex. 34A: Table 18, page 18.
" " 34B: Table 21, page 20.
" " 34C: Table 55, pages 62–65, inclusive.
" " 34D: Table 60, pages 74–83, inclusive.
" " 34E: Table 61, pages 84–93, inclusive.
" " 34F: Table 74, page 116.
" " 34G: Table 74, page 117.
" " 34H: Table 126, pages 215–217, inclusive.

Examiner De Bruler. Let's proceed with the hearing.

W. P. JOHNSON resumed the stand and further testified as follows:

Direct examination (continued) by Mr. MATTHEW:

Q. Mr. Johnson, I am not sure whether or not you stated that at one time you were an inspector of the California White and Sugar Pine Manufacturers Association?

A. Yes, sir.

Q. Were you its chief inspector during any period?

A. Yes, sir.

2786a Q. Throughout what period, please?

A. Our association was organized in 1916. For six months we loaned the chief inspector of the Western Pine Manufacturers Association, at which period of time he left, and I succeeded him for five and one half years following.

Q. What is the nature of your duties as chief inspector?

A. Harmonize the grades as produced from the log at the various mills in southern Oregon and California.

Q. Did you investigate complaints about grading, about the quality and nature of lumber?

A. Yes.

Q. Your duties carry you to the Middle West and to the Atlantic coast territories?

A. Yes, sir.

Q. Did you come in direct contact with the purchasers and users of California white pine and California sugar pine?

A. I can't say the ultimate users, but the dealers who received this lumber and parcelled it out to the trade.

Q. And with the sash and door manufacturers?

A. Yes, sir.

Q. Did you ever have any complaint presented to you as to whether or not the California white pine was unsatisfactory or not, such as it was represented to be?

A. Yes.

Q. And what was the nature of those complaints?

2787 A. On several occasions, for instance, the door factory had been accustomed to our California white pine from one district that was of a soft texture, and he had ordered similar stock on repeated orders and received stock from a community where the texture was not so soft.

Q. These complaints were directed against the character of the lumber received from certain districts?

A. Yes.

Q. And, in general, was their complaint about California white pine?

A. No.

Q. Was there any complaint about the name?

A. None.

Q. Was there any evidence that the trade was confused as to the term California white pine?

A. Not during my time back there.

Q. During this period you were rather in frequent contact with the sash and door manufacturers in the Middle West?

A. I was.

Q. What was the principal lumber which they were using in the manufacture of sash and doors?

A. Western and California white pine.

Q. Did any case ever come to your attention, during your period of service as inspector for the association, where California white pine had been furnished upon orders calling for sugar pine?

2788 A. No, sir.

Q. Did you ever have a complaint from the customer to the effect that he had ordered sugar pine and California white pine had been furnished?

A. Yes; I did.

Q. How many instances?

A. I know of only one specifically.

Q. Did you investigate it?

A. Yes; I did.

Q. And with what result?

A. The car was straight sugar pine.

Q. Have you had any experience with Idaho white pine lumber, Mr. Johnson?

A. Yes, sir.

Q. Is any of that experience recent?

A. Yes, sir.

Q. What is it, please?

A. I was field man for a company and constantly among the mills from Vancouver, B.C., as far south as it is manufactured in California, looking for lumber that will best suit and meet the requirements of our trade. I had occasion to run across a large unit of Idaho white pine logs in the Gray's Harbor country, Washington, logs which had grown on the south slope of the Olympia Mountains.

2789 They looked very favorable to me and I induced our company to buy them. Under my supervision I had them manufactured, graded, shipped to Los Angeles for seasoning and distribution among our trade.

Q. Has the lumber proved satisfactory to your trade?

A. Not altogether.

Q. Have you found that it differs in quality in any marked degree from lumber from the same species of tree grown in the interior?

A. Decidedly so.

Q. What are the differences?

A. It is much harder in texture.

Q. This lumber, as I understand it, was yielded by the tree which has been referred to here as the Pinus monticola?

A. Pinus monticola; yes.

Q. You know the tree?

A. Yes, sir.

Mr. MATTHEW. You may cross-examine.

Cross-examination by Mr. BURR:

Q. That particular variety of Idaho white pine is generally known as coast white pine, isn't it?

A. No; they call it Idaho white pine up there and ship it; it has been manufactured for some time and shipped down east as Idaho white pine.

Q. That is not in the inland empire at all, that is down on the coast?

2790 A. Yes.

Q. Grays Harbor is in southwest Washington, isn't it?

A. Yes.

Q. Do you happen to know whether that is an extremely rainy district?

A. It is.

Q. What companies did you testify that you had been connected with in the lumber trade, or didn't you give a list?

A. I don't recall whether I specified the names or not.

Q. You have been with the Sugar Pine Lumber Company, of Pinedale, have you not?

A. Yes, sir.

Q. How many years were you with them?

A. I was with them from 1923 to 1928.

Q. Who was your chief over there?

A. You mean the manager?

Q. Who did you report to?

A. While Mr. Hemphill was manager I reported to him.

Q. And after that to whom?

A. He was succeeded by B. A. Canon.

Q. You were with Staats & Payne?

A. Yes, sir.

Q. Of New York, were you not?

A. Yes, sir.

Q. What was your capacity with them?

2791 A. Buying on the coast here for them.

Q. Did you report direct to Mr. Frederick Staats during that period?

A. Yes; he was in New York and I was out here.

Q. You are now with the W. E. Cooper Lumber Company?

A. Yes, sir.

Q. How long have you been with them?

A. A little over one year.

Q. What other concerns have you been with during your lumber career?

A. The Standard Lumber Company, now known as the Pickering Lumber Company, the McCloud River Lumber Company.

Q. I think you testified to that. Any others?

A. I operated two small mills, one in Truckee and one in Loyalton.

Q. Loyalton is in California and Truckee is in Nevada?

A. Truckee is in California.

Q. You were in business for yourself on those occasions?

A. No, sir. I had entire charge of the lumber products there.

Q. For whom?

A. I was not in business for myself.

Q. Was that for Pickering?

A. No, sir.

Q. Who was that for?

A. One of them was the Rees Lumber Company, the other was for the Smith Lumber Company.

2792 Q. And what other concerns?

A. I was with the W. E. Kelley Lumber Company, of Chicago, when I first came west. I think that is all that I recall now.

Q. About a half dozen different concerns?

A. Yes.

Q. Besides the California White and Sugar Pine Manufacturers Association?

A. Yes, sir.

Q. Do I understand you to imply by your testimony that in your judgment the sugar pine wood is inferior to the California white pine?

A. I don't believe you did. If I did I didn't mean to convey that.

Q. The California sugar pine commands a better price on the market than California white pine, does it not?

A. In some grades.

Q. In which grades does it command a better price?

A. I should say 1 shop and better.

Q. How about 1 common?

A. We don't have such a grade, can't get it, doesn't produce it.

Q. You mean the sugar pine doesn't?

A. Yes.

Q. What common grades does sugar pine produce?

A. We call that 2 and better; I say we are getting no 1 common. It is so insignificant that it is put in with the 2 common.

2793 Q. Merged in with the 2?

A. Yes; and 3 common and 4 common.

Q. Does no. 2 common of sugar pine command a better price than nos. 1 and 2 of the California white pine, or either of these two grades?

A. In some instances.

Q. Isn't that true as an average?

A. No.

Q. Well, in your judgment, why does California white pine fail to command as strong a price on the grades better than the common grades than sugar pine?

A. I don't believe I can answer that.

Q. Let me see if I can help you. Do you think a reputation for sugar pine for greater durability than California white pine helps its price to be higher than that of the California white pine?

A. I don't believe I get your question now.

Q. Does a reputation in the trade for greater durability of sugar pine help that product to maintain a higher price on the market than California white pine?

A. I don't think so.

Q. You don't?

A. My personal belief is it does not.

Q. Does it have a better reputation for durability, in your judgment?

2794 A. No; not when you speak of durability.

Q. Durability when exposed to the weather, I am referring to.

A. No.

Q. It does not have a better reputation?

A. No.

Q. I want to ask you again, from your long experience in this business, why, in your judgment, sugar pine commands a higher price on the market?

A. If I can only give it in a brief way, it is for particular uses; it is more desirable.

Q. What uses are those?

A. You ask for durability, as far as durability is concerned, no. But in some cases, such as working it in different uses, on account of its softness, it possibly works up better than the California white pine does.

Q. What purposes and uses are those that it works up better for than the California white pine?

A. It is generally recognized in pattern work.

Q. What kind of wood is required for pattern purposes?

A. Today both California white pine and sugar pine.

Q. No, no; what kind of quality, not what wood?

A. What kind of quality?

Q. Yes.

A. Soft texture.

Q. Soft texture?

2795 A. Well seasoned.

Q. Yes?

A. Properly graded and manufactured.

Q. Does uniformity of texture have anything to do with its utility for pattern purposes?

A. Yes, sir.

Q. In those respects, in your judgment, the sugar pine is superior to California white pine?

A. In my judgment?

Q. Yes.

A. If the same degree of care is exercised in selecting both I question whether there is.

Q. How do you reconcile that with your statement that the use of the wood for pattern purposes is one of the elements that enables California sugar pine to obtain a greater price on the market than California white pine?

A. Merely it has been a practice, so far as I know, and they have enjoyed that privilege.

Q. It has enjoyed a higher reputation for those qualities than California white pine?

A. Yes.

Q. Isn't it because there is greater diversity in the California white pine product than there is in a sugar pine product?

A. No, I could cut you just as inferior patterns out of sugar pine, or monticola, or strobus wood as out of California white
2796 pine.

Q. But there isn't as great a run on that type of wood as there in the California white?

A. It is easier to get out of this true white pine.

Q. In other words, there is a greater range of quality and characteristic of the California white pine than there is of the sugar pine, isn't that true?

A. Let me get you straight on that.

Q. There is a greater range of characteristics and qualities in the Pinus ponderosa, or California white pine, than there is of the sugar pine?

A. No.

Q. Isn't it true that the California white pine product has a larger proportion of the harder material than the sugar pine?

A. Speaking generally, no.

Q. Isn't it on an average softer than the California white pine?

A. Yes.

Q. The average then of California white pine is harder; isn't that right?

A. I would rather say you are right.

Q. There are some sections of the California white pine range where there is very little that is suitable for pattern purposes; isn't that true?

A. Yes, sir; likewise the sugar pine.

Q. What range of the sugar pine would you say that is true of?

2797 A. Southern Oregon, northern California and possibly south of the extreme eastern part of the State.

Q. Are you familiar with Arizona and New Mexico ponderosa?

A. Briefly.

Q. Now, what other tendencies are there in the market that tend to give sugar pine a higher price than California white pine besides its use for pattern purposes?

A. Piano key stock.

Q. What kind of material is necessary for piano key stock?

A. Really, I don't know other than it has been the custom to purchase or receive sugar pine for piano key stock.

Q. You were with the sugar pine company at Pinedale, were you not?

A. Yes, sir.

Q. What was your function for that company?

A. Plant superintendent.

Q. Do they let you know what the purposes are for what they desire lumber for at any time when you were superintendent at the plant?

A. I had no occasion to look over every inquiry and order before it was accepted.

Q. Just what kind of stock do you manufacture for piano keys?

A. We try to select it from the heartwood, soft texture, free from pitch as we can.

Q. Why do you take it from the heart instead of from the sap?

A. From their specifications, they do not want sapwood in it.

2798 Q. Well, now, is the sap of ponderosa suitable for that kind of work?

A. I should say not.

Q. It is a little harder than the sap of the California sugar pine, is it not?

A. You said sap?

Q. Yes.

A. Sap in either case would be undesirable.

Q. Is the heartwood of ponderosa suitable for that kind of thing?

A. I would say not.

Q. It is a little harder than the heartwood of California pine, is it not?

A. Yes.

Q. Darker in color, as a rule, isn't it?

A. No; I wouldn't say so, but the sugar pine logs from which we get piano key stock is just as dark as California white pine.

Q. What other reasons are there for the enhanced price of sugar pine on the market contrasted with the California white pine?

A. Drainboards.

Q. Where is the drainboard used, in a house?

A. Sink, supposedly.

Q. Well, that is a place where the wet and dry condition alternates, isn't it, at the drain board?

A. Yes.

Q. That requires a wood that is decay resistent, does it not?

2799 A. Yes; but we probably supply more white pine drainboards now than we do sugar pine.

Q. But you think its reputation for utility for drainboards is one of the things that helped California sugar pine to a higher price?

A. It is generally believed so until they got to trying California white pine and that is enjoyed now.

Q. Wasn't that due to the reputation that California sugar pine had for durability?

A. It was believed so.

Q. In other words, it had that reputation, did it not?

A. It did have, but it doesn't now.

Q. Hasn't it still, as a matter of fact, a reputation for greater durability?

A. For drainboards?

Q. For drainboards.

A. Not when properly selected.

Q. What do you mean by when properly selected—how do you properly select it?

A. By cutting old heartwood.

Q. Hasn't California sugar pine a better reputation for heartwood than California white pine? I want the facts on that, isn't that true?

A. I think it does.

Q. Doesn't it deserve that reputation now?

2800 A. I have lots of respect for sugar pine.

Q. It deserves that reputation for durability, doesn't it?

A. Not on durability; no.

Q. But it has it, you say?

A. Not in my judgment.

Q. Well, I am not talking about your opinion; it has it in the trade, does it not?

A. Generally speaking; yes.

Q. You say that the trade is not confused by the term California white pine, did I understand you to say that?

A. Yes, sir.

Q. Do you regard California white pine as a true white pine?

A. As the trade understands it.

Q. Pardon?

A. As the trade understands it.

Q. Do they understand what true white pines are?

A. No.

Q. When California white pine is called white pine, doesn't that lead the trade to understand that it is a true white pine, helps to, doesn't it?

A. No.

Q. You think the word " white " has nothing whatever to do with the association in the mind of the trade of California white pine with the true white pines?

A. Positively not.

2801 Q. Positively not——

A. (interrupting.) Until about five years ago when the trade was befogged with a lot of these advertising campaigns to further the use of some other woods, and they got the architects to go down to the retail dealer and tell him he wasn't being supplied with true white pine. He didn't know; all he was supplying was what his trade wanted, and they bought it in accordance with what their experience had taught them as to what they had received before.

Q. Suppose a man had received before the genuine white pine, and he found some difficulty, we will say, in getting from his dealer a true white pine, and he said to his dealer, " Can't you supply me with what I have been getting? " and the dealer said, " No; I have got California white pine, however," don't you think that the use of the word " white " in that connection would help put the sale over?

A. None.

Q. You don't?

A. No.

Q. Did you say you had made trips back through the East?

A. Yes; while I was with the association, about three to six months out of each year, I was back there.

Q. How far east did you get?

A. As far as I could go.

Q. You went to New England?

2802 A. Yes, sir.

Q. How did you find that sugar pine was selling out there, was it on the market, did you find it competing?

A. Yes, sir.

Q. Did you find California white pine competing?

A. Yes, sir.

Q. Was that during the period that pondosa was sold under that trade name?

A. No, sir.

Q. What were they calling the inland empire ponderosa stock?

A. Western white pine?

Q. How did you learn anything about the reputation of the old northern white pine in that New England territory?

A. I had some occasion to see them cutting second-growth cuts.

Q. I am talking about the reputation of the wood as a building material, did you have any occasion to find out what the reputation of the northern white pine was in New England?

A. No; I can't say that I did.

Q. How many weeks did you spend in New England?

A. I couldn't state that; I was down there on several occasions.

Q. Several days at a time?

A. Oh, yes.

Q. And you mean to say you learned nothing about the reputation of northern white pine in New England and, as a lumberman in that district, don't you know as a matter of fact, sir, that northern
2803 white pine has a remarkable reputation in New England for durability and for all purposes for building, except heavy structural work?

A. Well, I can recite a lot of cases where they were buying California white pine.

Q. Answer the question first and we will talk about something else later.

A. No; I don't.

Q. You spent time in New England and you didn't find that out, is that true?

A. The trade was familiar with what they were getting, when we told them they were getting California white pine or sugar pine, and they knew what to expect.

Q. They knew the trade name, but did they know such as genuine white pine?

A. I don't believe it mattered to them.

Q. But the trade there is constantly asked by the customers for white pine, isn't that true, without the word "California" attached?

A. I didn't find that to be the case.

Q. You didn't?

A. No.

Q. Did you find that the trade there has an admiration for northern white pine for building purposes?

A. Yes, sir.

2804 Q. Northern white pine?

A. Yes; in some cases.

Q. I thought you said a little while ago you didn't learn anything about northern white pine and its reputation.

A. That is a white-pine producing country.

Q. Well, what do you mean by saying you learned nothing about northern white pine?

A. That isn't learning anything.

Q. You said you knew nothing about the reputation of northern white pine in that country, a few moments ago.

A. Yes, sir; I contend that and still contend it.

(Here followed remarks off the record.)

Examiner DE BRULER. Let's proceed with the cross-examination in the usual way.

Mr. MATTHEW. I want the examiner to understand that I object to this and counsel should be required to observe ordinary courtesy.

Mr. BURR. I have a right to admonish the witness.

Examiner DE BRULER. Ask the witness the question.

Mr. MATTHEW. I submit those answers are perfectly correct.

Mr. BURR. I stand on the record.

Mr. MATTHEW. So will I, unless the witness wants to make further comment.

Mr. BURR. I object to the suggestion; you can attend
2805 to that on redirect examination.

Mr. MATTHEW. It is agreeable to me.

Examiner DE BRULER. Please proceed with the hearing. We are taking up too much time.

By Mr. BURR:

Q. At the present time are you carrying most of the California white pine or the sugar pine?

A. In our yard, in storage, about half of each.

Q. Do you understand, Mr. Johnson, that there are certain pines that are known generally as genuine white pines?

A. I, personally?

Q. Yes.

A. Yes.

Q. Do you know whether so-called California white pine belongs to the genuine white pines?

A. Botanically, it does not.

Q. Do you think that the use of the word "yellow" instead of "white" in the name of California white pine would make a difference in the saleability of the California white pine if it were called yellow pine?

A. I think it would mislead the trade.

Q. Would it associate that product with the yellow pines of the south?

A. It would be impossible to associate them with it.

Q. I mean would it have the tendency to confuse the trade
2806 into thinking California yellow pine, so-called, was akin to the yellow pines of the south?

A. Yes.

Q. By that same token, don't you think that the calling of the California white pine, with the word "white" in it, has a tendency to associate the product with the genuine white pines of the north?

A. Positively none.

Mr. MATTHEW. I object to the form of that question.

Examiner DE BRULER. The objection is overruled.

By Mr. BURR:

Q. You think the word yellow pine would have a tendency to associate it with the yellow pines of the south, whereas the term "white" doesn't have any corresponding tendency to associate it with the white pines of the north, is that true?

A. They just know what they——

Q. (Interrupting.) Answer the question please, and explain afterwards.

A. It would, yes; because the trade now knows what California white pine is, and to call it some other name as pondosa would confuse them.

Mr. MATTHEW. I want the examiner to understand that the point of my objection, which I tried to make in timely fashion, but the

speed of this cross-examination is such that apparently the
2807 opportunity was not afforded, is that I have no objection to any cross-examination directed to actual confusion or misunderstanding, but a question which is framed in this fashion as to whether or not a term has a tendency to do certain results, is the very question before the Commission. It is the ultimate question. And in every instance where I have made that objection heretofore I have been sustained and the examiner has ruled that the examination must call for facts, evidently facts, rather than being directed to ultimate conclusions.

Examiner DE BRULER. He can give his judgment along that line.

Mr. BURR. He has already given it.

Mr. MATTHEW. I want the record to show that I object questions put in that form. I do not want to hamper counsel in his examination, however.

Mr. BURR. I think you are fair.

Mr. MATTHEW. If the question is framed differently I shall offer no objection.

Mr. BURR. The motion to strike was denied, was it not?

Examiner DE BRULER. Yes.

By Mr. BURR:

Q. The uses of sugar pine are rather more exacting than those of California white pine, aren't they, as regards the seasoning?

A. The uses, you say?

Q. Yes.

A. Yes, sir.

2808 Q. Tell me, does sugar pine season more satisfactorily?

A. More unsatisfactorily.

Q. It is a kiln dry proposition, that is, a kiln dry proposition is more difficult in sugar pine?

A. Very much more.

Q. And yet I thought you testified something with regard to patterns needing lumber that was properly seasoned?

A. Yes, sir.

Q. When sugar pine eventually is seasoned the resulting wood is more satisfactory for pattern purposes, the result is a better condition of seasoned lumber, is it?

Mr. MATTHEW. Than what?

By Mr. BURR:

Q. Than California white?

A. Well, when it is properly seasoned I believe it is.

Q. Why do you exclude the sapwood from the sugar pine pattern lumber, is it because the shrinkage is less in the heartwood than in the sapwood?

A. No, sir.

Q. Why is it?

A. Because it is difficult to season it without considerable degrade.

Q. You are talking now about the sap?

A. Yes, sir.

Q. The difficulty with the sap is to season it without the
2809 degrade?

A. Yes.

Q. And when you use Pinus ponderosa for pattern purposes, as I believe you said you did sometimes, is that true?

A. Yes.

Q. You eliminate the sapwood in the Pinus ponderosa from the pattern stock, do you?

A. No, sir.

Q. What do you use mostly, sap in the pattern stock of Pinus ponderosa?

A. I don't believe mostly; no.

Q. You use them both, do you?

A. Both.

Q. Do you use a combination piece?

A. Yes, sir.

Q. Without the sapwood the heartwood of Pinus ponderosa would not be large enough for larger patterns, would it?

A. No.

Q. Which is more durable, the heart or the sapwood?

Examiner DE BRULER. That has been gone into time and time again.

Mr. BURR. This is cross-examination and I am leading up to something.

By Mr. BURR:

Q. Which is more durable, the heartwood or sapwood?

2810 A. Which one?

Q. Yes.

A. Either wood? I don't think there is any difference. Maybe I misunderstood you.

Q. Which is more durable, the heartwood or sapwood of Pinus ponderosa?

A. The heartwood.

Q. The same is true of sugar pine, isn't it?

A. Yes.

Q. Which has the greater percentage of heartwood, California sugar pine or California white pine?

A. California white pine you said—sugar pine has the greater.

Q. Then how do you account for your testimony that the dead and down timber of California white pine is in a better condition than sugar pine?

Mr. MATTHEW. I don't think he said that.

Mr. BURR. I thought he did.

The WITNESS. I did not. I said there was more rot in the sugar pine heart than I found in the wind fallen logs of the yellow pine or white pine.

By Mr. BURR:

Q. Wasn't that, as a matter of fact, because the sugar pine in those particular logs was an older type and had begun to rot before it fell?

2811 A. That I don't know; it is just a condition I found there.

Q. That wouldn't be consistent with the high reputation of sugar pine for durability that that heartwood should rot first, would it?

A. Well, the only point I was trying to bring out was that heartwood in either one is immune from rot if exposed to the same weather elements.

Mr. BURR. That is all.

Redirect examination by Mr. MATTHEW:

Q. Mr. Johnson, was there any confusion in the pine-lumber trade as to these various lumbers before the word pondosa thrust itself into the situation?

A. I never had occasion to have it questioned.

Q. Have you found that your trade is interested at all in the botanical nomenclature or classification of trees?

A. None.

Q. Is it interested in the common names of the trees in particular localities in any respect, or is it interested rather in the quality and the use of the lumber which is offered to it?

A. That is what they are mostly interested in—the quality.

Q. You were asked some questions about the reputation of white pine in New England, and your first answers, as I recall it, had something to do with the local cutting of pine timber in New

2812 England at the present time, apparently not responsive to the question counsel had in mind. Now, I will ask you again whether you have been familiar for a long time with the reputation of northern white pine for durability? I am speaking now about the old time and established reputation over a great period of years?

A. Northern pine?

Q. Yes; Northern white pine.

A. The question is as to its durability?

Q. Its reputation, the reputation of the Northern white pine for durability.

A. It is generally good.

Q. You are familiar with it, that is the first question, whether you are familiar with its reputation?

A. Yes.

Q. And what is its reputation in New England?

A. Well, I couldn't speak for them down there. My experience was in Wisconsin.

Q. Then were you thinking of pine lumber, as to the state of its production, did you have that in mind?

A. I don't get that.

Q. Let's revise it. You said your experience was in Wisconsin?
A. Yes, sir; my manufacturing experience.
Q. Manufacturing the Northern white-pine lumber in Wisconsin?
A. Yes.

Q. My question has to do with the repute of Northern white-
2813 pine lumber for durability, irrespective of the State in which it may be used. You are familiar with that repute, as I understand it?
A. Yes.
Q. And what was that repute?
A. It was just generally good.
Q. And was that its repute in New England?
A. Yes.
Q. And did you intend to say anything on your cross-examination to the contrary?
A. No.
Q. Did you intend to make any comment as to the repute of the lumber which is now cut locally in New England?
A. I did not.
Q. You didn't have that in mind?
A. No.
Mr. MATTHEW. That is all.
Examiner DE BRULER. That is all.
(Witness excused.)
Mr. MATTHEW. I will call Mr. Pratt.

M. B. PRATT was thereupon called as a witness and, after having been first duly sworn, testified as follows:

2814 Direct examination by Mr. MATTHEW:

Q. Please state your name and place of residence.
A. M. B. Pratt, 3131 C Street, Sacramento.
Q. Are your services engaged by the State of California?
A. Yes, sir.
Q. In what capacity?
A. Chief of the State division of forestry.
Q. What is the division of forestry and with what larger unit is it identified?
A. The State division of forestry is one of the divisions of the State department of natural resources, which embraces forestry, parks, gas and oil, minerals, and fish and game.
Q. What are the particular functions of the division of forestry with which you are the chief?
A. The chief function of the State division of forestry is the protection of timber and watershed areas lying outside the boundaries of the national forests; most of these lands are in private ownership.
Q. And throughout what period have you been identified with the division of forestry?

A. I have been identified with the State forester's office since 1918. The State division of forestry is a recent title given to that work by the legisature.

2815 Q. How long have you been identified in the division, or predecessors?

A. Since 1918.

Q. How long have you been chief of the present division?

A. Since 1921.

Q. Please state briefly your academic preparation and your experience in forestry.

A. I completed a course at the University of Chicago in 1903, receiving a degree of bachelor of science, after which I went to the Yale University, where I completed my course in 1905 and received a degree of Master of Forestry. At that time I took the civil-service examination given by the Federal Government for forest assistant, and upon being notified of my success in taking the examination, was sent to California in July 1905 as a member of the United States Forest Service.

I did general work in California, particularly in connection with reconnaissance work, forest reconnaissance, rather timber reconnaissance for a year, and also on a market study on cooperation with the State of California.

In 1906 I was assigned to the Tahoe National Forest with headquarters at Nevada City, and was assigned to timber sale work which was my principal duty from 1906 to 1914. I was made deputy forester supervisor of the Tahoe National Forest in about 1912.

In 1914 I accepted a position at the University of California
2816 as assistant professor of forestry. While there I specialized on wood utilization and wood technology. I left the University of California in 1918—February 1918—and went with the State in the capacity of deputy State forester, in which capacity I remained until 1921, when I was appointed State forester, which is the title which has now been changed to chief of the State division of forestry.

Q. Does the State division of forestry cooperate with the lumber companies and likewise with the Federal Government in the work with which the division is charged?

A. Yes; we have a cooperative agreement with the Federal Government under what is known as the Clarke-McNary Act, whereby we receive a certain amount each year, based on the efforts made by the State and by the cooperating agencies, such as lumber companies, in the protection of our timber and watershed areas.

Q. Mr. Pratt, you are familiar with the forests of California and particularly with the pine forests?

A. My whole experience in forestry has been in California.

Q. You are familiar with lumbering operations there?

A. Yes, sir.

Q. And you know the wood which is yielded by these various pine trees?

A. Yes, sir.

Q. Do you know what is meant by California white pine?

2817 A. Yes, sir.

Q. And by sugar pine, of course?

A. Yes, sir.

Q. Will you briefly describe the lumber which is yielded by the Pinus ponderosa tree, and outline its general uses?

A. The lumber of Pinus ponderosa is a lumber which is used for interior trim, sash and doors, and the lower grades are used for fruit boxes. It is a wood which varies more or less in its quality, depending upon where it is cut and the locality in which it grows, but in general it is a soft whitish wood. It is botanically, of course, a yellow pine.

Q. That is, the tree is a yellow pine?

A. Yes.

Q. I will ask you to state whether, in the quality of the wood and the uses to which it is best adapted, it falls more appropriately within the yellow pine group or within the white pine group?

A. I consider its uses fall more appropriately within the white pine group.

Q. In your work, as a professor of forestry at the University of California, I understand you to say you went extensively into the problems of wood utilization and wood technology?

A. Yes, sir.

Q. And did you make comparative studies of the woods yielded by various species of pine trees during that time?

2818 A. Yes, sir.

Q. Including the sugar pine and the ponderosa pine?

A. Yes, sir.

Q. Likewise included in the southern yellow pine?

A. Yes, sir.

Q. Those were included in your studies?

A. Yes, sir.

Q. And pines of both the white and yellow pine groups respectively?

A. Yes, sir.

Q. Can you state, Professor, whether in your opinion the lumber yielded by the Pinus ponderosa tree is in general inferior to the lumber yielded by the sugar pine trees?

A. It is not inferior in my estimation.

Q. I assume that the lumber of one species may be deemed superior for certain uses than the lumber of certain other species?

A. Special uses; yes.

Q. Do you recognize any difference between the durability of the heartwood lumber of either species?

A. Yes; the heartwood is more durable, as a rule, than the sapwood.

Q. I mean, is the heartwood of either species more durable than the heartwood of the other species?

A. No; I dont know of any data which would be conclusive on that matter.

Q. Would you distinguish between the durability of the
2819 sapwood of the two species?

A. No.

Q. I assume you would not recommend the sapwood of either species for durability?

A. By durability I have reference particularly to the contact with the ground.

Q. Would you recommend either for use where it would be in contact with the ground?

A. No, sir.

Q. Is the lumber yielded by the Pinus ponderosa tree, which is commonly introduced to the trade under the name of California white pine, in general in competition with the lumber yielded by the yellow pine trees of the South?

A. No; they have different uses.

Q. And what are the notable uses of the yellow pines of the South?

A. For structural purposes, on account of the density of the wood, certain grades.

Q. Is California white-pine lumber particularly suitable for such purposes?

A. No; it is not classed as a structural timber.

Q. Is there a marked difference between the appearance of the lumber from Pinus ponderosa and the lumber from the southern yellow pines?

A. Yes; the southern yellow pine lumber has more resin
2820 in it and greater distinction between spring and summer wood than the ponderosa.

Q. Are the differences readily distinguishable, even by the layman?

A. As a rule, yes; typical specimens.

Q. How long have you been familiar with the term California white pine, Professor?

A. Since 1905, when I first came to California.

Q. Since that time to your knowledge has the lumber generally been marketed under the term California white pine?

A. Yes, sir.

Q. To your knowledge has sugar pine ever been marketed under the commercial name of California white pine?

A. No, sir.

Q. Or under any other name which included the word "white" in it?

A. It has always been called sugar pine as far as I know.

Q. To your knowledge is there any confusion in the lumber trade as to what is meant by California white pine and by sugar pine, respectively?

Mr. BURR. Wait a minute! I don't think he is qualified thus far on the trade. I doubt whether he knows first-hand what the reputation in the trade is.

Examiner DE BRULER. If he doesn't know he will say so. I will leave it to the witness.

Mr. BURR. I think he ought to be qualified.

Examiner DE BRULER. Objection overruled. Proceed with
2821 the examination.

Mr. MATTHEW. I will accept the examiner's ruling.

Mr. BURR. I want an exception to show the witness is not properly qualified as to his knowledge of the trade to answer a question of that sort.

Examiner DE BRULER. Exception allowed. Proceed with the examination.

A. What is the question?

(Whereupon the question referred to was read by the reporter.)

Mr. BURR. If you know.

A. I know of no confusion that exists.

By Mr. MATTHEW:

Q. At one time did you have charge of timber sales for the Forest Service?

A. Yes, sir.

Q. And you have an actual contact with lumber operations in the forest?

A. Yes, sir.

Q. You are familiar with the terms under which this lumber is introduced to the trade?

A. Yes, sir.

Q. And have been for many years?

A. Yes, sir.

Q. Professor——

A. (Interrupting.) Not professor.

Q. In the botanical classification of trees do botanists give any consideration to the quality, appearance, or utility of the lumber which is yielded by that tree?

A. I don't think so.

Q. You are familiar with the botanical nomenclature of the pines, of course?

A. Yes, sir.

Q. Is any consideration given to the quality or the appearance or the utility of lumber in making the botanical classification of pines, particularly ponderosa pine?

A. It is my opinion that botanists judge the floral characteristics, or the external characteristics of a tree in giving its common name more than they do the lumber of that tree.

Q. Do they give any consideration to the quality or use of the lumber, as far as you know?

A. No. I might say that the term yellow pine evidently originated in the mind of the early settlers, due to the distinctive color of the bark of the mature trees. My opinion in that matter is substantiated by that of——

Q. (Interrupting.) That would be hearsay. Is there any reason in your opinion, why the commercial name of the lumber yielded from a particular tree should coincide in any respect with the botanical name of the tree, or even by its common name or locality?

2823 A. No.

Q. Is there any relation between the commercial name and the botanical name?

A. No.

Q. Or with the common name of the tree itself?

A. No.

Q. You have stated, Professor, that as far as you know there has been no confusion in the lumber industry because of the use of the term California white pine. Can you think of any term which would more satisfactorily designate this lumber for introduction into the trade?

A. No; I could not.

Q. If the present term, California white pine, were replaced by some name which did not contain the word "white", would there be any resulting confusion in your opinion?

Mr. BURR. I think that is highly speculative.

Examiner DE BRULER. Read the question.

(Whereupon the question referred to was read by the reporter.)

Mr. BURR. The Commission cannot make a finding with regard to any other names.

Examiner DE BRULER. You may answer that. Your exception is noted.

A. In my opinion there would be a confusion.

2824 By Mr. MATTHEW:

Q. Will you tell why?

A. The trade are accustomed to certain names and any change in names sets up some doubt in their mind as to the quality of the material.

Mr. BURR. May I request that it be understood that my objection as to this witness' lack of qualification goes to all these things where he testified as to the trade and trade knowledge?

Examiner DE BRULER. It is so understood and the exception allowed.

By Mr. MATTHEW:

Q. Mr. Pratt, there has been some testimony in the record respecting blue stain, particularly as it may attack fallen trees in the forest. Is the appearance of that blue stain any evidence of decay?

A. No, sir.

Q. Why not?

A. It is a fungus; does not induce decay; it induces discoloration which results in degrade of the material, which is the most serious thing.

Q. May the lumber continue sound notwithstanding the presence of blue stain?

A. Yes, sir.

Q. Does the blue stain attack the sapwood of California
2825 white pine?

A. Yes.

Q. And of sugar pine as well?

A. Yes.

Q. Is there any distinction between the two in that respect?

A. I made a study one summer, when in the university, of blue stain on both sugar pine and ponderosa in the La Moine yards. La Moine is situated in the Sacramento Canyon of northern California. We found that blue stain was very prevalent in both air dried sugar pine and ponderosa, due to the defective circulation.

Q. Can you see any distinction in the behavior of the two woods under those conditions?

A. The sugar pine seems to be more susceptible to it than the ponderosa.

Q. Is the checking of a log on the ground in the forest any evidence of decay?

A. Due to moisture conditions I should say.

Q. I assume the checking may facilitate decay where it admits moisture in the crack?

A. It allows the entrance of fungus.

Q. In your opinion does the relative susceptibility of the two kinds of trees to decay, when lying on the ground in the forest, afford any indication of the relative durability of the lumber yielded by those trees when put to actual use?

A. No, sir; I don't believe there is much connection.

2826 Mr. MATTHEW. You may cross-examine.

Cross-examination by Mr. BURR:

Q. Mr. Pratt, have you ever been engaged in the lumber business?

A. No, sir.

Q. Have you been back East in connection with your lumber work?

A. Yes, sir.

Q. Where?

A. I attended foresters' conferences in various parts of the East—New York, Maryland, North Carolina, and Washington.

Q. On those occasions did you talk with wholesalers?

A. No, sir.

Q. Did you talk with brokers in the lumber business?

A. No, sir.

Q. Retailers?
A. No, sir.
Q. Architects?
A. No, sir.

Mr. BURR. I now move to strike all the witness' testimony with regard to the matters as to the knowledge of the trade as to the confusion of the trade, from the record for the simple reason that this witness is not qualified to know anything about trade conditions, or what would be confusing to the trade, or the ultimate consumer.

2827 Examiner DE BRULER. Motion denied and exception allowed.

Mr. MATTHEW. I don't recall he said anything about the trade.

Mr. BURR. He said it would be confusing to the trade. That is your question, as I recall it. I may be in error, but I think I made objection at the time.

Mr. MATTHEW. I am willing to assent, in the interest of expedition, to the granting of Mr. Burr's motion as to the testimony relating to confusion in the trade. I think there is some merit in Mr. Burr's feeling that I couldn't qualify this witness as to the eastern trade, at least. Perhaps it would save his time and my time to do that.

Mr. BURR. Thank you, very much.

Examiner DE BRULER. It may be stricken.

Mr. BURR. I think that is very considerate indeed.

By Mr. BURR:

Q. I think I understood you correctly to say in your judgment the uses of Pinus ponderosa lumber falls more appropriately in the white pine group than within the yellow pine group?
A. Yes, sir.
Q. Did I not?
A. Yes, sir.
Q. There are, however, certain differences in the uses, are there not, of the white pine lumber as contrasted with the Pinus

2828 ponderosa?

A. Yes, sir.
Q. Pardon?
A. Well, I am only familiar with the uses of the Pinus ponderosa as--you have reference to the strobus particularly, do you?
Q. There are some differences in the uses of Pinus ponderosa and sugar pine coming from your own State, are there not?
A. Well, I believe they are used for practically the same purposes.
Q. You do?
A. Yes.
Q. Are you familiar with which wood, if either, is used more extensively and satisfactorily for pattern purposes?
A. Sugar pine has the reputation of being used more extensively for pattern work.

Q. Will your experience enable you to state whether it is more adapted to pattern purposes?

A. No; my experiences wouldn't qualify me for that.

Q. You are not in the manufacturing business and haven't been?

A. No; I wouldn't be conclusive on that.

Q. I think you said that botanists didn't give any consideration to lumber distinctions in their botanical classification, did you?

A. It is my impression that botanists do not consider the quality of the lumber in giving common names.

Q. In giving them the Latin names, but don't they in giving the common names?

2829 A. I don't think so.

Q. Don't the botanical works, when they give the botanical distinctions between different species of wood, mention a great many other things besides the floral distinctions?

A. Oh, yes; they mention many things.

Q. And refer to the characteristics and quality of the various lumber produced by these various species, do they not?

A. Yes; in connection with the description of the tree, they go more or less into the lumber, quality of it.

Q. And when they divide into white pine and yellow pine groups, isn't the lumber produced by those woods given some consideration and weight?

A. Yes; to a certain extent, but as a matter of information and connection with the species.

Q. Did I understand you to say that you thought sugar pine on a whole was more susceptible to decay, or more susceptible to blue stain?

A. My limited experience in the La Moine yard is what I am talking about.

Q. How long was that experience?

A. About three months.

Mr. BURR. That is all.

Re-direct examination by Mr. MATTHEW:

Q. Mr. Pratt, is the botanical nomenclature in any respect dependent upon the lumber or its qualities?

2830 A. No.

Mr. MATTHEW. That is all.

Examiner DE BRULER. That is all.

(Witness excused.)

Mr. MATTHEW. May I call Mr. Grant?

E. J. GRANT was thereupon called as a witness and, having first been duly sworn, testified as follows:

Direct examination by Mr. MATTHEW:

Q. Mr. Grant, please state your name and place of residence?

A. E. J. Grant. My place of residence or office?

Q. Place of residence.

A. 906 North Alpine Drive, Beverly Hills.
Q. That is in California, of course?
A. California.
Q. What is your business or occupation?
A. I am in the lumber business.
Q. And with what particular company?
A. Algoma Lumber Company.
Q. The Algoma Lumber Company is one of the respondents in these proceedings. What is the Algoma Lumber Company, Mr. Grant?

A. It is a company engaged in the manufacture and sale of
2831 California white pine.

Q. And in what State does it conduct its operations?
A. Oregon—the manufacturing lumber.
Q. Where is its manufacturing plant located specifically?
A. At Algoma, Oregon, about ten miles north of Klamath Falls.
Q. You operate in what is commonly known as the Klamath Basin?
A. Yes.
Q. Throughout how many years has the Algoma Lumber Company been operating in this area?
A. Seventeen years.
Q. What has been the extent of your personal experience in the lumber industry, Mr. Grant?
A. I started in the lumber business with a box factory, or with an interest in a box factory, in 1905. In 1906 we purchased another factory and in 1908, to secure lumber for that second factory, we went into the purchase of timber and the erection of a sawmill. We cut out that particular tract of timber in approximately three to four years and then moved over to our present location.
Q. Then you have had some twenty-five years' personal experience in the lumber industry?
A. Yes.
Q. And all of that time in California and Oregon and in connection with the manufacture and distribution of pine?

A. Yes.

2832 Q. What species of lumber do you produce and market at your Oregon plant?
A. California white pine, sugar pine, and what we call red fir.
Q. Which lumber predominates?
A. California white pine.
Q. Throughout what period have you been familiar with the California white pine?
A. Since I first started in the business.
Q. Has your lumber always been sold under the name California white pine?
A. Always.
Q. It has been advertised to the trade as such?

A. Always?

Q. And invoiced under that name?

A. Yes.

Q. Do you sell directly to the trade or do you sell through some particular agency?

A. Our sales are varied. In some cases direct to the trade and in some cases through wholesalers, some cases direct to retail yards.

Q. Where do you find the principal markets for your lumber?

A. The upper grades nearly all go East, and the lower grades a considerable portion is sold in California as box shook; the balance is sold both in California and in the East as common lumber.

2833 Q. Let's take your box lumber, which is sold in California, first. May I ask whether you commonly segregate the sugar-pine lumber from the California white-pine lumber in assembling shipments of box lumber?

A. It is mixed together.

Q. And under what name does these shipments enter the trade?

A. As pine box shook.

Q. Is that the prevailing practice in this territory?

A. Yes.

Q. You ship your shop grades largely to the Middle West, Mr. Grant?

A. Yes.

Q. To what particular territory for the most part?

A. To factories along the Mississippi River and to Wisconsin points where the larger sash and door factories are located.

Q. To a large extent, I assume, your shop lumber is re-manufactured into sash and doors, and similar products?

A. Yes, sir.

Q. I think you stated that your select lumber goes further East, or am I right?

A. Yes, sir.

Q. How far does it go?

A. A great deal of it is sold in New York and Philadelphia territories.

Q. For what purposes does that lumber find ultimate utility?

2834 A. Largely for interior trim.

Q. You stated that you invoice your lumber as California white pine. I will ask you under what name you receive inquiries or orders for this lumber?

A. California white pine.

Q. Is the name well known to your trade?

A. Very well known.

Q. Is there confusion in the trade as to what it is, as far as you know?

A. None at all.

Q. Have you had any complaints from your trade respecting that name?

A. Not a single complaint.

Q. Any complaint as to the quality of the lumber which is furnished under that name?

A. None whatever.

Q. Any complaint as to the durability of it?

A. None.

Q. Has there been any complaint from your trade that confusion or misrepresentation exists by virtue of your use of this commercial name?

A. No complaint whatever.

Q. Do you find that any of your customers exhibit any interest in the botanical classification of trees or in the common names of the trees from which lumber may be produced?

2835 A. Not at all. I don't believe they know anything about it.

Q. What are they interested in?

A. In the qualities with respect to uses to which they intend to put the lumber.

Mr. BURR. What is the answer?

The WITNESS. In the qualities with respect to the uses to which they intend to put the lumber.

By Mr. MATTHEW:

Q. You stated, Mr. Grant, that your manufacturing plant and sawmill is located in the State of Oregon. I will ask you to state *whether*, in your opinion, there would be any confusion in the trade if you were to advertise and offer your lumber under the name of Oregon pine?

A. It would be a terriffic confusion because that name is already in general use in California for another wood.

Q. What is that wood?

A. Fir, commonly called, so-called "fir."

Mr. BURR. I object to that, bringing in another wood, if the examiner please.

Mr. MATTHEW. This is inevitable here because we have an Oregon manufacturer manufacturing pine and——

Examiner DE BRULER (interrupting). The answer may stand with the understanding we are not to go any other woods any further.

Mr. BURR. Will you allow me an exception?

2836 Examiner DE BRULER. Yes.

By Mr. MATTHEW:

Q. Would you feel that any confusion might result if your lumber product were offered to the trade under the name of Oregon yellow pine?

A. That would be still more so because that name of yellow pine is, by the name yellow pine, is commonly meant the lumber from

the South which enters the trade mostly for entirely different purposes and uses.

Mr. BURR. May the record show that my objection heretofore made with regard to inquiries as to various specific names that might possibly be adopted as substitutes, goes here to this line of questioning?

Examiner DE BRULER. Yes. I understand it. Objection overruled.

By Mr. MATTHEW:

Q. Mr. Grant, can you think of any name, other than the present commercial name of California white pine, which would satisfactorily designate your product and prevent possible confusion in the minds of your customers?

Mr. BURR. Same objection.

Examiner DE BRULER. Same ruling.

A. There is none.

By Mr. MATTHEW:

Q. Why do you prefer this name to all others which occur?

2837 A. Because it so correctly designates both the territory from which the lumber comes and corresponds to the uses to which other white pines are put.

Q. Uses of your lumber are in general similar to the uses of the so-called "true" white pines, as they have been termed by counsel?

A. Yes, sir.

Q. How far is the city of Klamath Falls from the Oregon-California boundary line, Mr. Grant?

A. Approximately thirty miles.

Q. And is this lumber area in the Klamath Falls basin rather closely identified geographically with the lumber belt of northern or northeastern California?

A. Very closely.

Q. Is it quite distinct from the lumber belts which lie to the northward of the Klamath Falls district, say in central Oregon and the interior?

A. Very distinct.

Mr. MATTHEW. You may cross-examine.

Cross-examination by Mr. BURR:

Q. As a matter of fact, you are forty miles from the California State line, are you not?

A. Approximately so.

Q. Would you be in favor of the Arizona white-pine people

2838 calling theirs California white pine where they make Pinus ponderosa lumber?

A. I am not interested in Arizona.

Q. I am asking, do you think that would be fair to your product?

A. I would have no objection to it.

Q. You would have no objection?

A. No.

Q. The same would be true of the Colorado Pinus ponderosa, which is mountainous country?

A. I want to qualify that by saying I would have no objection to having it called Arizona white pine, but I would object to its being called California white pine.

Q. You would?

A. Yes.

Q. Why?

A. Because the lumber produced is not of as good a quality as our California white pine. The trade expects that very good quality in buying California white pine.

Q. Well, now, aren't there some sections of California that don't have that good high quality of California white pine that you have there where you manufacture?

A. I am speaking of averages, not certain sections. I believe that unquestionably there are trees in California producing as poor lumber as the average of the Arizona white pine, or Arizona pondosa pine.

2839 Q. And there are trees in the Klamath Falls section that don't produce as good as the average of the California trees, aren't there?

A. Exactly, individual trees, but the average of the lumber is far superior.

Q. And the average then you think in California is superior to the Arizona white pine, is that true?

A. Yes.

Q. Aren't there sections in California where the stand is much inferior to the stand, for example, in the Klamath Falls section?

A. Yes.

Q. Then where would you draw the line as to whether an operator is entitled to use the word "California" in connection with his white pine and where he is not to use it?

A. I think it is properly drawn as now used. The California white pine includes the Klamath Falls and southern Oregon district, and does not extend to Bend and eastern Oregon, nor does it extend into Arizona. They are very distinct and separate.

Q. It takes in part of Nevada, doesn't it, that is, some of the Nevada lumber is called California white pine?

A. Yes.

Q. There are sections in California where it is not superior to some of the sections in Arizona, isn't that true?

A. That is individual trees, or the general average—the general average in my opinion and experience of the California lumber

2840 known as California white pine, from all sections where it is manufactured, is superior to any section where it is manufactured in Arizona.

Q. Average over the State you mean?

A. Average any section, not taking individual trees.

Q. Aren't there sections in California where the average Pinus ponderosa tree is considerably less smooth and soft than is the average in the Klamath Falls section?

A. Yes.

Q. Where would you say those sections are?

A. In my opinion the California white pine produced from the Tuolumne County region is inferior to the California white pine produced from the Klamath section.

Q. Isn't it your judgment that it is inferior to what it is over in Bend?

A. No.

Q. Are there any other sections besides Tuolumne—isn't it true that there are other sections you can name where the Pinus ponderosa in California is inferior to that at Klamath Falls and vicinity?

Mr. MATTHEW. I think the witness stated that the Klamath Falls section produced the best.

The WITNESS. There is no great amount of difference between the larger producing regions such as that operated in by the Weed
2841 Lumber Co., the McCloud River Lumber Co., and the Red River Lumber Co., with the Klamath section.

By Mr. BURR:

Q. You would say those are about on a parity, would you?

A. I would.

Q. And the rest of California you would say is not quite on a parity with that?

A. I don't want to speak specifically.

Q. I am talking about averages.

A. Generally there would be a little difference in favor of those regions as compared with the western slope of the Sierra Nevadas in the southern part.

Q. Now, as a matter of fact, aren't there sections in Arizona where the average is just as good as it is in certain sections in California?

A. Not to my knowledge, nor is it shown, I believe, by the average sales results.

Q. The Arizona people get the same prices, don't they, as a great many sections in California?

A. Not for their upper grades.

Q. For what?

A. Their upper grades.

Q. How about in New Mexico.

A. The same applies to New Mexico as applies to Arizona.

Q. You would still allow those people the use of the word "white" would you?

2842 A. I would if they would prefix it with "Arizona."

Q. Why shouldn't you prefix yours with "Oregon" if it comes from Oregon?

A. Well, because the larger California white pine district lying very close to us puts us, that is, the quality of our lumber so corresponds with that, and the California operators were pleased to have us join them in this California white pine name. The Oregon white pine would immediately identify us with red fir, which is a very inferior wood and used for different purposes. Oregon pine is the general term for red fir in selling it in California territory.

Q. I think you said that there would be very much confusion if you sold it as yellow pine. Why would that be?

A. Because the woods are used for different purposes.

Q. It would identify you with the yellow pines with the South, would it, for advertising purposes?

A. Which would cause a great deal of confusion in the minds of the buyers.

Q. That would tend to identify you with the yellow pines of the South, wouldn't it?

A. Yes; something to be avoided.

Q. Do you understand that the Pinus ponderosa does not belong to the genuine white pines, or don't you know that?

A. You are speaking botanically, or commercially, by the use of the word genuine white pine?

2843 Q. Does it belong, first, botanically to the genuine white pines?

A. I understand it does not.

Q. The use of the word "white" in connection with the trade term California white pine, serves to identify you with the genuine white pine, does it not?

A. I think commercially it is a genuine white pine.

Q. Will you please answer the question? Does that tend to identify you with the genuine white pines?

Mr. MATTHEW. Commercially or botanically?

By Mr. BURR:

Q. Commercially?

A. I think it does, and I think it deserves to.

Q. Your judgment is that it deserves to belong in that group?

A. Exactly.

Q. If I understand your testimony correct.

A. Yes, sir.

Q. And use of the word "white" helps that along, does it not?

A. Yes, sir.

Q. And is that the reason why you adopted it in part?

A. I did not adopt it, nor do I know when it was adopted. It has been in general use for over twenty-five years and is well known.

Q. That help that you receive in identifying your wood commercially with the white pine, that is gained from the use of the word "white" that is one of the reasons that you want to

2844 continue; is that true?

A. I think the——

Q. (Interrupting.) Wait a minute.

A. Could I answer and then qualify it?

Q. Yes.

A. The answer is yes.

Q. Now explain.

A. The qualification is that the use has become so general that it stands on its own merits and is well known to the trade under that name.

Q. By the trade you mean the people who buy from you?

A. Yes; and the—yes; I will answer that yes.

Q. Your company sells box lumber here in California locally, does it, or in Oregon locally, I would say; your common grades are sold locally?

A. In San Francisco or—they are sold through southern California and central California.

Q. Your box grades?

A. Yes.

Q. And your selects, I think you gave some testimony on that, your selects go where, to New York and Philadelphia, don't they in part?

A. In part.

Q. And there you sell those to wholesalers, do you not?

A. Yes, sir.

2845 Q. I think you said something about selling to retailers. Do you sell retailers direct, or through the wholesaler, or through broker?

A. In some cases we sell retailers direct, not very many.

Q. Do you sell the consumers direct, excepting for box uses?

A. Consumers—do you mean retailers or the man who builds a house?

Q. I thought you said you sold to consumers. Did you? Perhaps I am wrong.

Mr. MATTHEW. I don't think so.

Examiner DE BRULER. I think he said retailers.

Mr. BURR. All right. That is all.

Mr. MATTHEW. That is all.

Examiner DE BRULER. That is all.

(Witness excused.)

Mr. WHEAT. Call Mr. H. J. Nunneley.

H. J. NUNNELEY was thereupon called as a witness and, after having been first duly sworn, testified as follows:

Direct examination by Mr. WHEAT:

Q. Will you please state your full name and place of residence, Mr. Nunneley?

A. Hollis J. Nunneley, residence Los Angeles, California.

2846 Q. And in what business are you engaged?

A. In the sale of lumber in Los Angeles.

Q. And are you connected with some lumber company in that place?

A. I am connected with the E. K. Wood Lumber Company, of Los Angeles.

Q. How long have you been connected with that organization?

A. About three and a half years, a little better, practically four years.

Q. Is the E. K. Wood Lumber Company engaged generally in the lumber business in and about the Los Angeles area?

A. Throughout the West.

Q. And where is their headquarters?

A. San Francisco.

Q. And their Los Angeles office, with which you are connected, is engaged in what portion of their business?

A. Well, in the southern part of California and Arizona and New Mexico.

Q. And just what is your work with that company?

A. I am in charge of the sales of California white and sugar pine.

Q. Mr. Nunneley, were you engaged in the lumber business prior to going with the E. K. Wood Lumber Company, of Los Angeles?

A. Yes; I have been in the lumber business practically all my life.

Q. Will you just state briefly what that experience has been?

A. I worked as a boy, while going to school, in the woods, logging, etc.

2847 Q. Where was this?

A. In California?

Q. What part?

A. Northern California. After getting out of school, about 1919, I went into the mills, worked in the mills.

Q. Where was this?

A. Throughout northern California, most of the time with the Red River Lumber Company at Westwood, Lassen County.

Q. Just what was your work with the Red River Lumber Company?

A. My work there—I started working in the mill, worked through the mill; for some time I graded and shipped, also worked in the sales.

Q. Did you have occasion, during that experience with the Red River Lumber Company, to get into the woods themselves?

A. I spent quite a bit of my time in the woods more or less.

Q. Are you familiar with both Pinus ponderosa and sugar pine in the woods, and on down into their uses as lumber?

A. I am not familiar with them in Latin names, only as they are known, their trade names.

Q. By Pinus ponderosa I mean the wood marketed as California white pine?

A. Yes, sir.

Q. Then you are familiar with that wood and with sugar pine from the woods on down through the ultimate use?

A. Yes, sir.

2848 Q. Will you state briefly just what your present work is, just exactly what you do?

A. Actually selling to the consumers and the users of white pine and sugar pine and looking after those things.

Q. By white pine, to what lumber do you refer?

A. California white pine.

Q. How long have you been familiar with the name California white pine?

A. That is all I have ever known it as.

Q. Is that well known in the trade to which you come in contact?

A. I have always found it so.

Q. Do you know of any other name used for that lumber as a commercial name?

A. Never have known of any other name but that.

Q. Do you know whether or not there are any companies now producing their lumber in California which have recently adopted some other name, or does your recollection go to that?

A. I believe they have; I have seen price lists of companies in California in the last six months that have changed to some other name.

Q. What is that other name?

A. I believe they call it yellow pine.

Q. Do you recall what company that is?

A. The Sugar Pine Lumber Company, I believe, is one that I recall.

2849 Q. Are both sugar pine and California white pine coming into the Los Angeles market in large quantities?

A. Quite a large quantity; yes.

Q. And are the sales of California white pine increasing or decreasing, as compared to the general sales of sugar pine in that area?

A. I think it is increasing.

Q. What are the general uses to which that lumber, California white-pine lumber, is put in the area in which you have general dealings?

A. The largest use is millwork and finish and some sash and doors. The moving-picture industry uses a lot.

Q. What do they use it for, the moving-picture people?

A. Building sets, etc., that enters into millwork.

Q. Have you had occasion to consider the use of these several pines for furniture business?

A. Yes; some of that is used for that.

Q. Will you explain briefly what that is?

A. It is used in the furniture industry in building dressers, etc., things like that to some extent in Los Angeles.

Q. Is sugar pine also used in the furniture industry?

A. Very little. I don't know of any; however, there may be some.

Q. Can you explain why California white pine has gone into the furniture trade in preference to sugar pine?

A. My personal experience that I have had along that line is because the white pine paints so much easier than the sugar
2850 pine. Furniture is painted mostly with a spray gun and it takes several coats to cover up the pitch flecks in sugar pine. That is not true with the white pine. The objection that they have to sugar pine is for that reason and they won't accept it; they will only accept the California white pine.

Q. And the furniture trade requires, does it, a wood of excellent paintability?

A. Yes; and workable.

Q. And do the little what you have called pitch flecks in sugar pine occur quite generally in the sugar-pine lumber that comes into the market?

A. It is in all of it. It is characteristic of the wood, I believe.

Q. And do those pitch flecks, as you have termed them, hamper the paintability of the wood?

A. Oh, yes. It takes more paint to cover them up, because if you are trying to paint it a light color it will show through until you get enough paint on to cover it.

Q. Let me ask this: Does your company sell California white pine in considerable quantities in the southern part of California and in Arizona and in New Mexico?

A. Well, in board footage we sell more, I should judge.

Q. Of which?

A. California white pine.

Q. Than sugar pine?

2851 A. Than we do in sugar pine.

Q. Do you distribute a considerable quantity of the California white pine?

A. Yes, sir; it runs into millions of feet every year.

Q. Have you ever had any complaint from your trade as to the durability of the California white pine wihch you have furnished?

A. No; I don't recall of any time where any question has come up as to its durability or lack of durability. It has always been considered a good wood.

Q. Are you wholesaling and retailing both?

A. Both.

Q. And you deal with the ultimate consumer on occasions, do you?

A. Very often.

Q. And by that do you mean the man who actually builds the structure?

A. Yes; and living in it.

Q. Are you interested in any sugar-pine mill, or is your company?

A. None whatsoever.

Q. Have you any interest in pushing either sugar pine or California white pine over the other?

A. Not one over the other whatsoever. We are only interested in pushing them both—on which we can make the most money.

Q. Your chief aim is to sell as great a volume as possible of both woods?

A. Yes, sir.

2852 Q. In selling sugar pine to your trade, do you encounter, in your opinion, any sales resistance, or are you hampered in the sale of your sugar pine because of the use of the term "white" in the term "California white pine"?

A. No; never have known such a thing. It seems like everybody understands it, as that is all they have ever known.

Q. Do you believe that any confusion would result from a change in this trade name of California white pine?

Mr. BURR. We make the usual objection.

Examiner DE BRULER. Objection overruled and exception allowed.

A. I believe it would take a lot of work and time to reeducate them. It would be like changing my own name. I would have to go and get reacquainted with my friends.

By Mr. WHEAT:

Q. Would there be any change in the uses to which this lumber is put by the consumer?

A. I don't think the consumer is interested at all in the name of lumber.

Q. Do you believe a change in the name of California white pine, which would eliminate the word "white", would assist you in any manner in the marketing of your sugar pine?

A. No; I can't see where it would at all.

Q. Do you purchase any of this so-called "California white pine" from Oregon?

2853 A. Yes; quite a lot of stock comes from Oregon. It is one of the stocks that is known there; that is, the stock from Oregon called "California white pine", that grows in Oregon.

Q. Do you purchase from the Klamath Falls area in Oregon?

A. Yes; that is, the Klamath Falls lumber is generally known as stocks from the Klamath Falls district, not particularly Oregon.

Q. You know, do you, that the Klamath Falls area lies within the boundaries of the State of Oregon?

A. Yes; I know that.

Q. Mr. Nunneley, would there be, in your opinion, any confusion if the wood now marketed as California white pine from the Klamath Falls region were to be marketed under the name "Oregon pine" or "Oregon white pine"?

A. Well, I would imagine so. We sell quite a lot of lumber as Oregon pine.

Q. What lumber is that, sir?

A. That is the douglas fir species. We sell that as Oregon pine, and if we had to sell the other along with it we would have an awful time.

Q. That is one of the trade customs, to sell douglas fir as Oregon pine in the Los Angeles area?

A. It is.

Mr. BURR. I object.

Examiner DE BRULER. He has answered that.

By Mr. WHEAT:

Q. Are you familiar with the wood which is marketed as
2854 yellow pine in the South and East?

A. I can't say I am so well familiar with it. We have some of it in that territory. It is ordered and known there.

Q. It is ordered and known in the Los Angeles area, is it?

A. Yes.

Q. Where do you procure that yellow pine?

A. From down in the Southern States. It comes around through by boat, as a general rule.

Q. You bring it in by water to southern California points?

A. Yes; through the Canal.

Q. Do you get orders for yellow pine on occasion under that name?

A. Yes.

Q. Has it been your experience that the purchasers who order yellow pine, under that name, will accept California white pine as compliance with those orders?

A. No; they will not; absolutely not.

Q. Why not?

A. They claim it hasn't neither the suitability for the purposes which they want to use it, nor——

Mr. BURR (interrupting). We admit all that.

Examiner DE BRULER. That is admitted then.

By Mr. WHEAT:

Q. Let me ask whether California white pine, in general, is used for similar uses to sugar pine?

A. Practically so, in southern California; yes.

2855 Q. If a name were to be given to this wood, such as "California pine", or "California soft pine", do you consider that there would be any resulting confusion to the trade?

Mr. BURR. I object on the ground that the Commission has no constructive jurisdiction.

Examiner DE BRULER. Let him go into that if he wants to. Objection overruled and exception noted.

A. I believe that it would cause a lot of extra work and confusion among our trade and that we would have to do a lot of extra work to go out and tell each and every one that, just because the name was changed, but it was still the same wood. That would take a lot of effort.

By Mr. WHEAT:

Q. Wouldn't there be, in your opinion, any confusion between such names as I have suggested, "California pine" or "California soft pine", and the term "California sugar pine"?

A. Yes; I think it would have to be explained, the reason and what for and all about it.

Q. Did you ever have any complaint from your customers regarding the use of the trade name "California white pine"?

A. Never have had any question about it whatsoever.

Q. Does the trade which generally purchases California white pine from you reorder that pine under the same trade name?

A. Always so.

Q. It is familiar by that name, is it?

2856 A. Absolutely.

Q. In your opinion, does the term "California white pine" properly identify that wood with respect to its quality and uses?

Mr. BURR. I object to that. That is the question before the Commission.

Mr. WHEAT. It has been asked and answered by about fifty witnesses.

Examiner DE BRULER. Objection overruled. Answer the question. Exception allowed.

A. Yes; I do.

Q. (By Mr. Wheat.) And can you think of any name other than the term "California white pine" which, in your opinion, would more properly or accurately designate the lumber that is now marketed as "California white pine"?

Mr. BURR. Usual objection.

Examiner DE BRULER. Objection overruled. Exception allowed. Answer the question.

A. No; I have never thought of any name—never had that come up.

By Mr. WHEAT:

Q. I will ask whether the people with whom you deal, the purchasers of lumber from you, either wholesale or retail, are interested in the botany of the lumber which they buy from you?

A. I don't think so. I wouldn't think 1% would know.

Q. What, in your opinion, are they interested in?

2857 A. Only in the use for what they want the lumber. If the lumber will fit that particular use they want to put it to—that is what they are interested in.

Mr. WHEAT. I think that is all. You may cross-examine.

Cross-examination by Mr. BURR:

Q. Mr. Nunneley, do you travel into New Mexico and Arizona in connection with your sales work?

A. No; I personally don't.

Q. Does any of your product comes from Arizona and New Mexico, your so-called "white pine"?

A. No, sir; it don't.

Q. You specialize on the California and the Oregon?

A. Yes. That material from Arizona and New Mexico don't come into the Los Angeles territory.

Q. What do your customers ask for, white pine or California pine, or sometimes one and sometimes the other?

A. Sometimes one and sometimes the other. Most of our people or lots of the people in Los Angeles are from the East and are used to white pine and they call it white pine.

Q. When you have people more recently from the East, and ask for white pine, do they realize that the California white pine is not a true white pine such as they got in the East?

A. I don't think they think anything about it. They don't
2858 care anything about it so long as it answers their purpose.

Q. Do you think they know that the sugar pine really is a genuine white pine and belongs to the same group as eastern white pine?

A. I don't think so; some particular ones might have read the propaganda on it.

Q. There is a difference in the price of the sugar pine and California white pine in your district?

A. Yes, sir.

Q. And doesn't that have some influence on these furniture manufacturers in selecting California white pine in lieu of sugar pine?

A. I don't think so, because lots of them use much higher-priced woods than sugar pine.

Q. In the purchase of supplies they would consider price as one of the elements of their choice, wouldn't they?

A. Naturally so; surely so.

Q. That would be one of the elements in the purchase of California white pine in lieu of sugar pine for furniture purposes?

A. I wouldn't say between those woods. I wouldn't think that would be really a matter just between those two woods; it would in some other wood, a spruce or something like that.

Q. The price element is important to a man trying to keep the cost down, and that would be one of the elements considered?

A. I think so; I think he would consider that; yes.

Q. There isn't any northern white pine in your market, is there?

2859 A. Northern white pine?

Q. From Wisconsin?

A. No.

Q. Minnesota?

A. No; none.

Q. Is Idaho white pine—that is, does Idaho white pine get down there?

A. There is some; yes.

Q. Very little, is it?

A. Not any great amount.

Q. How do you sell that—or do you handle it?

A. We never have.

Q. Who, in Los Angeles, handles it, do you know?

A. Why, I believe the W. E. Cooper Lumber Company sell some there. I understand they do.

Q. Did you know that before you heard the witness examined here?

A. Yes; I have known that they do, because I went down and looked at the material.

Mr. BURR. That is all.

Mr. WHEAT. That is all.

Examiner DE BRULER. That is all.

(Witness excused.)

(Here followed remarks off the record.)

2860 Examiner DE BRULER. Let the record show that the hearing is adjourned until 10:00 o'clock a.m., February 3, 1930, to the offices of the Federal Trade Commission, in the Flatiron Building, 544 Market Street, San Francisco, California.

(Whereupon, at 12:35 o'clock p.m., an adjournment was taken until 10:00 o'clock a.m., February 3, 1930.)

2861 Docket No. 1620 to 1669, inc.

SAN FRANCISCO, CALIFORNIA, *February 3, 1930.*

Met pursuant to adjournment, 10:00 o'clock a.m.

Before Ellis De Bruler, examiner.

Appearances:

Eugene W. Burr, for the Commission.

McCutchen, Olney, Mannon & Greene (by Mr. Allen P. Matthew and Carl I. Wheat) for the respondents.

Examiner DE BRULER. Let's proceed with the hearing.

This meeting was adjourned to the Federal Trade Commission's office in San Francisco, but by consent of all parties the hearing was had in room 620, St. Francis Hotel, San Francisco.

Is that correct?

Mr. MATTHEW. Yes.

Mr. BURR. Yes.

Mr. MATTHEW. May the record show, if you please, that Mr. Grant, who was called as a witness for the respondents, and testified particularly with respect to the operations of the Algoma Lumber Company, is the president and manager of that company and has been for many years. I find I neglected to make that clear.

Examiner DE BRULER. The record may so show.

2862 Mr. MATTHEW. I will call Mr. Bliss, if I may, as the next witness.

CHARLES T. BLISS was thereupon called as a witness and, after having been first duly sworn, testified as follows:

Direct examination by Mr. MATTHEW:

Q. Please state your name and place of residence.

A. Charles T. Bliss, 15 Crocker Avenue, Piedmont, California.

Q. At the present time are you engaged in the lumber business?

A. Not at the present time.

Q. Have you been engaged in the lumber business at any time?

A. For a great many years until—and practically all my life—1915.

Q. Where and when did you enter upon the lumber business?

A. In 1886 I went to Greenbrook and took charge of the sawmills there.

Q. Where was Greenbrook?

A. In Nevada, on the shores of Lake Tahoe.

Q. And that is on the east side?

A. On the east side; yes.

Q. And with what company were you identified?

A. Carson & Tahoe Lumber and Fluming Company.

Q. Was that a corporation engaged in the manufacture and sale of lumber?

2863 A. It was.

Q. Throughout what period were you connected with the Carson & Tahoe Lumber and Fluming Company or its successors in interest?

A. From 1886 to 1898.

Q. You say that you took charge of the sawmill at Greenbrook. Mr. Bliss, will you tell us briefly the nature of your duties and responsibilties throughout your entire period of connection with that company?

A. I had charge of the logging and looked after the logging interests. I had charge of the sawmill and the shipping of the lumber from the sawmill.

Q. What kind of lumber was manufactured at the sawmill at that time?

A. White pine, some sugar pine and fir, and some cedar.

Q. Was the bulk of your lumber cut represented by what we know as California white pine?

A. Yes.

Q. And where did you find the principal markets for the lumber produced by the Carson & Tahoe Lumber and Fluming Company?

A. Virginia City, Nevada; Comstock Mines.

Q. And you had a market in any other territory?

A. About the time I went there we marketed our upper grades of lumber in the Salt Lake district.

Q. That is Salt Lake City, Utah?

A. Yes; that is where we shipped it.

2864 Q. Did you market any of you lumber to the east of that territory?

A. Never that I know of—never went there.

Q. You state that you were with the Carson & Tahoe Lumber and Fluming Coming from 1886 to 1898. Did you go in the employment of some other lumber company after that latter date?

A. I went with the Westside Lumber Company. I was with them for two years, or nearly two years, during the construction period.

Q. You had nothing to do with the actual operation of their sawmills?

A. I was not there after the lumber was marketed. They had sawed some lumber during the time that I was with them.

Q. You left that company about 1900?

A. I left that company in June 1900, or July 1, to be accurate.

Q. What was your next employment in the lumber industry?

A. I was manager of the Hobart Mills, the Sierra Nevada Wood and Lumber Company.

Q. The Sierra Nevada Wood and Lumber Company has been succeeded by the Hobart Estate Company?

A. It has.

Q. Will you state where the Hobart Mills are located?

A. It is located seven miles north, a little east of north, of Truckee, California.

Q. And you were with that company for how many years?

A. Fourteen years.

2865 Q. And in what capacity?

A. Manager.

Q. Now, Mr. Bliss, I think you stated that while you were with the Carson & Tahoe Lumber and Fluming Company the bulk of your lumber produced was represented by what we know as California white pine?

A. It was.

Q. Under what name was it sold?

A. It was sold as pine lumber to the trade—local trade.

Q. Without any other designation particularly?

A. Yes.

Q. When did you first hear it referred to as white pine, by any name including the word "white" pine?

A. About 1886 we got orders from Salt Lake, when they designated that they wanted the California white pine that we had formerly shipped them.

Q. From that time on was the lumber commonly marketed as white pine, or California white pine?

A. It was always marketed as white pine.

Q. That was in the local territory?

A. Local territory.

Q. Extending to Salt Lake City?

A. Yes.

Q. Did you at any time market any of this pine lumber during the period of your connection with the company to the east-

2866 ward of the Rocky Mountains?

A. Never knew of it.

Q. Did you know anything about the eastern white pine, or northern white pine, during your connection with the Carson & Tahoe Lumber and Fluming Company?

A. If I did, I didn't pay any attention to it; it didn't impress me at all.

Q. Did you come in competition with it?

A. Never did.

Q. Was sugar pine ever sold under the name of "California white pine", or any name which included the word "white"?

A. Never.

Q. It has always been sold as sugar pine?

A. Always.

Q. What kinds of lumber were produced by the Hobart Mills during the period of your connection with that operation?

A. Principally white pine, which we afterwards sold as California white pine. There was a little sugar pine, but very little; and fir, white fir, and the Sierra Nevada red fir, and very little cedar.

Q. Where did you find the principal markets for the California white pine that was produced at Hobart Mills?

A. The commons we marketed all locally, and to the Southern Pacific for snowshed uses; on the upper grades, we marketed that principally through the—I am speaking now of the better
2867 upper grades, the whiter flooring and ceiling—we marketed locally.

Q. The witness is referring to California white pine?

A. California white pine. The upper grades we marketed through the California Sugar and White Pine Agency.

Q. Was that sold as California white pine?

A. Yes, sir.

Q. Has it always been sold as California white pine when shipped into the eastern territories?

A. Yes, sir; as far as I know.

Q. You stated that the term "white" began to be applied to this pine lumber about as early as 1886?

A. That is the first that it was called to my attention, because I only entered into the lumber business actively at that time.

Q. And when did you first become acquainted with the term of "California white pine"?

A. The California Sugar and White Pine Agency was formed shortly after I went with the Hobart Mills. I wouldn't say the exact year, but about 1901, or along about that time.

Q. It was about that time that this lumber began to move east to a substantial extent?

A. Some of it had moved east from the California coast before that, as I understand it, but we found that there was a necessity for a marketing agency and we formed—I say "we", meaning the various companies—we formed what was known as "the California Sugar and White Pine Agency."

2868 Q. What name was used to describe this lumber from the commencement of the operation of that agency?

A. California white pine.

Mr. MATTHEW. You may cross-examine.

Mr. BURR. No questions.

Examiner DE BRULER. That is all.

(Witness excused.)

Mr. MATTHEW. I will call Mr. Oliver.

GEORGE D. OLIVER was thereupon called as a witness and, after having been first duly sworn, testified as follows:

Direct examination by Mr. MATTHEW:

Q. Mr. Oliver, please state your name and place of residence.

A. George D. Oliver, Hobart Mills, California.

Q. What is your business or occupation, Mr. Oliver?

A. General manager of the lumber department of the Hobart Estate Company.

Q. The Hobart Estate Company owns and operates the Hobart Mills?

A. They do.

Q. How long have you been the manager of the Hobart Mills?

A. Since about March 1, 1914.

2869 Q. And continuous since that time?

A. Yes.

Q. What has been your experience in the lumber industry?

A. Well, I began as a scaler in the woods for the Carson & Tahoe Lumber and Fluming Company in June 1886, and I continued in various capacities until the end of 1901, when I left the lumber business for eight years and a half. About the middle of the year of 1900 I went to the Sierra Wood and Lumber Company, which company was owned and controlled entirely by the Hobart Estate Company, and afterwards changed to that name, and I have been continuously with them since.

Q. You heard the testimony of Mr. Bliss, who preceded you?

A. I heard part of it; I came in while he was testifying.

Q. When did you first become familiar with the term "white pine", or "California white pine", to describe the lumber which is the subject of consideration in these proceedings?

A. The first time that I ever heard of the term "white pine" applied to California pine, I think, was in 1887. For a term of probably three months during that year I was taken to their office to take the place of a bookkeeper who was sick, and that three months was the only time that I was in touch with the sales at all; but I remember a letter coming through the office at that time stating that they wanted white pine, from the Tahoe region, if I remember.

Q. A letter from whom?

2870 A. Taylor, Romley and Armstrong, of Salt Lake.

Q. Is that one of your customers in Salt Lake City?

A. It was at that time.

Q. Throughout what territory was the lumber of the Carson & Tahoe Lumber and Fluming Company being marketed during that period, Mr. Oliver?

A. The principal parts of the product was going to the mines at Virginia City and in local territory, and some of the better grades were going as far east as Salt Lake, and possibly Denver. Sometime in '80 they started a box factory and began shipping box shook to southern California.

Q. During the period of your connection with the Carson & Tahoe Lumber and Fluming Company, as far as you know your lumber product was not going into the Eastern or Middle Western States?

A. I have no recollection of any definite shipments further than Salt Lake.

Q. Was your lumber product in competition anywhere with what is known as "the eastern" or "northern white pine"?

A. No.

Q. Did you know anything about this eastern or northern white pine?

A. Don't remember that I ever heard of it at that time.

Q. You went to the Hobart Mills, I think you said, in 1900?

A. Yes.

Q. In what capacity?

2871 A. Superintendent.

Q. And how long were you superintendent?

A. Until March 1, 1914.

Q. Then you succeeded Mr. Bliss as general manager?

A. Yes.

Q. And have been manager ever since?

A. Yes.

Q. When did you first become familiar with the common commercial name of California white pine for this lumber?

A. I think about 1901 or 1902, a number of the proprietors of sash and door factories in the Middle West came east, as we understood it, to find a successor for the lumber that was being gradually diminished and getting very scarce in the east.

Q. You say they came "east"?

A. I mean west.

Q. Yes.

A. And I know that we began shipping to certain firms California white pine about 1902, I think.

Q. Prior to that time were you making any substantial shipments east, as far as you know?

A. I don't know; I think so; but I didn't have anything to do with the shipping, and I have no recollection that we were.

Q. That is about the commencement of the shipments east, as far as you are familiar with them?

A. As far as I know.

2872 Q. What do you mean by east?

A. East of Salt Lake; we called it east, but I might have said in the Middle West territory.

Q. Under what name was this lumber offered to the trade at that time?

A. Just pine lumber in the local trade.
Q. And when shipments began to move east——
A. (Interrupting.) It was billed as California white pine.
Q. And has it been so billed ever since?
A. Yes, sir.
Q. Did you meet with any competition from the eastern or northern white pine in the Nevada, Utah, or Colorado territories, during the period of your connection with the Carson & Tahoe Lumber and Fluming Company?
A. No; not that I know of.
Q. Have you any competition with eastern or northern white pine in the local territory from Salt Lake City and west?
A. No.
Q. Did you know anything about eastern or northern white pine while you were with the Carson & Tahoe Lumber and Fluming Company?
A. I don't remember that I ever heard of it. I knew there was pine in the East, but we didn't consider it because we weren't in competition or any way interested in it.

Q. What are the principal markets for the lumber produced
2873 by your company, Mr. Oliver?

A. We manufacture box shook for shipment to southern California; we have a number of retail yards in Nevada that handle our common and some better grades; we also supply a number of yards in various localities, and we ship our 2 shop and better through the California Sugar and White Pine Company, with the exception of what we use in our own sash and door factory.
Q. Has your price list always described this lumber as California white pine?
A. The Hobart Estate Company always show California white pine.
Q. Do you have any sugar pine?
A. A negligible quantity; we don't pay any attention to it.
Q. Have you at any time in the past cut any sugar pine?
A. We have cut sugar pine, but we put it in with our white pine.
Q. Does your price list show sugar pine?
A. No; it is not mentioned.
Q. That is because you have a negligible quantity?
A. Yes.
Q. Have you had any complaints from your trade as to the identity of the lumber which is shipped to them?
A. None.
Q. Any complaint that any confusion exists in the trade by virtue of the name of California white pine?
A. None at all.

Q. Have you had any complaint, any confusion in particu-
2874 lar, with sugar pine?

A. No; not at all.
Q. Sugar pine definitely and distinctively is known as such?
A. Sugar pine only—as sugar pine only.

Q. Have you ever known it to be marketed under the name of "white pine", or "California white pine"?

A. Never knew it was considered as a white pine until a few years ago.

Q. Have you any complaint as to the durability of the lumber which is shipped from your mills as California white pine?

A. None at all.

Q. Have you had any demand from your trade for a change in the name of this lumber?

A. No.

Mr. MATTHEW. You may cross-examination.

Cross-examination by Mr. BURR:

Q. What was the total of that business that was going east in 1902?

A. I couldn't say. I was not identified with the sales, but I know there were a few cars.

Q. How far east did it go, east of Salt Lake, beginning about that time?

A. I think that it went to the sash and door factories along
2875 the Mississippi River.

Q. Why did you change the local name that you gave for this product so as to include the word "white" when you shipped east?

A. We didn't change the name; we merely added "white" because the customers gave us an indication that they wanted a lumber of that texture and color.

Mr. MATTHEW. I think there is a confusion; I think that you are referring to the shipments to the Mississippi River aren't you?

Mr. BURR. He testified, as I understood him, that when he shipped east he added the word "white", and he just testified so again.

Q. When you began using the word "white" that was after you began shipping to Salt Lake, was it, when you began shipping further east?

A. The term "white pine" was in use when I came back in the lumber business in 1901.

Q. And you were still selling locally as California pine, were you, or something of that sort?

A. It was just designated generally as the commons, as rough and surfaced, and the better grades as clear.

Q. Well, you called it "pine", did you?

A. Sometimes we didn't designate it as "pine"; the firs were designated as an indication they were not pine, and the pine went rough and surfaced and——

2876 Q. (Interrupting.) And sometimes you called it "pine" and sometimes you didn't; is that true?

A. I think the billing would show that, but I wouldn't say positively, because it was something I never thought of coming up against.

Q. Did you designate it as "white" when you sent it to Salt Lake?

A. That Salt Lake business was with the old Carson Lumber Company. I don't remember of any shipments of the Hobart Estate Company directly to Salt Lake.

Mr. MATTHEW. He is asking about the early shipments to Salt Lake.

The WITNESS. I don't know anything about the billing.

By Mr. BURR:

Q. When did you begin sending it to the Mississippi Valley, in your experience?

A. I think they were shipping there when I went with the company, but I haven't any particular recollection.

Q. That was on your return to the lumber business?

A. Yes.

Q. And at that time they were calling it "California white pine"; is that true?

A. Yes.

Q. In the Mississippi Valley, in those days, there was competition from the northern white pine, wasn't there?

2877 A. I don't know. I understood that the northern white pine, or whatever they were using, was diminishing, and it was necessary to find a lumber to succeed it, and this lumber was so satisfactory to them that the eastern men designated it "white pine" themselves. That was my understanding at that time.

Q. And you merely fell in line as to what your wholesalers were doing?

A. That is as I recollect it, although I wasn't connected with the sales or shipments then.

Q. Your company doesn't object to a change in the name of "California white pine", does it?

A. Most assuredly.

Q. It does?

Mr. MATTHEW. I want to interpose an objection.

Examiner DE BRULER. The objection is sustained.

Mr. MATTHEW. I move the question and answer be stricken out. It is not proper cross-examination.

Examiner DE BRULER. I think not.

Mr. BURR. He testified with regard to confusion, that there was no confusion, and it seems to me that is proper cross.

Mr. MATTHEW. It has nothing to do about confusion.

Examiner DE BRULER. I don't think it is proper cross-examination—what the company objects to.

Q. (By Mr. BURR.) These eastern shipments didn't amount to anything until about 1900, did they?

2878 A. Prior to 1900 I wasn't in the lumber business.

Mr. BURR. Mr. Examiner, was that question and answer stricken physically?

Examiner DE BRULER. You were asking about what his company objects to. I don't think it is proper cross-examination.

Mr. BURR. Was that physically stri'ken?

Examiner DE BRULER. I just sustained the objection.

Mr. BURR. And it remains in the record?

Examiner DE BRULER. Yes.

By Mr. BURR:

Q. To whom does your company sell, wholesalers, retailers, or what?

A. We sell 2 common to the retail yards, and our no. 2 shop and better is sold to the California Sugar and White Pine Company.

Q. Do you sell to any retail yards except in California?

A. None in California, all in Nevada.

Q. All in Nevada?

A. Practically so. I will qualify that and say one or two in the eastern part of California.

Q. The retailers you sell to are all in Nevada and those two in California?

A. Yes.

Mr. BURR. That is all.

Examiner DE BRULER. That is all.

(Witness excused.)

2879 I will call Mr. Sayre.

FREDRICK F. SAYRE was thereupon called as a witness and, after having been first duly sworn, testified as follows:

Direct examination by Mr. MATTHEW:

Q. Mr. Sayre, please state your name and place of residence?

A. Fredrick F. Sayre, 150 Duane Street, Redwood City, California.

Q. Are you at the present time actively engaged in the lumber business?

A. No, sir.

Q. Have you been engaged in the lumber business in the past?

A. Since '76.

Q. Will you relate briefly your experience in the lumber business, Mr. Sayre?

A. Retail, wholesale, lumber and building materials of all kinds in the early days; later, lumber only.

Q. At what point did you experience in the lumber business commence, Mr. Sayre?

A. Mont Claire [Montclair, N.J.], New York.

Q. What was the nature of your business there?

A. Retail yard.

Q. And how long were you there?

A. Left there in '86 and came to Colorado.

2880 Q. Did you engage in the lumber business in Colorado after your arrival there?

A. In Denver, Colorado.

Q. How long were you in the lumber business in Colorado?

A. Until 1901.

Q. With what particular company were you identified in Denver?

A. Sayre-Newton Lumber Company.

Q. That was a lumber company formed by yourself and associate, I take it?

A. Yes, sir.

Q. And what was the nature of your lumber business at Denver and other Colorado points?

A. Wholesale and retail.

Q. And what kinds of lumber did you deal in?

A. The native stock of Colorado, southern yellow pine, some Texas and Louisiana and Georgia; Chicago pine, as we called it, which was the northern white pine of Wisconsin and Minnesota; Oregon pine from Oregon, California pine from California, white and sugar pine both.

Q. Did you handle the California pines during the early part of your operations in Denver?

A. No, sir.

Q. Under what name did you market the pine lumber which you obtained from the Southern States?

— A. Yellow pine.

2881 Q. Was it known as "yellow pine", or just as "southern yellow pine"?

A. Southern yellow pine; pitch pine.

Q. Those were the common market names?

A. Yes, sir.

Q. And I think you stated that the term "Chicago pine" was employed to mean the eastern and northern white pine?

A. Yes, sir.

Q. When did you first begin to draw any supplies of lumber from California?

A. I think the first car I bought was in 1898.

Q. Prior to that time was the California pine product in competition at all with the eastern pines?

A. I never heard of it.

Q. Will you relate the circumstances under which you began to draw pine lumber from California?

A. The one car I bought in '98 directed my attention to it; and I came out to California in '99 to investigate what they had out here, starting in at Fresno, from which point I went to Sanger and over to the Fresno Flume and Lumber Company, up to the Madera Sugar Pine Company, and traveled all the way up the State to the Bukegime Sugar Pine Company, which had a mill just above Montague, on the Shasta division. I looked up the white pine and the sugar pine. I went over to the Hobart Mills, which was then known as the Sierra Nevada Wood and Lumber Company.

Q. Did you then increase your purchases of pine lumber
2882 from California?

A. Yes, sir.

Q. Both of white pine and of the sugar pine?

A. Yes, sir.

Q. Under what commercial name did you sell or distribute the pine lumber obtained from California and which we know now as California white pine?

A. We sold the California white pine in the Denver market, and we sold the California sugar pine.

Q. Did you sell the California white pine under that name?

A. Yes, sir.

Q. Why did you not call it by the name of "yellow pine", or by the name "California yellow pine"?

A. Because it would be misleading to call it "yellow pine"; it would immediately be classed in with southern yellow pine, and it would have been a misnomer for our markets there to use it or call it as "yellow pine."

Q. Under what name did you sell sugar pine?

A. Sugar pine.

Q. Have you ever known of sugar pine to be sold or introduced to the trade under any name other than sugar pine or California sugar pine?

A. No, sir.

Q. Now, Mr. Sayre, throughout what period were you selling this California white pine in the Colorado markets? I think you
2883 said you got the first car about 1898.

A. 1898 and 1899, and 1900; then I came west to California in 1901.

Q. Will you relate the circumstances which lead to your coming west, Mr. Sayre, and engaging in business here?

A. In 1899 I was out here on a buying trip for my company in Denver. I was asked to a meeting by a Mr. Harvey Lindley. We met at the Palace Hotel with Mr. Scott, Mr. Van Arsdale, Mr. Cox, Mr. Shaffer, Mr. Poole, and Mr. Dean.

Q. Is that the Mr. Elmer H. Cox?

A. Yes, sir.

Q. Mr. Cox has been previously a witness in this case?

A. Yes; I had talked about some of these—that is, I had talked with some of these manufacturers individually in my trip around among the mills—and had conveyed to them the information that there was a market for this California sugar and white pine in the extreme East if they would seek it, particularly among the sash and door men. At this meeting they asked me to tell them what I thought of the market, which I did.

I went on my trip north to Portland, Seattle, Tacoma, and back home. In 1900 I came out here on another buying trip and was called into another meeting with practically the same gentlemen,

with one or two added, and gave them another talk on the market of the East. In the meantime they had some two or three buyers out here from the Mississippi River looking over the field
2884 and they were interested. I think it was in February—I know it was the day the "Rio de Janeiro" went down in the bay here.

Q. That was in February?

A. I think it was in February 1901. I left here that night on my trip North again, and at Tacoma I got a wire from Mr. Harvey Lindley asking me if I would come out to California to undertake the marketing of this stock. I wired him that I couldn't do it; that I had my business in Denver.

Mr. BURR. All this is immaterial to the issues here.

Examiner DE BRULER. I presume it is leading up to some point.

Mr. MATTHEW. He will be brief. I want all the circumstances relating to the formation of this selling organization on record.

Examiner DE BRULER. That is all right.

By Mr. MATTHEW:

Q. Continue, Mr. Sayre.

A. This was followed by correspondence, and in May the committee, of which Mr. Harvey Lindley was the chairman, came to Denver to call on me and endeavor to induce me to come out here to take charge of the marketing organization known as the California Sugar and White Pine Agency.

Q. About what time was that agency formed?

A. I think it was formed in February, immediately after I was here, and put in charge of Mr. Tinkham.

2885 Q. At which time did you become identified with the agency?

A. June 1901.

Q. In what capacity?

A. Manager.

Q. And what were your responsibilities as manager of that agency?

A. That of introducing California sugar and white pine to the eastern and northern markets.

Q. Later on was the name of the agency changed to California Sugar and White Pine Company?

A. It was incorporated along in 1904 or 1905.

Q. And you continued as manager?

A. Yes, sir.

Q. How long were you the manager of the agency or the successor company?

A. Up to, I believe, December 31, 1920.

Q. Was that agency formed by a number of the manufacturers of white and sugar pine in California?

A. Yes, sir.

Q. From the commencement of your employment with this company, Mr. Sayre, was California white pine, as we know it, advertised and introduced to the trade under that name?

A. Yes, sir.

Q. Or was it at any time sold or advertised under any other name to your knowledge?

A. No, sir.

2886 Q. Can you tell me approximately the volume of the California white pine lumber that was marketed through your agency, or company, while you were manager?

A. From 30 million, I think, in 1901, to a maximum of 85 million in any one year.

Mr. BURR. That is both types of lumber?

The WITNESS. Sugar pine and white pine. About a third of that was sugar and two thirds white pine.

By Mr. MATTHEW:

Q. You can't give us the segregation; that is, segregate the volume that was marketed during your period of connection?

A. No; I couldn't because I haven't access to the records now.

Q. When did you retire from that company, Mr. Sayre?

A. 1920; at the close of 1920.

Q. During that period of approximately twenty years continuously, you sold California white pine under that name and California sugar pine under that name?

A. Yes, sir.

Q. Were you equally interested in pressing the distribution of both kinds of lumber?

A. Certainly.

Q. Did you find that the sale or distribution of sugar-pine lumber was hampered in any respect because of the fact that California white pine was marketed under the name "California white

2887 pine"?

A. Not at all.

Q. Was the distribution of sugar pine limited in any sense by the utilization of the name, "California white pine"?

A. No, sir.

Q. Were the two lumbers well known to the trade?

A. Yes, sir.

Q. Was there any confusion between them?

A. None that I ever heard of.

Q. Do you recall of any complaint from your trade respecting the use of the name "California white pine"?

A. None whatever.

Q. Do you recall any complaint as to the durability of the lumber which was furnished under that name?

A. No, sir.

Q. Did you find that your trade was interested at all in the botanical classification of the trees from which the lumber was produced?

A. No, sir.

Q. Did you find that the trade was interested in the common names of the trees from which the lumber was produced; that is, the conventional names of trees in the woods?

A. No.

Q. Was their interest entirely in the quality and use of lumber?

A. Yes, sir.

2888 Q. Mr. Sayre, if the name "California white pine" were replaced by some name which suggested yellow pine, would it, in your opinion, tend to remove the confusion or create confusion?

A. Create confusion.

Q. Why?

A. Because it would immediately class it with yellow pine of the South, which is not the same character of wood.

Q. Is the California white pine in any material degree in competition with the yellow-pine lumber of the South?

A. No, sir.

Q. Does it find utility generally for the same purposes as yellow pine in the South?

A. No.

Q. Is it used generally for the same purposes as the old northern white pine?

A. Yes, sir.

Mr. MATTHEW. You may cross-examine.

Cross-examination by Mr. BURR:

Q. When you were manager of this agency you sold to what classes of buyers?

A. Principally in volume to the sash and door manufacturers.

Q. You sold some to wholesalers, did you?

A. Yes, sir; we sold to wholesalers.

2889 Q. You didn't sell to the retailers in the eastern trade, I suppose?

A. Well, we sold some retailers; not very many, because the volume wasn't there.

Q. Where were those retailers located?

A. We sold to the retailers in Denver, and one or two, as I recall it now, in New York and in Newark, N.J.

Q. Those were large buyers, were they?

A. Yes, sir.

Q. For retail buyers?

A. Yes, sir.

Q. And those located in Denver were men that you knew personally and thereby got direct access to?

A. Yes; and so were those in New York and New Jersey.

Q. Your residence was in Mont Claire at one time, I believe?

A. Yes, sir.

Q. They were people that you knew personally, were they?
A. Yes, sir.
Q. But, in general, you didn't sell to the retail trade, I take it?
A. No, sir.
Q. In your sales in the East the California white pine came into competition with the northern white pine, did it not?
A. Well, yes, and no. I wouldn't say it came very much in competition; there was so little of the northern white pine left that there wasn't much competion of it.
2890 Q. As a matter of fact, it is still sold in that market, isn't it?
A. Yes; I presume so.
Q. If anybody wants to pay the price they can get northern white pine if they don't ask for too big a width?
A. I guess so; I haven't been East for a number of years.
Q. Do you see the advertisements in the national trade journals?
A. No; I don't.
Q. As a matter of fact, during that period just prior to 1920 you probably kept in contact with the trade journals and the advertising, did you not?
A. Yes, sir.
Q. And the advertising of northern white pine was still being inserted in the papers—that is, they were pushing northern white pine in those markets—were they not?
A. Yes, sir.
Q. And your California white pine came in competition with it, didn't it?
A. Yes; I presume you would call it competition.
Q. It was sold at a cheaper price, wasn't it, than the northern?
A. Yes; I guess it was. I don't know what the northern prices were.
Q. In connection with your work on the Atlantic coast, you are familiar with the long-standing reputation of the northern white pine for its high qualities, weren't you?
2891 A. We knew it as Michigan white pine on the Atlantic coast.
Q. And you knew that was the same thing in species as had been sold in New England as the old Maine and northern white pine; that is true?
A. Yes, sir.
Q. You knew that that had a high reputation for durability and for various qualities, did you not?
A. Yes, sir.
Q. When you sold your California white pine back there, wasn't it some advantage to be able to call it California white pine, in view of the reputation that white pine had in that market?
A. Well, I didn't so consider it.
Q. You didn't?
A. No, sir.

Q. Why not?

A. Simply because I put it on the market as white pine because it was a white pine, so far as color and texture of it went.

Q. I believe you testified that you didn't want to call it yellow pine because that word "yellow" would associate it with the yellow pines of the South. Did I understand you correctly?

A. Yes, sir.

Q. Didn't the word "white" associate the lumber with the northern and Michigan white pine?

A. Associated color of the pine.

2892 Q. Well, didn't it associate it, as a matter of common thought, in the trade; didn't that associate it with the northern white pine and Michigan white pine, to call it "white" instead of calling it "yellow"?

A. Yes; I assume it would.

Q. You don't know, I don't suppose, how the wholesaler to whom you sold, or the few retailers to whom you sold—you don't know whether they called it "California white", or whether they called it just "white pine", do you?

A. I never asked any questions about that.

Q. If they actually sold it as white pine, instead of attaching the word "California", it would confuse with the northern and Michigan white pine, wouldn't it?

A. They might put it over in that way. I don't know.

Q. This word "white" in there would help them put it over, if it was invoiced to them as California white pine?

A. If they sold it as white pine without any "California" to it, but I know it was sold through the Tonawanda market as California white pine.

Q. Those wholesalers sent it to the retailers as California white pine, did they?

A. Yes, sir; those wholesalers.

Q. Did you advise those meetings that you attended to use the words "California white pine" in their eastern sales?

A. I don't think I advised it in any such way. I said it was a white pine, as far as I was concerned, and it went in the east-

2893 ern market.

Q. Did you advise them that it was advantageous to call it "California white pine" in the eastern markets?

A. I didn't advise them that it was advantageous to call it "white pine"; I told them they must not call it "yellow pine."

Q. For the reason that it would associate it with the yellow pines of the South?

A. Yes; the yellow pine of the South.

Q. And you can't recall whether you advised them to call it "California white pine"?

A. I didn't give them any advice on it; I wasn't asked for advice on that.

Mr. BURR. That is all, sir.

Redirect examination by Mr. MATTHEW:

Q. Did you ever have any complaints to the effect that California white pine was being furnished upon orders calling for the old northern white pine, or Michigan white pine?

A. No, sir.

Q. You never knew of any confusion in the trade in this respect?

A. No, sir.

Recross-examination by Mr. BURR:

Q. You didn't come in contact with the actual buyers of the
2894 wood at all, the ultimate consumer, did you?

A. Oh, my, yes.

Q. I mean the men who actually are putting up houses and that kind of thing.

A. Sash-and-door men were my biggest customers, and I knew them personally.

Q. I am talking about the fellow that puts up a house.

A. That is a very small portion of the white pine from this country; I didn't come in contact with the carpenter.

Q. You didn't come in contact with the men who buys the sash and door?

A. No; not the man who bought the sash and door.

Q. Do you happen to know how those sash-and-door men sold their sash and doors?

A. Pine sash and doors.

Mr. BURR. That is all.

Examiner DE BRULER. That is all.

(Witness excused.)

Mr. MATTHEW. I will call Mr. Wist.

EDWARD F. WIST was thereupon called as a witness and, after having been first duly sworn, testified as follows:

2895 Direct examination by Mr. MATTHEW:

Q. Please state your name and place of residence.

A. Edward F. Wist; residence, 1216 Bay Street, Alameda, California.

Q. What is your business or occupation?

A. Secretary-treasurer and general manager of the California Sugar and White Pine Company.

Q. How long have you been connected with that company, Mr. Wist?

A. Since 1901.

Q. And how long have you been its general manager?

A. Ever since 1925.

Q. What generally has been the nature of your responsibilities from the time that you entered the employ of the company in 1901 to date?

A. Well, looking after the sales, shipments, and placement of orders, and various positions in connection with the selling organization.

Q. Did you have any experience in the lumber business prior to the time when you become identified with the California Sugar and White Pine Company?

A. I was with the Sayre-Newton Lumber Company at Denver from 1896 to 1901.

Q. That was the company, the concern, to which Mr. Sayre has just testified to?

A. Yes, sir.

2896 Q. From 1901 to date have you been continuously connected with the sales end of the California Sugar and White Pine Company?

A. Yes, sir.

Q. I think Mr. Sayre has testified that that company was formed to market the lumber produced by various different manufacturers?

A. Yes, sir.

Q. Will you give the names of those manufacturers, Mr. Wist, as they are today? What companies now market their lumber through your California Sugar and White Pine Company?

A. It has a membership of the Hobart Estate Company, the Shaw-Bertrim Lumber Company, the Swayne Lumber Company, the California Fruit Exchange, the Spanish Peak Lumber Company, and the Penman Peak Lumber Company. I think those are all.

Q. I suppose, from time to time, the personnel of the companies for which you market lumber may change?

A. Yes, sir.

Q. Have you been equally interested in pushing the sale of sugar pine and California white pine, Mr. Wist?

A. Yes, sir.

Q. You are as anxious to sell sugar pine as California white pine, and vice versa?

A. Yes, sir.

Q. Will you state briefly where you find your markets for this lumber?

A. In the Eastern States, the Middle West, further east,

2897 and the Middle West. In fact, all over the world, as far as that is concerned; we ship abroad; we export lumber to all markets everywhere.

Q. Under what name do you advertise and invoice the lumber which we have here referred to as California white pine?

A. California white pine—our letter also shows that.

Q. Has that been the practice of your company during the entire period of your connection with it?

A. Always.

Q. And under what name do you advertise and invoice lumber which has been referred to as sugar pine?

A. Sugar pine.

Q. Have you ever advertised it, or marketed it, under a commercial name with the word "white" in it; sugar pine?

A. No, sir.

Q. Are there distinctions between the two lumbers well known?

A. Yes, sir.

Q. Have any of your customers complained to you of a confusion between California white pine and sugar pine?

A. Never.

Q. Can you tell us approximately the aggregate volume of the sales of lumber through your organization since the period of your connection with it, Mr. Wist?

A. Well, we have shipped, I should say, over a billion and a half of both sugar and white pine, and over a billion of white

2898 pine.

Q. Have you had any complaints from your customers as to the quality of the lumber which is furnished under the name "California white pine"?

A. No, sir.

Q. Any complaints as to durability?

A. None.

Q. Has there been any demand from any of your trade from a change from the present name of "California white pine"?

A. No.

Q. Does California white pine come into competition to any material extent with the southern yellow pines?

A. The California white pine comes into a different class of work entirely from southern yellow pine.

Q. For what purposes is California white pine primarily, or predominately, used?

A. Millwork and finish, sash and doors, moldings, siding.

Q. For what purposes is the southern yellow pine predominately used?

A. It is used more for common construction work, as we call it.

Q. Is California white pine in competition with the southern yellow pine?

A. No, sir.

Q. Is the California white pine in competition with the Idaho white pine?

2899 A. To some extent, I think it is.

Q. To what extent, if you know?

A. Well, they have either of the finish type, common boards; in that end of the product they do compete; but they do not produce much of the factory type of sash and door lumber—that is, shop lumber.

Q. Then you don't encounter material competition from the Idaho white pine in your factory or shop grades?

A. No, sir.

Q. When did you first become familiar with Idaho white pine as such?

A. I don't remember, probably five or ten years ago.

Q. When did you first have any knowledge of it being marketed in the East or Middle West?

A. Well, about the same time. I just saw it in the trade press.

Q. Were you marketing California white-pine lumber long before you heard of Idaho white pine?

A. Yes, sir.

Q. If the present term of "California white pine" were replaced by a name which suggests the southern yellow pine, either by actual name or otherwise, what would be the effect upon the trade, as far as possible confusion is concerned, Mr. Wist?

A. I think they would be greatly confused; they wouldn't know what it was unless the present name was continued. I think it is a very distinctive name; it identifies the wood—where it
2900 comes from. I think it is a popular term to use.

Q. Can you think of any other name that would appropriately describe this lumber in order to identify it to the trade?

A. No, sir.

Mr. BURR. I object to that.

Examiner DE BRULER. Objection overruled.

Mr. BURR. It is immaterial.

Mr. MATTHEW. I think it is very material.

Q. (By Mr. MATTHEW.) Mr. Wist, have you found at any time that the sale of sugar-pine lumber is prejudiced in any respect because of the fact that California white pine is marketed under the name "California white pine"?

A No, sir.

Mr. MATTHEW. You may cross-examine.

Cross-examination by Mr. BURR:

Q. Do I understand that your company does the actual invoicing?

A. Yes, sir.

Q. In other words, do you sell the entire product of all these concerns that you represent?

A. We sell the product of what we call no. 2 shop and better; the upper grades.

Q. But not the common?

A. Some common, but not a great deal.

2901 Q. And it is shipped direct from the company to whomever you designate as the buyer; is that right?

A. Yes, sir.

Q. To what class of customers do you sell, Mr. Wist?

A. We sell to the wholesaler, retailer, the factories, and also planing mills.

Q. Well, the factories and planing mills represent about how large a percentage of your sales?

A. The largest percentage, because it is the largest percent of the shop and factory grades.

Q. Would you say 60%?

A. Sixty percent, I would say.

Q. How much of the sales are to wholesalers, approximately?
A. Well, I don't know; probably 30%, I should say.
Q. And about 10% to retailers?
A. Probably a little more than that, about 15% to 25%.
Q. Say, 15% to 20%?
A. That is a rough estimate.
Q. Which of those other figures would you want to correct?
A. Well——
Q. (Interrupting.) You have got now about 110%, haven't you?
A. I didn't know that.
Q. You said 60%, I believe, to the planing mills, and to the shop——

A. (Interrupting.) You might say 60% to the planing
2902 mills and the other divided up equally between the retailer and wholesaler.

Q. Where are these retailers?
A. Where are they?
Q. Yes.
A. Well, all over the country, in the Eastern States, New York, Pennsylvania, Ohio, and the Western States.
Q. Do you come in contact with northern white pine and Idaho white pine through that entire territory, or don't you?
A. I understand that wood is offered in those territories, too.
Q. And the characteristics and qualities of those woods vary from those of California white and sugar pine, to some extent, do they?
A. I understand they do.
Q. They vary from California white pine rather more than they do from sugar pine, don't they?
A. Possibly.
Q. And do you sell for pattern purposes?
A. Yes, sir.
Q. What variety do you sell most of for pattern purposes?
A. Sugar pine mostly.
Q. Do you recommend California white pin efor those purposes?
A. Well, if they would like it we wouldn't recommend it, the white pine especially; we recommend the sugar pine.
Q. Do you know how your customers retail, or don't you come in contact with them?

2903 A. Our customers?
Q. Yes.

A. I do.
Q. I mean do you know how they retail, under what terms?
A. No.
Q. You don't know whether they sell it as California white pine or white pine, or how they do?
A. No. Our salesmen, representatives, would probably know.
Q. Which of the companies that you represent sells more sugar pine than it does California white pine, any of them?
A. None of them. The sugar pine is the smallest percentage.

Q. It is the smallest percentage?

A. Produced.

Q. Which of your concerns would sell as much as one third sugar pine?

A. The Swayne Lumber Company.

Q. Any others?

A. That is the only one that would have that percentage of sugar pine; the other would have a small percentage.

Q. How much would you say would be the percentage of sugar pine of your total sales of pine?

A. About one third.

Q. You just said that only one concerns would have 30%, didn't you?

A. An approximate figure.

2904 Q. Isn't 33⅓% too high for your total sales of sugar pine if one would run 30% and the others small?

A. Yes.

Q. What is the percentage at the present time, instead of 33⅓%?

A. Possibly 30% would be the extent at the present time.

Q. You testified that only one of them would run 30%?

A. Yes; that is what I mean.

Q. You said only one of them would run 30% and now you say the whole bunch will run about 30%. There must be some mistake.

A. You take the Spanish Peak Lumber Company, they have some sugar pine—it varies.

Q. Isn't your percentage of sugar pine too high for your total, the percentage of sugar pine to your total, isn't that too high?

A. Of our total, yes; our grand total. I thought you meant of the total of each mill.

Q. I did ask about that. I think you testified it was about 33⅓% of the aggregate of sugar pine; isn't that too high?

A. Of our mills, yes.

Q. How much would it run to, do you think, of your mills?

A. Well——

Q. (Interrupting.) As a matter of fact, it wouldn't run 20%, would it?

A. I would say 20% to 25%.

Q. You make a differential between the two products, don't you, sugar pine is higher?

2905 A. Yes, sir.

Q. Why is that?

A. Because the demand of the trade has become accustomed to paying more for it.

Q. It is better for certain purposes than California white pine?

A. Yes, sir.

Q. Besides pattern work, what varieties of utility is it better for than the California white pine?

A. It is better for piano-key stock, drain-board stock, and it is very well adapted for that, besides pattern work.

Q. Do you recommend it for outside finish, rather than California white, wouldn't you?

A. I don't know. I think either one would do, would be satisfactory for outside work. I don't think they use much of the sugar pine on account of the cost of it.

Q. But irrespective of cost, would you recommend the sugar pine?

A. I probably would.

Q. When you come in contact with Idaho white pine, and northern white pine, in competition, the word "white" in your California white pine product is a help to the sales, is it?

A. I presume it would help, but I never thought of it in that direction.

Q. You think it would be?

A. Possibly it would.

Mr. BURR. That is all.

2906 Mr. MATTHEW. That is all.

(Witness excused.)

Examiner DE BRULER. We will take a five-minute recess.

(Whereupon a five-minute recess was taken.)

Mr. WHEAT. I will call Mr. Dwight.

WARD A. DWIGHT was thereupon called as a witness, and after having been first duly sworn, testified as follows:

Direct examination by Mr. WHEAT:

Q. Mr. Dwight, you are engaged in the lumber business, are you?

A. Yes.

Q. Just what is your present occupation and what company are you employed by?

A. I am president of the Dwight Lumber Company in San Francisco, and president of the Big Lakes Box Company at Klamath Falls.

Q. The Big Lakes Box Company is one of the respondents in this hearing?

A. Yes.

Q. And how long have you been engaged in the lumber business?

A. About 30 years.

Q. Will you briefly, for the record, state your experience in the lumber work, just what that has been?

2907 A. About 1900 I started in a small way as a broker and commission dealer in lumber and box shooks.

Q. Where was that?

A. San Francisco. In 1903 we started the Montague Box and Lumber Company at Montague.

Q. That is in California?

A. Yes; northern California. In 1917 we started the Big Lakes Box Company at Klamath Falls, Oregon.

Q. And have you ever been interested or employed by any other lumber concerns?

A. I was only employed for a few months by the Charles Nelson Company, of this city.

Q. Throughout the other period of your experience you have been in business for yourself or in connection with other persons?

A. Yes.

Q. When did you first hear the term "California white pine"?

A. I can't say that definitely; when I began 30 years ago California white pine was the name of the lumber we are still handling.

Q. What lumber did you specialize in when you first began marketing lumber?

A. We specialized in the beginning in the handling of spruce, box shooks in particular, and douglas fir, or Oregon pine as it is generally known.

Q. What did you say douglas fir was generally known as?

A. Oregon pine.

2908 Q. And that was in the California market, was it?

A. Yes. When we started the Klamath Falls operation, from that time on we handled more and more white pine and less and less of anything else.

Q. Do you now produce sugar pine from your operation around Klamath Falls?

A. A small percentage.

Q. Are you now interested in any other sugar-pine production, exception the Big Lakes Box Company?

A. No.

Q. And your sales of lumber are very largely confined to California white pine, is that so?

A. Very largely.

Q. During your experience in the sale of these woods have you ever had brought to you any knowledge of any confusion between California white pine and sugar pine?

A. Never.

Q. Are these lumbers both well known to the trade?

A. Yes.

Q. Is the distinction between them well known to the trade in general?

A. Very well known.

Q. Have there every been any complaints to you regarding the name under which you market your Pinus ponderosa lumber, to California white pine?

2909 A. No.

Q. Have any complaints every come to you that a confusion exists because of that name?

A. No.

Q. Have you ever had any complaints regarding the durability of California white pine?

A. No.

Q. Are you aware of any demand from the trade for any change in the name of California white pine?

A. On the contrary, they don't want it changed, those we deal with.

Q. Do you find that the trade with which you deal is interested in the botany of this wood?

A. None whatsoever.

Q. What are they interested in, if anything?

A. The quality of the wood.

Q. And are they interested in the uses to which it may be put?

A. Yes; naturally.

Q. If the name "California white pine" were to be replaced with any name suggesting yellow pine, would or would not that create any confusion in the lumber trade?

A. I think it would.

Q. And why?

A. Because it would identify it with a wholely dissimilar product.

Q. Are you in competition, as far as you know, with south-
2910 ern yellow pine?

A. Not as far as we have been able to determine.

Q. Do you know whether or not southern yellow pine is used for similar uses to the California white pine?

A. Very seldom.

Q. And what are the general uses of southern yellow pine?

A. It is a structural lumber for heavy work.

Q. Do you know whether the California white pine is generally used for the purposes for which the old northern white pine is used?

A. I think it is.

Q. Can you think of any other name which would appropriately describe the wood now marketed as California white pine, or in its properties and qualities?

A. I have tried for a good many years to think of one and haven't been able to.

Q. Do you yourself, Mr. Dwight, come in contact with the people who purchase this lumber?

A. You mean the ultimate consumer?

Q. Well, who do you come in contact with?

A. We come in contact with the wholesaler in particular, and very largely with the planing mills, sash and door factories.

Q. Is it your opinion that if there were complaints to these people to whom you sell your wood, regarding the use of this name, that that complaint would come back to you?

A. I think ultimately it would come back to us.

2911 Q. Do you believe that California white pine, as you have sold it, goes into uses for which it is primarily adapted because of its mechanical properties?

A. Yes; I do.

Q. Do you believe that there would be any change in such uses if the name were to be changed?

A. Not at all.

Q. Why not?

A. Because it is the merit of the wood that sells it; it is not the name. It would take some time to change the name, to get it over, and it would be costly and eventually, as soon as the buyer was able to identify the product with the new name, it would go just the same.

Q. But it would be necessary, would it, to educate the trade, so to speak, to any new name which might be adopted?

A. It would take quite some time before it became generally well known.

Q. Is the sale of California white pine increasing or decreasing, eliminating for the moment the present market depression?

A. I think, on the whole, it is increasing.

Q. Can you tell me whether or not the name "California white pine" has, to your knowledge, been continuously applied to the wood of Pinus ponderosa from California during the entire period of your lumber business?

A. It has ever since I knew anything about it.

2912 Q. Have you ever known of any other name being applied to that wood from the California area?

A. No; I haven't.

Q. Have you ever known of sugar pine being marketed as white pine?

A. No.

Q. Or as California white pine?

A. No.

Mr. WHEAT. I think that is all. You may cross-examine.

Cross-examination by Mr. BURR:

Q. Mr. Dwight, in the testimony that you have given you had relation to your business in connection with the Big Lakes Box Company, had you?

A. Yes.

Q. Your testimony is in relation to the Big Lakes Box Company rather than the Dwight Lumber Company?

A. I may explain that the Big Lakes Box Company is the manufacturing department and the Dwight Lumber Company is the marketing department.

Q. They are merely your sales agency, are they, your sales subsidiary?

A. Yes; the Dwight Lumber Company markets the products of the Big Lakes Box Company. I am president of both companies.

Q. Now, Mr. Dwight, are you the principal executive for the Big Lakes Box Company?

2913 A. Yes.

Q. Are you the one who generally attends the meetings of the California White and Sugar Pine Association?

A. Yes.

Q. Do you recall receiving from that association a questionnaire in which this was asked——

Mr. WHEAT (interrupting). If any question is arising with reference to any actions on the part of the Association, of course, we shall have to object, as they are not parties here. I don't know what this question is going to be, however.

Mr. BURR. This is a question asked in the following terms, and I shan't object if counsel wishes to make a motion to strike on the ground that that motion is not timely, and let him see what we have.

By Mr. BURR:

Q. Do you recall this question being asked you: "Since the Federal Trade Commission has been requested to issue a cease and desist order against the use of the word 'white' in the trade name of 'California white pine' on the grounds that 'California white pine' is not a true white pine, do you wish to continue the name 'California white pine'?" Along about June 17, 1927, do you recall that question?

A. I think I do.

Mr. WHEAT. I desire to object to the question, first, because
2914 it relates to something which did or did not transpire in relation to this association, which is not a party to this case; and, second, because whether or not any person connected with that association might or might not have desired to retain this or that trade name has nothing to do with the question now before the Commission, which is whether or not unfair competition exists because of the use of that trade name.

Mr. BURR. Let me be heard. The reason I am asking that question is this: He has testified that no other name would do. Now, if he answered "no", as he will testify that he did, I think, that means that he has at one time at least held a different view than he now holds, namely, that he would be agreeable to some other name and didn't wish to continue the present name of California white pine. Therefore, it seems to me, it is absolutely and directly material in that matter as cross-examination.

Mr. WHEAT. Why don't you ask him directly those questions that you have mentioned to the examiner? I have no objection, if he has changed his mind, but I do object to anything about reference to that association, or any statement which any man may have made.

Examiner DE BRULER. Why don't you ask whether he has changed his mind on that?

Mr. BURR. It seems I must first have the fact that he knows that question, and it seems to me it is absolutely and correctly ma-
2915 terial. Here is a man who comes here and says that no other name will suit him. I want to prove that his company has answered differently on that very question.

Examiner DE BRULER. Has he answered that?

Mr. BURR. His company has.

Examiner DE BRULER. Objection sustained.

By Mr. BURR:

Q. Did you answer the question that was propounded, or did some other member of your company answer it?

Mr. WHEAT. I object again because it refers to the same document.

Examiner DE BRULER. You can answer whether you answered that or not.

The WITNESS. I think probably I did.

By Mr. BURR:

Q. Do you recall whether you answered "yes" or "no"?

Mr. WHEAT. If you have sustained my objection you certainly cannot allow this particular question as to the particular document which I have in mind.

Examiner DE BRULER. I sustained the objection on the ground that it was an association, but now he says he answered it himself.

Mr. WHEAT. Go ahead. I think this witness is able to take care of himself.

By Mr. BURR:

Q. Did you answer that "no"?

2916 A. I don't recollect.

Q. Do you recall being handed a copy of the circular of the association dated June 17, 1927, which I now hand you?

Mr. WHEAT. I shall now have to object again to any matters pertaining to circulars of this association. We are not dealing with this association here, Mr. Examiner, and any circular that may or may not have been put out is immaterial in this case.

Mr. BURR. If the examiner please, this is an association, and it would not be difficult to prove, and I think it is already in the record, is one which most of these gentlemen who are respondents here are members of, and I will ask——

Examiner DE BRULER (interrupting). Ask him what part he took in it. That is far as you can go.

By Mr. BURR:

Q. Do you recall that circular, sir?

Mr. WHEAT. You are not purporting to offer the circular?

Mr. BURR. No; I am using it to refresh his recollection.

Mr. WHEAT. That is all right.

Examiner DE BRULER. That is all I understood it was for, to refresh his recollection.

A. (Examining circular.) I don't recall this particular circular. We received many of them.

2917 By Mr. BURR:

Q. Yes; and I would like to ask if that serves to refresh your recollection as to your answer. You are listed there as having answered "No" to that question and the question itself is repeated, and I wish you would state whether or not you recall now answering "No" to that question?

A. It was not answered by me. It was answered by Mr. Voigt. I didn't notice that before.

Q. Who is Mr. Voigt?

A. He is our vice president and general manager at Klamath Falls.

Q. Do you remember his consulting with you on that subject?

A. No.

Q. The answer is listed on that document, is it?

A. Yes, sir.

Q. For your company?

A. For the Big Lakes Box Company it was answered "No."

Mr. WHEAT. I move to strike the question and answer out on the examiner's ruling that this matter can be used for anything that this witness may be asked, but whether or not it is listed as "Yes" or "No" is immaterial.

Examiner DE BRULER. Let it stand.

Mr. BURR. It is an admission on the part of his company.

Mr. WHEAT. If this matter is pressed as an admission on the part of this company in this case, then I must press my
2918 motion to strike this out. I think clearly that is immaterial in this matter and I think I am entitled to a ruling on that.

Mr. BURR. If it is true that his company answered "no", it is absolutely and directly an admission on the part of this company, this respondent. There is no question about that.

Examiner DE BRULER. He has answered, and it may stand and the exception allowed.

By Mr. BURR:

Q. Mr. Dwight, you sell to what classes of customers?

A. Very largely to wholesalers.

Q. And some to planing mills?

A. Sash and door factories, yes; wholesalers, sash and door factories are our principal trade.

Q. Practically your entire trade, is it not?

A. I should say the very large percentage of it.

Q. How large a percentage is other classes—that is, what are the other classes, pattern manufacturers?

A. We sell very little pattern lumber.

Q. You don't sell the retail trade at all?

A. Very, very seldom.

Q. You say that the word "yellow", if it were adopted for your product, would align you with the southern manufacturers of the hard yellow pines of the South, isn't that true?

A. I think it would have that tendency in the mind of the ultimate consumer, perhaps.

2919 Q. Well, now, the use of the word "white" helps to align you in the minds of the ultimate consumer with the northern white pine and the Idaho white pine, does it not?

A. I don't think so.

Q. By the same token, why wouldn't it?

A. Because white pine describes our lumber and yellow pine does not.

Q. It does help to align you with the white-pine group?

A. Yes; with the white-pine group.

Q. And that, if I understand you correctly, is where you think you belong in that respect?

A. I think so.

Q. That is one reason why you would like to continue the use of the word "white"; that is, it will continue to align you with the northern white pines?

A. No; that isn't the reason.

Q. What is the reason?

A. The reason is that the name is in general use and has been known for fifty years or more and adequately describes the lumber and tells the buyer what it is like, and the buyer is used to receiving it under that name.

Q. Don't you think you compete with Idaho white pine and northern white pine in these markets?

A. I presume so.

Q. Does it help you to sell in competition with those types of lumber to have the word "white" in there?

2920 A. I don't think it does, other than it is a name the buyer is accustomed to using and knows about it.

Q. That buyer has people come in and ask for white pine?

A. Probably.

Q. And in that case your California white pine can be sold as white pine more readily than if the word "white" wasn't in that name?

A. I don't think it is the name; it is the similarity of the wood that makes it possible.

Q. Doesn't that help, the similarity of the wood?

A. I don't see that it does. We can't tell what the retailer may resell anything for.

Q. You can't tell that?

A. No.

Q. Do you ever get commendation from the ultimate buyer, the home builder?

A. Very seldom.

Q. You never get any compliments or kicks?

A. If he kicks we probably get it back, because if he sends the lumber back to the retailer the retailer will probably tell the wholesaler and the wholesaler passes it back to us.

Q. If the complaint came several years afterwards it might not get back to you?

A. Probably not.

Mr. BURR. That is all.

2921 Redirect examination by Mr. WHEAT:

Q. Now, Mr. Dwight, did you ever answer to this association mentioned by Mr. Burr that you did not wish to continue the name "California white pine" for the Pinus ponderosa lumber which you produce?

A. I think not.

Q. Do you know whether or not your company ever answered this question in the negative?

A. I do not know that.

Mr. WHEAT. Then I will move that, under the examiner's ruling with reference to questions being asked this witness, that such matter be stricken out.

Mr. BURR. I think it is perfectly competent as an admission of that company.

Mr. WHEAT. The examiner ruled that he could be asked the question as to his own knowledge.

Examiner DE BRULER. I understand you to say that that is the answer of your company?

The WITNESS. I don't recollect that particular circular and I did not answer it. It is stated in there that a Mr. Voigt did answer it, and I don't know whether he did or not.

Mr. BURR. You have no real doubt but that the association correctly reported that, have you?

The WITNESS. I know nothing of it.

2922 Examiner DE BRULER. I think your motion to strike will be allowed, subject to your objection. It will remain in the record but subject to the exception.

Mr. BURR. All right.

Mr. WHEAT. That is all.

Examiner DE BRULER. We will take a recess until 2:00 o'clock p.m.

(Witness excused.)

(Whereupon at 12:00 noon a recess was taken until 2:00 o'clock p.m.)

2923 AFTER RECESS

2:00 P.M.

Examiner DE BRULER. If the parties are ready, we will proceed with the hearing.

Mr. BURR. Let the record show we now return to the Government's case, for the time being, to hear a further cross-examination of Frederick E. Weyerhaeuser, in accordance with the instructions contained in a telegram of Secretary Johnson, of the Commission, under date of December 31st.

Do you want that telegram in the record or not?

(Whereupon followed remarks off the record.)

Examiner DE BRULER. Mr. Weyerhaeuser will please take the stand.

F. E. WEYERHAEUSER resumed the stand and further testified, as follows:

Cross-examination (continued) by Mr. MATTHEW:

Q. Mr. Weyerhaeuser, at the time of your prior appearance on the witness stand I asked you certain questions respecting the commercial names under which your company offers to the trade lumber manufactured from the tree known as Douglas fir. Do you recall the inquiries along that line?

A. Yes; I think so.

Q. Now, may I ask you whether all of the lumber manu-
2924 factured by any of the companies in which you are interested, from this particular species of tree, is offered to the trade under a single commercial name?

A. So far as I know it is.

Q. Is all of it sold as Douglas fir; that is, by that name?

A. So far as I know.

Q. Do you not know that a considerable proportion of it is sold under the name of "Oregon pine"?

A. I do not.

Q. Have you an export trade in Douglas fir?

A. Not a direct export trade.

Q. Then you do not sell any Douglas fir lumber at Pacific ports in cargo lots?

A. It is sold, if I am correctly informed, through an agency. We don't sell it direct.

Q. Then you utilize the services of some agency in taking care of your export demands?

A. Yes, sir.

Q. Do you know whether your sales organizations, or your producing companies, receive orders under the name of Oregon pine, or Douglas fir, for this lumber which is sent to the export trade?

A. No; I do not.

Q. What is the agency through which you handle your export lumber?

A. I can't recall the name of it; it is a well-known agency.

2925 Q. It is not the Weyerhaeuser Sales Company?

A. No, sir.

Q. It is not any company in which you have any interest or control?

A. Well, I am not sure whether we have an interest in it or not. It is a subject which I know very little about, as I have had practically no contact with the export business.

Q. And you have no information at all as to the commercial name under which that lumber is exported?

A. No.

Q. Do you know whether any of the lumber manufactured by your companies from this particular tree which we have, for the moment, identified as Douglas fir, is sold under the name of red fir?

A. I think not, but——

Q. (Interrupting.) Did you ever hear——

A. (Interrupting.) May I answer that question? I am not sure I understood it.

(Whereupon the question referred to was read by the reporter.)

A. I think not, although I must say again, as I said before, that the detail of our business is too vast for my being familiar with all the details.

Q. Then, you never heard of a lumber bearing the commercial name red fir?

A. Yes; I have.

2926 Q. What is the extent of your familiarity with that term?

A. I have heard a great many discussions on the part of lumber men as to the difference between red fir and yellow fir. I have never heard an explanation that was satisfactory to me or at all convincing.

Q. Do you know the name red fir as the commercial name for lumber?

A. Yes.

Q. Do you know that any red fir lumber is produced in the Pacific Northwest?

A. Will you define the Pacific Northwest?

Q. I will include Oregon, Washington, Idaho, and western Montana.

A. Yes.

Q. Do you know whether it is yielded by a tree which is different botanically from the tree which yields Douglas fir lumber?

A. I don't know that it differs botanically.

Mr. BURR. If the examiner please, I think I neglected to say that this examination is subject to my exception.

Examiner DE BRULER. That is understood.

Mr. BURR. In accordance with the telegram which we did not read into the record.

Examiner DE BRULER. That is understood.

By Mr. MATTHEW:

Q. Is it your impression that they are one and the same tree?

Mr. BURR. If the examiner please, I rather object to asking

2927 for impressions. I don't think it adds anything of value to either side.

Examiner DE BRULER. He can answer the question. I think he can answer the question the best he can.

A. It is my impression that it is the same tree.

By Mr. MATTHEW:

Q. Are you able to specify the territory in which we find this red fir lumber produced?

A. It is produced in Idaho and in the Klamath Falls section and in a great many other places.

Q. Is it produced in what we commonly term the coast section where we find the typical Douglas fir, or the great bulk of Douglas fir?

A. It is rather difficult for me to explain. In the fir forest woodsmen will claim that one tree is a yellow fir and another tree is a red fir. But none of them can give any definite grounds for stating that one is a yellow fir and the other is a red fir.

Q. Is there any difference between the lumber yielded by the red fir and yellow fir, respectively?

A. In general the yellow fir is very old and produces a softer type of lumber than the trees which are called red fir; for the most part the red fir is a much younger tree than the tree that is called yellow fir.

Q. Then the red fir lumber is usually marketed separately from the Douglas fir lumber?

A. I think not.

2928 Q. Do you know that for many years there was quite a market for red fir in the Minneapolis area under that name?

A. Yes; there was.

Q. What was meant by red fir in the Minneapolis area at that time?

A. So far as I know it was the fir that was shipped from Idaho and principally from Idaho and Montana.

Q. Is there any change in conditions in the Minneapolis territory in that respect?

A. Not that I know of.

Mr. BURR. You are referring to market conditions, changes?

Mr. MATTHEW. Yes.

By Mr. MATTHEW:

Q. In other words, the term red fir in Minneapolis still means the fir which originates in what you describe as western Montana and Idaho, you say?

A. Yes.

Q. And some other place?

A. Well, the small tree grows in the Klamath Falls territory, but I am not familiar with all the producing plants of this section of the country.

Q. But the term red fir, in Minneapolis, does mean still the lumber manufactured or produced in western Montana and in Idaho?

A. Yes; so I understand.

2929 Q. It is not your understanding that the tree from which this lumber is produced is in fact a fir, is it?

A. I am not familiar particularly with the botanical terms, but I have heard it stated that the tree which we ordinarily call fir is not a true fir tree.

Q. You don't think that the botanical nomenclature of the tree is particularly important so far as naming the product of that tree is concerned, do you?

A. So far as the naming of that tree is concerned, I do not think it is important.

Q. So even if it should prove to be the fact that the tree from which Douglas fir lumber and red fir lumber are both obtained, is botanically, not a fir at all, but belongs to an entirely different genus, you wouldn't think that would call for a renaming of the lumber, would you?

A. I would not unless it was shown that the name of the lumber resulted in confusion and wastefulness.

Q. The question then is one of confusion and wastefulness and not merely of the botanical identification of the tree, or even of the common name of the tree of the forest, is it?

A. Not as to that wood.

Q. Or as to the wood of any other tree for that matter, isn't it?

A. Yes.

Q. As far as you know, no confusion is caused by the utilization of the term Douglas fir to describe the lumber which we have

2930 just been reviewing?

A. No, sir; as far as I know.

Q. No economic waste or anything else deterious to the lumber industry or to the consumer?

A. Not so far as I know.

Q. Nor is there objection of similar character to the use of the term red fir, as far as you know?

A. No.

Q. I think I asked you a preliminary question when you were on the stand previously respecting Port Orford cedar. I am not sure that I recall your response, but I think you did say that you are familiar with that term. Am I right in that?

A. I have heard the term.

Q. Do you know the lumber?

A. I do not.

Q. Of course, you do not know whether it is yielded by a tree which is botanically a cedar?

A. I do not.

Q. You do not know whether it is yielded by a tree which bears the common or colloquial name of a cedar, do you?

A. No; I know nothing about it.

Q. Do you know of any lumber marketed under the name of incense cedar?

A. I have merely heard of it; I know nothing about it.

Q. Do any of your companies produce incense cedar?

2931 A. Not so far as I know.

Q. Does your sales company deal in incense cedar, so far as you know?

A. I never heard of its doing so.

Q. Is it possible that it may deal in such lumber under some name other than incense cedar?

A. It is possible; but I think not.

Q. You know nothing about it?

A. No.

Q. Does your company, do any of your companies, produce western red cedar?

A. We manufacture cedar on the Pacific coast, which, I think, is called western cedar. I am not sure of the common name of it.

Q. You don't know whether the name of the lumber is western cedar or western red cedar?

A. I have always referred to it as cedar.

Q. Do you know whether it is yielded by a cedar tree?

A. I do not.

Q. You would again deem that immaterial so long as there is no confusion in the lumber trade?

A. So long as there is no confusion in the lumber trade and no harmful results to the ultimate consumer.

Q. Does your company manufacture or deal in any hemlock lumber?

A. Yes, sir.

Q. And what commercial names do you sell hemlock under?

2932 A. Hemlock.

Q. Is it known as mountain hemlock, or as western hemlock, or does it bear any name except hemlock?

A. The only name I know it by is hemlock.

Q. You don't distinguish between mountain hemlock and west coast hemlock?

A. I don't know the term mountain hemlock, what it means.

Q. Do you know there are different species of hemlock from which lumber is produced in the Pacific coast area and the intermountain area, respectively?

A. I do not know that there are different species.

Q. If there should be different species and the lumber yielded by the two species is substantially the same, the quality and utility, would you see any objection to mingling lumber from the two trees and selling it under a common commercial name?

A. That is purely an assumption.

Q. It is a hypothetical question, I will grant that; but upon that hypothesis, what would be your answer?

A. I don't think it is fair to ask that question without making a complete statement of the qualities.

Examiner De Bruler. Read the question.

(Whereupon the question referred to was read by the reporter.)

Examiner De Bruler. That refers to essentially the same lumber. Do you understand what he means? It is essentially

2933 the same lumber. Would there be objection to selling it under the same name?

The Witness. It would necessarily be the same species.

By Mr. Matthew:

Q. Assume, for the purpose of my question, that there are two different species, yet we find that the lumber yielded by the two

species is identical in appearance, quality, and utility. Would you see any objection to marketing all of this lumber under a single commercial name?

A. No; for under the definition they would be the same species.

Q. In my definition, Mr. Weyerhaeuser, they are different species, according to the botanists, and yet the lumber coming out of the two species is exactly the same, or apparently the same.

Examiner DE BRULER. You understand he means if the lumber is the same would it make any difference?

Mr. BURR. That is a thing that doesn't occur in the state of nature.

Examiner DE BRULER. He is assuming it.

Mr. MATTHEW. It is shown of record it occurs in the short leaf and longleaf yellow pine of the South.

Mr. BURR. No—that there is no difference in the lumber?

Mr. MATTHEW. I didn't say that.

Mr. BURR. Your question to him says identical.

The WITNESS. Of course, I can't admit that it is a

2934 physical possibility.

By Mr. MATTHEW:

Q. Let us assume——

Mr. BURR. I object to the assumption.

Examiner DE BRULER. Let him go ahead.

Mr. BURR. It is so clearly hypothetical and——

Examiner DE BRULER (interrupting). He can ask the question and he can answer if he can.

By Mr. MATTHEW:

Q. You can't make that assumption, is that the difficulty?

A. I don't think there could be such a situation that could exist.

Q. You can't assume a common type of lumber coming out of two different species of trees for the purpose of my question?

A. Not exactly the same; no, sir.

Q. Now, assume that the red fir and the yellow fir, which we discussed a few moments ago, are recognized by the botanists as being two distinct species, and yet that the lumber yielded from the trees of the two species is identical, would there be any objection in marketing that lumber from both species under a common commercial name?

A. That is the same kind of a question.

Q. Well, but it doesn't involve quite as difficult an assumption. Mr. Weyerhaeuser, you have spoken of the difficulties which you have had in understanding the differences between red fir and yellow fir?

2935 A. Yes.

Q. Now, please make my assumption hypothetical only, and then answer my question.

Mr. BURR. I object to it on the same ground.

Examiner DE BRULER. Objection overruled. He can answer if he can.

A. Well, I must answer on my knowledge of the two woods. I see no objection to marketing them under the same nomenclature.

Examiner DE BRULER. He has answered that.

By Mr. MATTHEW:

Q. Do you know that lumber from both the red and yellow fir is marketed as Douglas fir?

A. Yes.

Q. You see no objection to that?

A. No; I see no objection to it.

Q. Under what commercial name do you expect to market the fir lumber which will be milled at your plant at Klamath Falls?

A. Probably will call it red fir, but I am not sure as to that.

Q. You are not sure—why not call it douglas fir?

A. It has been our practice to call the fir that we have manufactured in the inland empire red fir and I suppose the name will carry over to the Klamath Falls as it is practically the same tree. I cannot see any difference between them.

Q. That is primarily because this inland type of tree yields a lumber that is somewhat different in appearance and quality
2936 than the lumber from the coast type, as I understand it?

A. I presume because it is a smaller tree.

Q. And the lumber is on the whole somewhat different for that reason?

A. Yes; there is a difference in the type.

Q. In the type of lumber?

A. Yes.

Q. Do you think that any confusion would result if the lumber manufactured at your Klamath Falls plant from the ponderosa tree were marketed under the name of Oregon yellow pine?

A. I think not.

Q. That would be quite an appropriate term for Pinus ponderosa lumber produced in that section, would it not?

A. I see no objection to that term.

Q. The lumber is produced in Oregon, and from a tree which is botanically yellow pine, and for those reasons you think the term would be appropriate, as I understand it?

A. Yes.

Q. Is it possible that any of that lumber marketed will go to southern California?

A. We have not begun marketing any, but I assume some of it will be sold in southern California.

Q. Do you think that the use of the term Oregon yellow pine in the southern California trade might result in confusion with lumber known in that area as Oregon pine, and which is in
2937 fact identical with what we have discussed as douglas fir?

A. I know nothing about the term Oregon pine. I have merely heard it and I do not know how extensively it is used.

Q. Don't you know, Mr. Weyerhaeuser, that for at least fifty years, and possibly seventy or seventy-five years, Oregon pine has been the prevailing name, throughout California at least, for lumber obtained from the Douglas fir tree?

A. I assume it has, but I don't know of it of my own knowledge.

Q. Then you don't know that when a customer goes into a retail yard in Los Angeles and asks for Oregon pine, or just pine, he will get this Douglas fir lumber?

A. No, I don't know that, sir.

Q. Well, if it should prove to be the fact that the term Oregon pine, in southern California, now means and for fifty years at least has meant, this Douglas fir lumber, would you not agree that the term Oregon yellow pine, as applied to Pinus ponderosa lumber, would create confusion in that market?

A. I think it would not if the term yellow were used.

Q. You don't see enough identity or similarity between the term Oregon pine and the Oregon yellow pine to produce confusion?

A. I think the term yellow pine is very commonly known over the west.

Q. The term yellow pine?

A. Yellow pine.

A. Yes. Yellow pine, for at least designating a certain tree.

2938 Q. I am talking about lumber now. We are talking about The Los Angeles lumber trade. I am assuming that the people down there never saw a yellow pine, for the moment.

A. I don't think it would.

Q. You see no confusion?

A. No.

Q. Well, when you say absolutely no confusion, that is a very positive statement.

A. I see no occasion for confusion enough to be considered.

Q. At least you are quite satisfied there would not be utter chaos in the lumber markets down there if such a name were used to describe ponderosa lumber from the Klamath Falls district?

A. No, I think not.

Q. Is it likely that the use of the term Oregon yellow pine, to describe this lumber, and to introduce it into the Los Angeles trade, might cause confusion with the yellow pine lumber of the Southern States?

A. I don't understand that any yellow pine lumber from the Southern States is sold in California.

Q. You were not here, I take it, when a certain lumber man from Los Angeles testified in this case that rather considerable quantities of southern yellow pine lumber are now coming into the Los Angeles markets by vessel through the canal?

A. No; I wasn't here. I didn't hear that.

Q. May I state that there is such testimony. And, assum-

2939 ing that to be the fact, would you recognize the possibility of confusion in the Los Angeles markets through the use of the

term Oregon yellow pine to describe ponderosa lumber from the Klamath Falls district?

A. Before I answer that may I ask what kind of yellow pine is being shipped into the Los Angeles market?

Q. I can't pretend to recall the testimony exactly. Counsel will correct me if he thinks I am wrong. I think the testimony is merely to the effect that the southern yellow pine lumber, which is used primarily for structural purposes, is coming in in substantial quantities in that market.

Mr. BURR. I think it is practically the typical longleaf pine. That would be typical southern yellow pine, longleaf.

Mr. MATTHEW. I think counsel and I are agreed.

Mr. BURR. There was such testimony, I will concede that.

The WITNESS. I think there would be no serious confusion.

By Mr. MATTHEW:

Q. And if a customer came to a Los Angeles retailer and asked just for yellow pine lumber, you think there might be doubt in the dealer's mind as to whether he meant southern yellow pine lumber or Oregon yellow pine lumber.

A. There might me, probably would be.

2940 Q. Do you know whether the northern white pine lumber, that is, lumber yielded by the Pinus strobus, is marketed to any substantial extent in southern California?

A. Certainly is not.

Q. As far as you know there is practically none finding a market in that territory, is there?

A. There may be an occasional car, but I don't know of it.

Q. Considerable quantities of lumber produced from Pinus ponderosa trees are now being marketed in the Southern States, are there not?

A. I don't know that there are.

Q. Don't you know there is quite a market for what we term California white pine, and what you term up in the inland empire, pondosa pine, are being marketed in Texas, particularly in recent years?

A. Not to my knowledge.

Q. You are not familiar with any comparatively recent revision of the railroad rate structure involving the rates from the northwestern mills into Texas in order to stimulate the flow of northwestern lumber into that territory?

A. Yes; I am familiar with it, and a considerable amount of fir has moved into that territory, but I have no information that any considerable amount of pondosa has, but I may be mistaken.

Q. Does the fir lumber come into competition with the southern yellow pine?

2941 A. It comes into competition with the longleaf yellow pine.

Q. It is used for similar purposes to that extent?

A. Yes.

Q. Structural purposes, we may say?
A. Yes.
Q. Is the common term dimension stock?
A. Dimension and timber.
Q. Do you know whether the California white-pine lumber is competing with the longleaf yellow pine lumber of the South to any material extent?
A. No; not that I know of. Maybe I didn't answer the question. Will you read the question?
(Whereupon the question referred to was read by the reporter.)
The WITNESS. May I ask in what territory?

By Mr. MATTHEW:

Q. Well, say in the Southern States to start with. I think you said you knew of no movement down there. Take any common market, Chicago, if you will.
A. They are not very active competitors, one wood being rather the complement to the other, for many uses.
Q. Explain that—one being the complement of the other?
A. Well, the longleaf is used more particularly for timbers and dimension; so-called "California white pine" is used for inferior trim and paneling, and things of that kind. There is competi-
2942 tion between all woods.
Q. But then to a negligible extent in the case of these two woods, you say that one is largely the complement of the other?
A. Yes.
Q. Then it is desirable, is it not, Mr. Weyerhaeuser, from a point of view of your own philosophy of this proceeding, that lumber yielded from the ponderosa tree in California shall be so designated that it shall not be confused in any respect with the longleaf yellow pine lumber of the South?
A. Yes; I think so. The longleaf yellow pine from the South is sold as longleaf yellow pine, which designates it very definitely.
Q. Is it always sold under the name of longleaf yellow pine?
A. I can't answer that question.
Q. Isn't it very frequently sold just as southern pine?
A. I have already stated that while we manufacture longleaf pine I am not connected with the management of the company and so I am not very familiar with the subject, but as far as I know it is designated as longleaf yellow pine, whereas the Arkansas pine is now designated as Arkansas soft pine.
Q. We are concerned about this ultimate consumer. Let's get away from the mill, and away from the wholesale, if you please, and actually into the hands of the retailer or the consumer. And at that point isn't it a very uncommon thing to use the term yellow pine to express the longleaf yellow pine lumber of
2943 the South? Isn't that what that term means in a great many markets throughout the Middle West and East?
A. I don't think that you can say the term yellow pine means longleaf as distinguished from shortleaf; no, sir.

Q. Isn't the term yellow pine, without any qualifying term, frequently used upon orders for longleaf yellow pine?

A. I don't think I can answer that of my own knowledge.

Q. Do you think it would be a desirable thing for the lumber industry, and for the consumer, in the respects which have been covered by your testimony, if our ponderosa lumber from California were introduced to the trade under the name of California yellow pine?

The WITNESS. What is the question?

(Whereupon the question was read by the reporter.)

A. That question is very indefinite.

By Mr. MATTHEW:

Q. I can make it more definite and——

Examiner DE BRULER. It seems to be quite definite. Read the question.

(Whereupon the question was read by the reporter.)

A. I see no objection to it; there may be a better term.

By Mr. MATTHEW:

Q. You would rather call it pondosa pine, wouldn't you?

A. Yes, because that would include under one term all of the ponderosa lumber manufactured.

2944 Q. And serves to identify our lumber with the lumber which is obtained from the ponderosa pine mills of the Northwest?

A. Yes.

Q. Now, assuming that we would not in any event pass to the term pondosa pine, and that the question is, shall we adopt the term California yellow pine, it is your testimony, as I understand it, that there is nothing undesirable in the use of that term to describe our lumber, the lumber originating in California, and it comes from a tree which is classified botanically as a yellow pine—there is no objection, according to your testimony, to employing the term California yellow pine under which to introduce this lumber to the trade?

A. I see no objection.

Q. Now, Mr. Weyerhaeuser, notwithstanding that you have testified specifically that this California lumber from the ponderosa tree is not essentially competitive with the longleaf yellow pine lumber of the South, but that the two lumbers are practically complementary in character, you yet insist that there is no objection to the use of commercial names for these two lumbers which shall identify each as yellow pine lumber, is that your testimony?

A. Yes, because the longleaf pine is so designated, easily designated, and the short leaf pine, which is very similar to this ponderosa, very similar in its sapwood, is called Arkansas short leaf

2945 so that if this were called California yellow pine I think the matter of nomenclature of the yellow pines would be pretty clearly fixed.

Q. Would you want to get the ponderosa pine lumber into the yellow pine group?

A. Yes.

Q. Why didn't you adopt the name for your northwestern ponderosa pine which had the word "yellow" in it.

A. Well, if I remember correctly at the time we adopted the term western soft pine and that seemed to distinguish it from the yellow pines of the South. I should not have objected to the term western yellow pine myself.

Q. You didn't think there would be any advantage in trying to distinguish it from the yellow pine lumbers of the South?

A. Not particularly as to shortleaf. There is a marked difference between it and the longleaf.

Q. Aren't you quite certain, Mr. Weyerhaeuser, that you are unwilling to use the word "yellow" in the commercial name for your ponderosa pine lumber because of possible confusion with the yellow pine lumbers of the South? Wasn't that one of your objectives to avoid that confusion?

A. Well, it may have been. I don't remember. That was some years ago. I don't remember the discussion, but we arrived at the conclusion that western soft pine was the proper name and properly described the wood.

Q. Instead of using the term western soft pine, you called
2946 it pondosa pine?

A. We have changed. At first we adopted the name western soft pine. I think the Western Pine Association adopted the name pondosa and we also adopted it.

Q. Do any of your producing companies belong to the Western Pine Association?

A. Not now.

Q. When did your companies withdraw?

A. Several years ago. I can't fix the date. If it is important I can get it for you.

Q. No, if you can't recall. Did you participate in any of the discussions which preceded the coinage of this happy term, pondosa pine?

A. Do you mean at the discussions which resulted in the adoption of the name pondosa?

Q. Yes.

A. No; I was not at any such conference.

Q. The name was coined before you knew anything about it?

A. It was.

Q. Did you participate in any discussion on the part of the executives of the Weyerhaeuser companies which preceded the replacement of the term western soft pine, by the term pondosa pine?

A. I don't remember; I suspect I did.

Q. You don't recall any discussion of whether the word
2947 "yellow" would be avoided in any commercial name which you should adopt for your lumber?

A. No, sir; I do not have any such recollection.

Q. Mr. Weyerhaeuser, if the Pinus ponderosa tree were classified by botanists as a white pine tree—that is, belonging in the group which we recognize as the white pine group—would you see any objection to characterizing the lumber as California white pine?

A. I would.

Q. Even if our tree were botanically in the white pine group you would still see objection to our terming the lumber California white pine?

A. I think I would withdraw that, as to calling it California white pine, so long as the term were used which would permanently differentiate it from the white pines whose reputation had been established over the centuries.

Q. And the term "California" is sufficiently distinctive, or distinguishes it for that purpose, does it not?

A. No; I think not. But again you give me a supposition which is impossible. If it were a white pine I think you could not object to the term white pine in describing it, provided there were added to the name something which clearly distinguished it from the white pines of long reputation.

Q. I want to be sure that I get your mature view on that point. We are assuming, for the purpose of my question, that Pinus ponderosa is thrown by botanists in the group of white pines.
2948 In that event you would feel that you would have no objection to the marketing of the lumber from that tree under the term of California white pine?

A. We would probably have an objection, but I am afraid our objection would be weak if the tree truly were a white pine, but again that would be an impossibility. You are asking me a question which is beyond the realm of possibility.

Q. Irrespective of the quality, appearance, or utility of the lumber, you would recognize that we could use the term California white pine to describe our lumber if, in truth, we had a tree which is botanically a true white pine?

A. You certainly would have a very good argument for calling it white pine if it were a white pine, providing you differentiated it.

Q. Then, your answer is "Yes", as I understand that—you would see no objection to our using the term California white pine, no valid objection?

A. We would have an objection.

Examiner De Bruler. I think he has answered that.

Mr. Matthew. He has qualified it each time.

Examiner De Bruler. You are assuming something that is not true, that is not a fact, and you are assuming that the botanists do classify it as a white pine.

Mr. Matthew. Yes; of course, it comes right around to this:
2949 It simply shows the emphasis being placed solely on the botanical criterion and I want to make it clear of record. I have a purpose in doing so.

I will pass to slightly a different phase.

By Mr. MATTHEW:

Q. If the commercial name, California white pine, as now used, were to be abandoned could you see any objection, from the point of view of the lumber industry, or the customer or consumer, if the sugar pine producers were to adopt the name California white pine for their product?

A. Understanding, of course, as I have testified before, that I know little if anything about sugar pine, but if the reputation of sugar pine is established as being a wood of like qualities with white pine, then I see no objection to it.

Q. Suppose that the reputation of sugar pine should be markedly inferior to the reputation of the old northern white pine, and even to the reputation of Idaho white pine——

Mr. BURR (interrupting). If the examiner please, let me interpose an objection. I think we have been patient on this. When we got to the pines he got to a point where he had already examined this witness. This witness wasn't recalled to go into the pines, because those questions were not barred before, and it seems to me, for counsel to rehash the whole topic the same as has been true for the last three quarters of an hour that——

2950 Examiner DE BRULER (interrupting). I don't like to restrict him.

Mr. BURR. It seems that counsel is unduly trespassing by the fact that this witness was recalled for a specific purpose, that is, for examination along the line that was debarred before by the ruling of the examiner.

Examiner DE BRULER. Proceed with the cross-examination.

By Mr. MATTHEW:

Q. I will reframe my question. Assuming the repute of sugar pine lumber is seriously inferior to the repute of northern pine lumber and of Idaho white pine lumber, and recognizing that the sugar pine tree is botanically a true white pine, can you see any objection today, from the point of view of the lumber industry, the customer or the consumer, to the adoption of the term California white pine by sugar pine manufacturers?

A. Yes.

Q. And what?

A. Yes, if the wood were an inferior wood, I think the white pine manufacturers would object; but if it were a true white pine, I think the case would be weakened by that fact, and perhaps the Commission would permit them to use the term white pine, with some other qualification clearly differentiated from white pine, which clearly made it possible to distinguish the qualities of white pine from those of this new supposition.

Q. Now, you are passing to quality.

A. I have always had quality in all of my definitions.

Q. A moment ago you stressed the botanical differentiation.

2951 A. Well, perhaps your question was such that made me. I don't remember.

Mr. BURR. If the examiner please, I think that is rather unfair, because botanical distinction includes the quality of the wood product.

Mr. MATTHEW. Botanical distinctions do not determine quality.

Mr. BURR. They do—in every book you can find.

Examiner DE BRULER. Proceed with the cross-examination.

Mr. MATTHEW. I think we have a little confusion left in the record. If counsel will bear, I am nearly through. I shan't trespass very much further on your patience, but I want to pursue for a moment this question of proper commercial nomenclature of the lumber from the California pines.

By Mr. MATTHEW:

Q. I understand you to testify that with respect to the lumber which we know today as "sugar pine" and which you recognize as coming from a tree which is botanically a true white pine, you would question the right to the use of the term "California white pine" if the wood was in fact inferior to the wood of the northern white pine?

A. If I remember correctly, I stated we probably would object, but I thought our case would be very much weaker because of the wood being a true white pine.

Examiner DE BRULER. That was his answer.

2952 By Mr. MATTHEW:

Q. Let me come back to the question which I, in fact, asked you a moment ago but unconsciously I think you did not answer. I am asking you if you see any objection, from the point of view of the lumber industry, the customer, or the consumer. Now, I take it, that your answer which you previously have given reflects your views as a producer and marketer of lumber. Now, let's take the purchaser of lumber in the Middle West or in the East. Do you think he would have any grievance if the term "California white pine" were hereafter to be employed to designate what has for fifty years or more been known as "sugar pine"?

A. No, I think he would not.

Q. You can't see any confusion in the lumber trade in the East hereafter if the term "California white pine" means sugar pine lumber?

A. Why, certainly there would be confusion for a brief period of time until the term became known. I didn't suppose you meant immediate confusion. I thought you meant over a period of time.

Q. Then you think there would be some immediate confusion?

A. Why, certainly.

Q. And some immediate confusion on the part of the consumers of lumber as well who have come to know California white pine as it is marketed today?

A. Possibly, but I think that there would be very little confusion there.

2953 Q. That is because the consumers know comparatively little about what lumber may be in any event?

A. Some do and some don't.

Q. On the whole, they don't know much about it, do they?

A. I think that is so, on the whole.

Q. Do you know that some lumber from the Pinus ponderosa tree is manufactured in Arizona and in New Mexico, do you not?

A. Well, I have seen advertisements of lumber purported to have come from that territory. I have never seen the lumber milled or been in the territory.

Q. Assuming that such lumber is manufactured in those two States from Pinus ponderosa trees, do you think it would be appropriate to designate the lumber as southern yello pine?

A. I really know nothing about the lumber or the tree, so I don't think I am qualified to answer that question.

Q. Let's identify it as the same ponderosa which has this great range from Canada down into Mexico, which has been the subject of considerable testimony in this case, and the tree which is classified botanically as a yellow pine. We have that tree in Arizona and New Mexico. Can we appropriately call the lumber yielded by that tree southern yellow pine?

A. Well, it very closely resembles Arkansas short leaf. From that point I view I can see no particular objection to it.

Q. The Arkansas short leaf is commonly called Arkansas soft pine, as I understand it?

2954 A. That is a recent—comparatively recent trade name; yes, sir.

Q. And it is quite distinctively known by that trade name?

A. It is becoming so.

Q. The bulk of the short-leaf-pine lumber from the South is marketed under a name which is quite different from the term Arkansas soft pine. It is called short-leaf pine, is it not?

A. Well, I think the term now used generally is Arkansas soft pine.

Q. For all of the short-leaf-pine lumber of the Southern States?

A. No, no; I am not familiar with the short-leaf lumber that grows along the Atlantic seaboard. I don't know how that is marketed and I know nothing about the trees.

Q. What I am trying to get at, very frankly, Mr. Weyerhaeuser, is this, and then I am through: Is the term "Arkansas soft pine" restricted to the short-leaf-pine lumber coming from the State of Arkansas?

A. Well, I can't answer that question. There is a belt of timber which is called short-leaf pine which covers pretty much the State of Arkansas and a fringe in each one of the neighboring States. It runs up into Missouri, runs over into Oklahoma, and it runs into Louisiana and possibly over into Mississippi. I have traveled through that country, but I haven't been through all these operations and I couldn't tell you; but the great bulk of the timber, so far as my knowledge goes, is within the State of Arkansas?

2955 Q. Would you think it appropriate to use the term "Arkansas soft pine" to designate the lumber which comes from this timber belt which you have just described as spreading over into the adjoining and neighboring States?

A. If the timber were identical in quality and in species, and were the same as the reputed qualities of Arkansas pine, I could see no objection to it.

Q. I am assuming that. Assume these conditions and upon those conditions you see no objection to the term "Arkansas soft pine" covering all of that lumber?

A. No.

Redirect examination (continued) by Mr. BURR:

Q. Do you know of any confusion of douglas fir with other species known as firs?

A. I do not.

Q. You deal very largely in douglas fir, so called, your companies, do they not?

A. Very largely; yes.

Examiner DE BRULER. I think you have gone into that far enough.

Mr. BURR. You have allowed an unbridled cross-examination for the second time, and I certainly shall insist on a fair redirect
2956 examination of this witness. It seems to me that the examiner desires to curtail the record and bears his brunt down upon me, rather than opposing counsel, and I submit that there has been a long and exhaustive examination here, and you are certainly not going to curtail me on redirect.

Examiner DE BRULER. Go ahead. I hope you will not make it too long.

Mr. BURR. I will not. I thank you for the admonition.

By Mr. BURR:

Q. Do you deal more largely in douglas fir than any other one variety of wood?

A. We do.

Q. Now, in all your experience, have you ever had a complaint as to the confusion of douglas fir with the so-called genuine fir varieties?

A. I never have.

Q. Or with any other wood?

A. Never have.

Q. You were examined with respect to other supposed misnomers, or alleged misnomers, on the part of opposing counsel. Have you ever had any complaints or any expressed information as to misnomers, as to confusion, in those other varieties due to those supposed misnomers?

Examiner DE BRULER. You refer to the varieties that you mentioned?

Mr. BURR. Yes; I am referring to Port Orford cedar and
2957 other varieties that were mentioned in the cross-examination.

Examiner DE BRULER. You are not trying to broaden it any?

Mr. BURR. Not at all. I am referring to the testimony this afternoon on cross-examination.

The WITNESS. Except as to the case under consideration, I have never heard a criticism resulting that purported to grow out of confusion of nomenclature.

By Mr. BURR:

Q. By the case under consideration you mean the misnomers so alleged in the complaint?

A. I do.

Q. Of the California white pine, or the other white pine, made from the Pinus ponderosa tree?

A. Yes.

Q. You are coming upon the market with your Klamath Falls ponderosa lumber, are you?

A. We are.

Q. Do you know whether any of it has as yet been sold?

A. In small quantities.

Q. It is just beginning to come in, is it?

A. It is.

Q. That is one of your largest mills, is it?

A. It is one of the larger mills. I wouldn't say it is one of the largest.

2958 Q. Are you planning to call it Oregon yellow pine?

A. No.

Q. What do you expect to call it?

A. Pondosa.

Q. Then all the questions about the possibility of naming it Oregon yellow pine is purely hypothetical, is it?

A. It is.

Q. Is there any sugar pine in your territory tributary to Klamath Falls?

A. Yes; there is a sprinkling of sugar pine, considerable quantities in some places.

Q. Are you planning at all to call that California white pine?

A. I don't know that I have heard any discussion of that point. I think there is—no doubt we will call it sugar pine.

Q. Is the term "sugar pine" one which has been used for a long time with respect to that type of lumber, do you know?

A. So far as I know it has for a long time.

Q. Do you regard it as a distinctive name for that type of lumber?

A. I do.

Q. Do you see any advantage in calling it California white pine under those conditions?

A. In whose interest, may I ask?
Q. In the interest of selling the lumber.
A. Of selling the sugar pine?
Q. Yes.
2959 A. No; I see none there.
Q. Have you had any discussion with the sugar-pine manufacturers with regard to the possibility of changing the name of sugar pine to California white pine?
A. I have not.
Q. Have you had any with any other members of your organization, looking up to the possibility of changing that name?
A. No.
Q. Is Pinus ponderosa in competition with Arkansas soft pine, as distinguished from the typical southern pines of the harder description?
A. It is more so in competition.
Q. Do you know whether sash and door and exterior trim are made out of Arkansas soft pine?
A. They are.
Q. Would you see any objection to the designation of ponderosa from various different sections, as Klamath pondosa, inland empire pondosa, Spokane pondosa, or anything of that kind; would you see any objection to differentiation of them with different qualities from different localities?
A. May I ask whether you mean the ordinary differences that exist in the variety, or if they were markedly different?
Q. Let me withdraw that for the moment. There are differences in different localities as to the qualities and characteristics of the lumber made from Pinus ponderosa trees, are there?
2960 A. Yes.
Q. Now, your Klamath Falls pondosa, or rather the lumber from Klamath Falls made of that particular species, has a great deal of good will in the market, has it, as coming from the Klamath Falls section?
A. It certainly has some.
Q. Do you think it would be a proper nomenclature for manufacturers, selling pondosa from the Klamath Falls section, to designate it Klamath pondosa?
A. Why, I see no reason why they shouldn't do so, but it would be, in my opinion, very poor merchandising of pondosa pine. The mere fact that a wood moves in great volume, just as fir is sweeping over the country, makes no difference, in my judgment, what they call fir; it is sweeping over the country, and it will be used, no matter what name they give it, and the same way, as a matter of merchandising, the lumber from the ponderosa tree. I think it will be excellent merchandising who manufacture that lumber to agree

on one name and have a wood that is also sweeping over the country, as fir is.

(Stricken from the record), see p. 2961.

Mr. MATTHEW. I don't think counsel will contend that that answer is altogether responsive.

Mr. BURR. I will not object to a motion to strike.

Mr. MATTHEW. My motion is to strike that part of it which goes to his expression of judgment as to how desirable it would be to have the term "pondosa" adopted by all the manufacturers
2961 of lumber from this tree.

Mr. BURR. I will not oppose the motion if the answer is stri'ken entirely.

Examiner DE BRULER. It is stri'ken.

By Mr. BURR:

Q. Now, assuming for the purpose of your answer, that pondosa in different localities varies widely, do you see any objection to coupling with the word "pondosa" the name of the concern manufacturing it, for example, Shevlin-Hixon pondosa, or Klamath pondosa, or other names that would be distinctive of the company or distinctive of the locality?

Mr. MATTHEW. May I object to that on the ground that it is absolutely immaterial.

Examiner DE BRULER. Objection sustained.

Mr. BURR. Opposing counsel has gone down the line with one after another of hypothetical questions and it seems I might be allowed one.

Examiner DE BRULER. I think it is going too far.

Mr. BURR. I think it already went too far, under my former objection, and that was the time, if the examiner please, to cut out this kind of hypothetical questions.

Examiner DE BRULER. He was cross-examining under direction of the Commission and he was allowed to go the full limit under this cross-examination.

Mr. BURR. He certainly was. It seems to me it would
2962 necessitate a similar ruling on redirect.

Examiner DE BRULER. Objection sustained.

By Mr. BURR:

Q. I believe you have testified that if Pinus ponderosa had been a genuine white pine, or by some chemical alchemy it became a genuine white pine at some future time, that you wouldn't object to its being called a white pine. Is that my understanding of your recross-examination this afternoon? That if botanically it was a white pine that you wouldn't object to it being called a white pine?

A. I think I said we might object, but I didn't think our objection would be as strong.

Examiner DE BRULER. He has answered that to my knowledge three different times. I think it is correct.

Mr. BURR. It is a foundation question, if the examiner please.

By Mr. BURR:

Q. Now, is it your understanding that the term "white pine" as including a group of pines, includes the characteristics as lumber of that group of pines?

A. Yes.

Q. That also is used by botanists in connection with the term "white pine", is it not?

A. Yes.

Mr. MATTHEW. I object on the ground that it is not
2963 proper cross and the witness isn't qualified to answer as to what botanists do in classifying pines. He disclaimed knowledge on that.

Mr. BURR. If the examiner please, this witness must know something about botany for the very reason that a great many of counsel's questions were predicated on that knowledge.

Examiner DE BRULER. You can answer that if you have the knowledge, Mr. Weyerhaeuser.

A. I have been told that botanists consider the quality of the wood in the designation of it botanically.

Mr. MATTHEW. I interposed an objection on the ground that, first, it was improper cross-examination; second, that the witness wasn't qualified to testify as to what botanists included in making this botanical nomenclature, and I press the objection and I move to strike the answer.

Mr. BURR. If the examiner please, when opposing counsel said that if the botanical relation were such as to place this among the white pines, that so-and-so and so-and-so would be the effect, that presupposes that this witness has some concept of what the botanical distinctions are.

Mr. MATTHEW. Not at all.

Examiner DE BRULER. He may answer that one question. Read it to him.

Mr. BURR. He has already answered.

Mr. MATTHEW. I move to strike it out.

2964 Examiner DE BRULER. I will overrule the objection.

Mr. MATTHEW. He has already answered and I move to strike the answer and, likewise, because it is indefinite.

Examiner DE BRULER. The motion is denied and exception allowed.

By Mr. BURR:

Q. And you testimony was based on that supposition, was it?

A. Yes.

Mr. BURR. That is all, sir.

Rerecross-examination by Mr. MATTHEW:

Q. You say your answers to my queries as to the botanical designation of these pines were predicated upon the assumption or understanding that botanists included the quality of the wood in the tree in the determination of botanical nomenclature?

A. Yes; I have heard that they do.

Q. If you happen to be wrong in that assumption, would your answers to my queries differ?

Mr. BURR. If the examiner please, that is an unfair question because the record already shows, by several experts, that they do include the characteristics of the wood. Why ask the question contrary to fact?

Examiner DE BRULER. It seems to me, Mr. Matthew——

Mr. MATTHEW (interrupting). Just a moment! The expert
2965 testimony is definite to the effect, as I recall it, and I believe without conflict, that in the making of the botanical nomenclature botanists do not consider the cha acteristics of the wood.

Mr. BURR. If the examiner please, that is directly contrary to my understanding and the testimony shows that they consider, first, the floral distinction——

Examiner DE BRULER (interrupting). I think this has gone far enough. It seems to me, Mr. Matthew, that you have brought it all out.

Mr. MATTHEW. Then let's get at it another way. I think I can safely do that without trouble either to counsel or Your Honor, as I desire to make it clear, and I want to make it clear if I can.

Examiner DE BRULER. Go ahead.

By Mr. MATTHEW:

Q. If the botanical nomenclature is made entirely independently of the quality or utility or appearance of the lumber yielded by the tree, do you think it makes any difference what the botanical nomenclature may be so far as the designation of the lumber is concerned?

Mr. BURR. I object to the question as being contrary to fact.

Mr. MATTHEW. I have a right to put a hypothesis that presents my understanding of the fact, whether counsel agrees or
2966 not.

Examiner DE BRULER. Read the question.

(Whereupon the question was read by the reporter.)

Mr. MATTHEW. I will withdraw the question. I would rather not press it in that form.

Examiner DE BRULER. It seems you are going into such remoteness it has nothing to do with the issues.

Mr. MATTHEW. It is made a large part of the issues and if the present presiding examiner had been with us from the start, I think he would understand that a very earnest effort was made, if I understand the intention of testimony at all, to make the line of com-

mercial names follow the cleavage of botanical terms. That is one of the issues certainly in the case and it has been appropriate, I think, for me to interrogate a witness along that line.

Examiner DE BRULER. I stated it seems this line of questioning has gone far enough. Proceed.

Mr. MATTHEW. I will attempt to reframe the question and submit it to a ruling.

By Mr. MATTHEW:

Q. I understand now, Mr. Weyerhaeuser, that it is your understanding that in determining the botanical nomenclature of the pine trees, the botanists give consideration to the quality of the wood within the tree?

A. I have been told so.

2967 Q. Having been told so that is your understanding?

A. I have accepted it as I have very much other information.

Q. And it was upon that belief that you made your replies to my hypothetical questions as to the proper nomenclature for this lumber?

A. I had in mind that what you say is true.

Q. And you answered, in response to one of my questions, that if the Pinus ponderosa tree were in fact recognized by botanists as being within the group of true white pines, so called, you felt that you would not be in a position at least to object to the use of the term "California white pine" to describe the lumber yielded by the tree?

A. I didn't say that.

Q. Let me put this question to you: If the Pinus ponderos tree were in fact recognized by botanists as being within the group of true white pines, so called, would you feel that you could rightfully object to the term "California white pine" as the commercial term for the lumber yielded by the tree?

A. Yes.

Q. And why?

A. Because, as I have tried to say a great many times, the reputation of a wood, its qualities, has a lot to do with this question of nomenclature and, in fact, I think your question is an assumption based upon an impossibility.

Q. Well, let's assume the impossibility in the first instance.

2968 Examiner DE BRULER. I think he has answered that, it seems to me.

Mr. MATTHEW. He has answered two different ways in the record. I will you will have some difficulty in finding out exactly how the record stands.

By Mr. MATTHEW:

Q. Let's pass to something else for a moment. Is douglas fir selling on its merits or on its name?

A. Principally on its merits, also on its name. The two are involved in one idea.

Q. If you called it douglas spruce, would it still sell on its merits?

A. I think so, after it became known that the name had been changed.

Q. You wouldn't want to change the name to douglas spruce, would you?

A. It would involve another confusion.

Q. You said you never heard any complaint or confusion resulting from the use of your term "douglas fir", did I so understand you to say that?

A. Yes.

Q. Did you never hear of complaints to the effect that the term "douglas fir" had caused confusion by reason of the term "white fir" to describe a lumber coming from California?

Mr. BURR. I don't think it is proper re-recross.

2969 Examiner DE BRULER. He asked if he ever heard of it. He may answer yes or no.

A. I haven't.

By Mr. MATTHEW:

Q. Do you know of a lumber called white pine fir that is manufactured in California?

A. I know the term white pine fir. I have never seen the tree. At least I have never seen it manufactured in California.

Q. Do you know whether or not it comes from a tree which is botanically a true fir?

A. No; I don't know that it is a true fir.

Q. Well, if it happens to be a true fir, would you still claim that you have the right to use the word "douglas fir" to describe the lumber coming from a tree that is not a true fir?

A. Have a right?

Q. Yes.

A. You say have the right to use it?

Q. Yes.

A. I assume we would have the right to use it until some competent commission ordered us not to.

Q. Let's assume that, but does it cause any confusion in the trade? In other words, here is a manufacturer of lumber in California who gets his lumber from a true fir and markets it as white fir, if you please. You are manufacturing lumber from a tree that is

2970 not a white fir at all, and calling it a douglas fir. Has he any just reasons against you borrowing the term "fir" from his tree?

A. I think not. We manufacture a lot of white fir ourselves and we have never sensed any confusion in the selling of our white fir because of the nomenclature of the so-called "coast fir."

Q. Then as long as there is no serious confusion, you would think it entirely appropriate for you to continue the term "douglas fir"

to describe a lumber which comes from a tree which is not botanically a true fir?

A. If it caused no confusion, and did not result in the ultimate consumer getting a wood which did not answer his purpose, because of false nomenclature, I see no reason.

Q. Assuming all those qualifications, you see no objection to using the term "douglas fir" to describe a lumber coming out of a tree that is not a true fir?

A. I see no objection to the term unless——

Examiner DE BRULER (interrupting). I think he has answered that several times.

Mr. MATTHEW. That is all.

Mr. BURR. That is all.

(Witness excused.)

Examiner DE BRULER. We will take a five-minute recess.

(Whereupon a five-minute recess was taken.)

2971 Examiner DE BRULER. We will proceed if the parties are ready.

Mr. MATTHEW. I will call Mr. Mortenson, please.

H. D. MORTENSON was thereupon called as a witness and, after having been first duly sworn, testified as follows:

Direct examination by Mr. MATTHEW:

Q. Please give your name and your place of residence.

A. Name, H. D. Mortenson; residence, Klamath Falls, Oregon.

Q. What is your business or occupation?

A. Lumber manufacture.

Q. With what company are you identified?

A. Pelican Bay Lumber Company, Klamath Falls.

Q. And what is your relation to that company?

A. President and general manager.

Q. How long have you been its president and general manager?

A. Seventeen years.

Q. Is that since its organization?

A. Yes.

Q. Where is the plant of the Pelican Bay Lumber Company located?

A. It is about two miles north of Klamath Falls, Oregon.

Q. What kind of lumber is produced there?

A. At the present time California white pine.

2972 Q. Do you cut any sugar pine?

A. Not now.

Q. Have you in the past?

A. A little.

Q. What disposition was made of sugar pine which you did cut?

A. It went right in with the white pine.

Q. Will you please give us a brief outline of your entire experience in the lumber industry?

A. Well, I guess you might say I was born in the lumber industry. I started in picking up lath when I was about twelve years old, back in Wisconsin. I worked during my vacations.

Examiner De Bruler. Make this as brief as you can.

A. (Continuing.) As I said, I worked during my vacations in Wisconsin, in Michigan, and I worked one year after finishing college in Michigan. Then I came west and worked for two years for the Santa Barbara Lumber Company, at Santa Barbara, a retail yard, and I went up to Eureka and worked for a year and a half there, running the yard for the Redwood Company and became their sales manager, and was their sales manager for five years; and then I started the Pelican Bay Lumber Company.

Q. While you were in Wisconsin and Michigan did you became familiar with the northern white pine?

A. Yes.

Q. Have you any interests in any southern yellow pine
2973 manufacturing industry?

A. Yes; I have a financial interest.

Q. And does that company manufacture shortleaf or longleaf yellow pine?

A. I guess it is longleaf.

Q. Have you been through the forests of the south, the pine forests?

A. Somewhat.

Q. Do you know southern yellow pine, ar eyou familiar with it?

A. Yes.

Q. Under what name do you advertise and market and invoice the lumber which you product at Klamath Falls?

A. California white pine.

Q. Has that been your practice since the commencement of your relation to the industry?

A. Yes, sir; it has.

Q. When did you first become familiar with the term California white pine?

A. I first heard the name when I was working at Santa Barbara in about 1905.

Q. Have you known this lumber as California white pine ever since?

A. Yes; I have.

Q. Are you in personal touch with the marketing of your lumber, Mr. Mortenson?

A. Yes.

2974 Q. Do you give personal attention to the supervision of that end of the enterprise to some extent?

A. To some extent. I have a sales manager and I am very close touch with him.

Q. Do you personally travel, from time to time, throughout the East and call on the trade?

A. Yes.

Q. Do you sell entirely through your own sales organization, or do you sell through any agency?

A. Well, we sell through our own offices and we also sell through wholesale and commission men. Our box shook is sold through the California Pine Box Distributors.

Q. And where is the bulk of your box shook marketed?

A. In California and some in Arizona, a little in Texas.

Q. Do you market the remaining portion of your products in California and Arizona?

A. Yes, we do; we ship boards, common lumber, and some finish.

Q. Where do you find a market for the rest of your product?

A. Well, the shop and factory lumber goes largely to Mississippi River points, and Wisconsin factories. In fact, we are shipping some back to Wausau, Wisconsin, where I first heard of the business, first started in the business, and we send down to Texas—Waco, Texas, Dallas, Texas.

Q. Is your lumber sold in that territory under the name California white pine?

2975 A. Yes, sir, it is.

Q. You are familiar with the ponderosa tree as it appears in the forest, Mr. Mortenson?

A. Yes, I am.

Q. Does it resemble the yellow pine trees of the South in appearance?

A. No; it is quite distinctive looking from the yellow pine.

Q. What is the difference?

A. It has a different bark and it is lighter in color.

Q. How would you characterize the bark of the southern yellow pines?

A. Well, it is more of a brownish, dark brownish color.

Q. Have you ever known sugar pine to be marketed under the name of California white pine, or any other name including the word "white"?

A. Sugar pine?

Q. Yes.

A. No; I haven't.

Q. Is it your practice at the present time to mark or brand your lumber with any particular letters or name?

A. We have just begun branding our lumber. The National Lumber Manufacturers' Association is very anxious to inaugurate a grade and trade marking practice in the lumber industry so that all lumbers shall be named, that is, labeled its grade and trade name, and our association, the California White and Sugar Pine Manufacturers' Association, being in accord with that movement, and

2976 we are ourselves, being subscribers to this movement, we have begun to mark our lumber with the grade and the name "California white pine."

Q. That is, the full name "California white pine" is used in marking the lumber?

A. Yes.

Q. And that name will appear on every piece of your lumber?

A. We haven't gotten quite that far with it yet, but it is ultimately the aim to have that so.

Q. Do you purchase any lumber from the Government Mr. Mortenson?

A. Lumber?

Q. Yes; any trees, logs?

A. Yes; we do.

Q. Have you ever had any sugar pine trees included in such purchases?

A. Yes; we have.

Q. And these trees were in the Klamath Falls basin area?

A. Yes.

Q. What has been the quality of the sugar pine trees in that territory, from the point of view of the production of lumber?

A. Well, the sugar pine timber that was in with our timber appeared very good from the outside, but when we began to manufacturing it we found that it was full of shake, stump rot, and in fact produced so little lumber that it was so inferior that we petitioned the Forest Service to relieve us of the wasteage in
2977 cutting it, and after an examination on their part they acquiesced to our request and allowed us to leave the sugar pine.

Mr. BURR. Leave it? You mean you didn't cut it?

The WITNESS. We didn't cut any more of it. We cut some of it, but at the time we convinced them that we shouldn't cut it.

By Mr. MATTHEW:

Q. Had it any other defects other than those you have mentioned? I think you mentioned shake and stump rot, did you?

A. Yes.

Q. Just what is the nature of this stump rot?

A. Well, it was just dotty timber.

Q. And how seriously would that affect the merchantability of the lumber yielded by the tree?

A. Well, we would have to take down the large tree and take it into the plant, and be at all the expense of logging and bringing it to the mill and manufacturing it, everything of that kind, and probably get 10% or 15% of good lumber out of it, and the expense of that sort of an operation was prohibitive.

Q. Does your California white pine lumber come to any marked extent into competition with the yellow pine lumbers of the South?

A. To some extent, yes, in common boards and to a lesser extent in finish.

Q. Is there any material competition in the shop grades?
2978 A. No. The southern yellow pine, to my notion, in that respect is quite a different tree. When you open up southern yellow pine, in the process of manufacturing, it goes into common grades and such materials as are used for construction purposes; whereas when you open up Pinus ponderosa, that is undeniably shop

grade. It is not useable for any other purpose except factory reworking.

Q. Do you know whether the southern yellow pine yields any lumber of typical shop grades?

A. I don't think the grade is in the tree.

Mr. MATTHEW. I think probably counsel for the Commission will allow me to state that the grading rules of the Southern Pine Association do not specify the shop grades. I have here a copy of the 1929 Standard Specifications, which have been consulted in that respect.

Subject to correction from counsel, I would like to have it understood that——

(Here followed remarks off the record.)

By Mr. MATTHEW:

Q. Specifically, what are the shop grades of lumber?

A. There are no. 1 shop, no. 2, no. 3 shop, and then there is another factory grade which is no. 3 clear.

Q. Does your lumber come more in competition with the northern white and Idaho white pine than with the southern yellow pine lumber?

A. Yes, sir; it does.

2979 Q. And for what reason?

A. Well, for the reason that it is adaptable to the white-pine uses more closely than it is to the uses of the general characteristics of the southern pine.

Q. What are the primary uses for California white pine?

A. The primary uses are for interior and exterior finish, the shop lumber which goes into mill work and doors, sash, and uses of that character, and common boards which are used for shelving and the better class of construction.

Mr. BURR. Which lumber is this?

Mr. MATTHEW: California white pine.

A. (Continuing.) Then, again, box lumber goes into crating and box materials, principally for food products.

By Mr. MATTHEW:

Q. Do you meet substantial competition from Idaho white pine in the shop grades?

A. No. We meet with some competition from Idaho white pine, but it isn't very material in shops.

Q. Why is that?

A. Well, the Idaho white pine doesn't produce the volume of shop by any means, nor does it produce the wide, thick shop.

Q. Do you meet with substantial competition from the northern white pine in the shop grades?

A. No.

Q. Will you state the reason?

2980 A. It is not produced in a very appreciable quantity. The sash and door factories only rely on a wood which has a large volume.

Q. At the present time are the requirements of the more important sash and door manufacturers largely supplied with lumber from the Pinus ponderosa tree?

A. Yes; I think it is quite generally true that they are.

Q. Is California white pine selling on its merits—that is, because of its quality and its utility—or for some other reason?

A. Why, it is selling on its merits. Its qualities are well known by actual test and actual usage.

Q. Have you had any complaint from your trade respecting the use of the name California white pine?

A. No.

Q. Have you had any complaint from your trade to the effect that any confusion exists by virtue of the use of the term "California white pine"?

A. No; we have not. We have had some suggestion that it would be wrong for us to change it. Some of our people——

Mr. BURR. That is not responsive.

Mr. MATTHEW. The latter part should go out; that part of his answer, "no, we have not", is all that need be retained.

By Mr. MATTHEW:

Q. Have you had any complaint from your trade respecting the durability of California white pine?

2981 A. No; not that I know of. I have heard one or two cases where things of that kind have been discussed during my years with the business, but nothing material at all.

Q. Have you had any complaint from the trade respecting any alleged confusion between California white pine and sugar pine?

A. No.

Q. Are the terms "California white pine" and "sugar pine" well known to the trade?

A. Very well known every place that I have been.

Q. Do you know of any confusion between the lumbers?

A. No; I do not.

Q. Mr. Mortenson, you referred to the production of shop from the California white pine trees and from Idaho white pine trees, respectively. I will ask you to state what percentage of the lumber yielded by the California white pine trees in your section is represented by shop and better.

A. Shop and better—you mean just shop and shop and better?

Q. Let's take shop first, and then shop and better.

A. I would say that the shops would run between 30% and 35%.

Mr. BURR. That is Pinus ponderosa?

The WITNESS. Yes.

By Mr. MATTHEW:

Q. How about shop and better?

A. Well, that includes up to 3 clear.

Mr. BURR. Which does—the 30%?

The WITNESS. Yes.

2982 By Mr. MATTHEW:

Q. Take the shop and better collectively and give the proportion.

A. I think the region would probably produce 35%.

Mr. BURR. That would take the rest of the clear, would it?

The WITNESS. That would take the clear—yes; I guess 35% to 36% would probably include that.

By Mr. MATTHEW:

Q. I would like to call your attention to exhibit no. 29, Commission's exhibit no. 29, as offered in evidence in this case, pointing to show the result of studies on the heartwood content of standard grades of soft wood-yard lumber, based upon 1 x 8 inch boards inspected from the face side, and I will ask you to state whether, in your opinion, we can appropriately make a study of boards of those dimensions for the purpose of determining the normal percentage of heartwood and sapwood?

A. You mean boards of that size?

Q. Yes; 8 inches in width—I understand that means boards 8 inches in width.

A. I don't think that would correctly represent the proportion, particularly in this section of the country. I think that narrow boards like that would come more nearly from the outside of the log and be inclined to have more sap than the wider board, and we manufacture bigger and wider lumber here.

Q. Is a board 8 inches in width typical of your lumber?

2983 A. No; that is a small size with us.

Q. What would be?

A. Most of our boards run—the great preponderance of them are 12 inches and next to that 10 inches, and then we get quite a little 14, 15, and 16 inch.

Q. Will you briefly explain the manufacturing process and point out the part of the tree from which the wider boards, say the 12-inch boards, are obtained?

A. Well, they generally start in slacking off from the outside, and you get this small narrow lumber either from small logs or the first cuts on the larger logs. Whereas as you go on in your process of manufacture, what you call working down in the center of the log, and cant down——

Q. Explain what is meant by "canting down."

A. Turn it down and square it up, and turn it down on the carriage, and you begin to cut off the pieces off that cant, and in this country we cant down to 12 inches pretty largely, so that our lumber would be wider in size than these 8-inch pieces that are spoken of.

Q. Is there normally a greater percentage of heartwood in your 12-inch boards than in your 8-inch boards?

A. Percentage as to volume?

Q. Yes.

A. Yes; there is more heartwood than sapwood; yes.

Q. Well, is there more heartwood relatively in the 12-inch
2984 boards than in an 8-inch board?

A. Yes.

Q. That is because the 8-inch board normally comes out of the exterior portion of the log?

A. Yes; or out of a little small log.

Q. Mr. Mortenson, your lumbering operation is located in the State of Oregon and yet your lumber is offered to the trade as California white pine. Will you state why you use that term?

A. Well, we use that term for this reason: That trees grow of certain size and characteristics in accordance with the topography and soil and climatic conditions of the country in which they live, and it so happens that the Pinus ponderosa tree seems to reach its largest size and best texture in certain quite well-defined topographical areas; or, you might say, Big Basin, or territory, and that character of tree extends up into the Klamath Falls district. After going north of there it drops off to a smaller and not so perfect a tree. So that it is the character of the tree in this basin which was there long before the State lines were laid out that determines in our minds the place it belongs in the lumber world as the general characteristics and perfection of texture.

Q. In your opinion, would it be practicable to term your lumber "Oregon yellow pine" or "Oregon pine"?

A. I think not.

Q. Why not?

2985 A. Well, it would be very confusing, and if we called it Oregon yellow pine it would confuse us with our trade down in Arizona and Texas, wherever we went with it. We maintain an office at Dallas, Texas. I think it would be very confusing to that office to call it Oregon yellow pine; it would be confusing to the people that wanted to buy it.

Q. Would it be practicable to use any term which contained the word "yellow" without resulting in confusion in the lumber trade?

A. I do not think it would be practical.

Q. Would you be willing to use any term which contained the word "yellow" or which suggested the word "yellow"?

A. I wouldn't.

Q. And for these same reasons, that it might confuse it with the southern yellow pine?

A. Yes.

Q. Would the term "Oregon pine" without the word "yellow" be practicable?

A. No; that wouldn't be practicable either. When I worked in Santa Barbara, that is all we handled there, O.P.—everything was

Oregon pine—Oregon pine or redwood, and it is still sold pretty largely all through here as O.P., and that isn't our kind of wood at all.

Q. That is, Oregon pine is still called Douglas fir and comes from a tree which is not even a fir?

A. Yes.

2986 Q. Would it be practicable or desirable, from a point of view of the manufacturer or the trade, to use the word "pondosa"?

A. I think not. I believe that there would be some confusion and detriment. That is the same kind of a tree, but the wood and the sizes that come from it are contrary to our sizes and texture in many respects. I think it would be confusing.

Q. There has been some testimony, at an earlier hearing in this case, respecting a conference held in either Portland or Spokane, some two or three years since, in the course of which there was some discussion of an advertising campaign. I think that testimony was given by Mr. Getis.

Mr. BURR. I think so; yes, sir.

By Mr. MATTHEW:

Q. Do you recall participating in such a conference, Mr. Mortenson?

A. Yes; I was up at a conference regarding advertising.

Q. Do you recall some discussion of the use of the term "Pacific soft pine" in the course of that conference?

A. Yes.

Q. Would you relate the substance of the discussion briefly?

A. Briefly, we had hopes of a campaign for advertising at that time; at that time there was no advertising being done by any of the western woods, and the National Lumber Manufacturers' Association was contemplating an advertising campaign with its motto and slogan, "Use wood" They wanted to foster the use of wood for all purposes that they could possibly get it used for. We

2987 thought it would be a good idea if we could get the Western Pine Association to join with our association and put on a sort of joint campaign if this slogan "Use Pacific soft pines", and then each association would carry on its own advertising campaign directing the buying public to their wood specialties. In the case of western pine it would be Idaho white pine, and at that time I think it was western soft pine, or western white pine—I have forgotten the name—and in the case of our association it would be sugar pine and California white pine. But we didn't go ahead with that campaign. We just discussed it.

Q. Was there any suggestion on your part that the term "California white pine" would be discontinued as the prevailing commercial name for this lumber?

A. No, sir; I had no authority, and never have had any authority, to in any way tender any other name than California white pine.

Q. The term "Pacific soft pine" was merely to be used in a general advertising campaign for all these Pacific coast pines?

A. Yes; as I understand it.

Q. Mr. Mortensen, you have stated, I think, that you had no demand from your trade for a change in the name "California white pine." May I ask whether there has been any protest received by your company from any of your trade against the possibility of a change in name?

A. Yes.

Q. What is the nature of the protest?

2988 Mr. BURR. I think that is hearsay. It doesn't prove that the change of name ought not be made. We can't cross-examine the people that protested.

Examiner DE BRULER. He asked if he knows of any. That is not hearsay.

Mr. BURR. If he says "Yes" that means there has been a protest that is hearsay, and I can't cross-examine.

Examiner DE BRULER. The objection is overruled and exception allowed.

Read the question.

(Whereupon the question referred to was read by the reporter.)

Mr. BURR. I move to strike that last answer and object to this question.

Examiner DE BRULER. What was the answer to that last question?

(Whereupon the answer referred to was read by the reporter.)

Mr. BURR. I move to strike the last answer, and object to this question.

Examiner DE BRULER. The motion is denied and exception allowed.

The WITNESS. Could I change that word there? I didn't understand that word "protest." I would like to change that.

2989 Mr. BURR. He wants to change his answer to "No; it wasn't a protest", and I think——

Examiner DE BRULER. Let him make the answer himself. Read the question and answer.

(Whereupon the reporter read the question and answer.)

Examiner DE BRULER. Has there been any protest?

The WITNESS. Yes; there has.

Examiner DE BRULER. What is the nature of it?

Mr. BURR. I object to the question.

The WITNESS. They say——

Examiner DE BRULER (interrupting). Who said? Can you recall an instance of that kind?

The WITNESS. Yes.

Examiner DE BRULER. Go ahead; state when it was, as near as you can.

A. Well, there have been three or four of our customers that have said——

Mr. BURR (interrupting). Wait a minute! This is hearsay, what he is going to say.

Examiner DE BRULER. He is stating what the customers said.

Mr. BURR. That is not in the nature of an admission.

Examiner DE BRULER. Finish the answer and we will see what it is.

The WITNESS. All right; if you will give me a clear track I will answer the question.

2990 A. Some of our customers have said——

Examiner DE BRULER. If they made a protest, then say what the protest was about.

The WITNESS. Some of our customers said that they thought it would be bad to change the name.

Mr. BURR. If the examiner please, I renew my motion to strike. We went east for the very purpose of finding out, and allowed time for the opposition, one day at each place, to bring on people who were customers who could testify along this line, so I could cross-examine. It seems to me it is highly objectionable to bring in hearsay testimony far removed from the scene and not subject to our cross-examination.

Mr. MATTHEW. If the examiner please——

Examiner DE BRULER (interrupting). We will let the answer stand. But don't follow that line any further.

Mr. MATTHEW. Before Your Honor lays down a final admonition—this may save some time.

Examiner DE BRULER. All right; go ahead.

Mr. MATTHEW. It is a fact that the rule against hearsay is not violated unless the truth of the statement which the witness reports is in issue. This isn't a question of hearsay here. This witness can't say that he heard something, and that that statement which he repeats is, therefore, to be deemed to be true or otherwise. But he can rest the fact that certain protests, or statements, were

2991 made to him, not with a view to their being truthful or otherwise. The rule against hearsay isn't applicable here at all.

Examiner DE BRULER. I have ruled with you.

Mr. MATTHEW. Yes; but you have admonished me that I shouldn't go further.

Mr. BURR. If the examiner please——

Examiner DE BRULER (interrupting). Let Mr. Burr make a statement.

Mr. BURR. What is desired here is to show that the trade that this man deals with do not desire a change. That is only for the object of proving that they made a protest. I want to find out whether that is true or not; I want to find out why, and it seems to me it leaves the Government in an unfortunate position, which they ought not to be subjected to, by proving that what theses people said, the people that protested, and that is what they said, that they didn't want a change. The sum and substance goes right back to the hearsay rule, and I am denied my right to cross-examination.

Mr. MATTHEW. Hearsay isn't involved at all.

Examiner DE BRULER. The ruling is that the witness has answered and the answer may stand.

Mr. MATTHEW. If Your Honor please, I do not care to take up time on the record with needless explanation, but I think there should be no possible erroneous impression because of counsel's statement as to the opportunity afforded us in the East and Middle West.

2992

Examiner DE BRULER. I understand that.

Mr. MATTHEW. I hardly think you understand this part of the situation, and I think counsel's comments shouldn't go unanswered. I think Mr. Burr will agree that the Government was to permit us to put on evidence at points in the East, or Middle West, if inconvenient to get witnesses to the coast, but we were not required to do so. We were able to avail ourselves of that suggestion only in New York City. And, of course, we moved rather rapidly from point to point and frequently did not know, until about a day or two in advance, where the next hearing would be. That was all in the control of the Federal Trade Commission, and we made no effort, could make no effort, to gather witnesses for particular hearings.

Mr. BURR. If the examiner please, I want to say one word. I don't want to have it appear that my comment was unfair. The idea was this: That we did allow some opportunity for examination by the defense, but with the understanding that, if they desired to go East again, they were at liberty to do so. But that is no reason for having testimony narrated here at second-hand, but rather the contrary. They had an opportunity before, and they are preparing to have an opportunity again, to examine just such witnesses. I object to this as a substitute for calling them, either at the former occasion or at the subsequent occasion.

2993

Examiner DE BRULER. Your objection is noted and exception allowed.

Mr. MATTHEW. I will challenge the correctness of that, Mr. Burr.

By Mr. MATTHEW:

Q. Mr. Mortenson, I wish you would state what reasons you have for desiring to retain your present commercial name of California white pine?

A. The reasons for wishing to retain the name?

Q. Retaining that name; yes.

A. Well, it is a name that has been in use for a great many years and it is very well and favorably known throughout the United States and also in several foreign markets. A change in the name would create a considerable amount of confusion; the confusion, I think, would last for a considerable period of time. There has been lots of money spent in advertising this name, and I dare say that the collective advertising of our association and individuals and travel-

ing, etc., would amount to many hundreds of thousands of dollars, and we would lose all of that—would have to do it all over again. It would take a long time to get it over. Then I don't think that a change in the name would in any way change the use of the lumber. It would still go into the same channels as it does now, and I think if the name was changed the sugar-pine people might call their wood California white pine and take advantage of the name. And there is a standardization movement on the part of the Government
2994 now, lumber standards, and the name is well defined in that; it has become very widely known. For those reasons I would like to see it retained, because I do not think it causes any confusion as it now is.

Q. If the same California white pine was superseded by some other term, and then any of the sugar-pine manufacturers or distributors should adopt the name "California white pine" for their product, would there be any resulting confusion?

A. Yes; quite a little.

Q. How would it be practicable then to distinguish your product from the product which is now manufactured and sold as sugar pine?

A. I haven't reached that point yet; I don't know how it would be done.

Q. Have you been able to think of any term to be used as a commercial name for this lumber which more accurately and satisfactorily designates it than the term "California white pine"?

Mr. BURR. I object to the question on the ground that the Commission has no jurisdiction there. It is not in the issues here.

Examiner DE BRULER. Objection overruled. Let him answer.

The WITNESS. What is the question?

(Whereupon the question was read by the reporter.)

A. I have been trying to think of a name, but I have been unable to find any that would, to my mind—would more accurately
2995 describe it. California white pine is individual, distinctive, and doesn't mean Idaho white pine; it doesn't mean northern pine; it means California white pine.

Mr. MATTHEW. You may cross-examine.

Cross-examination by Mr. BURR:

Q. Mr. Mortenson, do you realize that the record shows that—and you have heard a great deal of it—the change was made by the pondosa people from western white pine to pondosa without losing their business appreciably?

A. I didn't hear anything of that kind go in this record, but I am not aware of that as a fact.

Q. If you knew that was the case, would you regard that as bearing upon the question of the great losses that you would sustain, if you changed the name from California white pine to some other?

A. Well, I have my own personal idea as to how well they got along with that change, and from my own experience.

Q. You think they lost trade, do you?

A. I think so. I think it was confusing.

Q. Well, what other term was the word "pondosa" with in your judgment?

A. I don't think that it was confused with any other term.

Q. It is not a confusing term with anything else that you know of as the pondosa word?

2996 A. No; I think that is quite original.

Q. Do you think that the word "pondosa" is easy for the trade to associate with the species from which that lumber is made?

A. I imagine it would be when they once get the idea.

Q. It really suggests the botanical word itself, doesn't it?

A. I don't think so; I don't think that lumbermen have ever thought about botany until within the last few years.

Q. And do any of your own members, using the word "California white pine", show in parenthesis the word "pondosa" or "ponderosa" in connection with the trade name?

A. I believe they have done that recently.

Q. Has your company done that at all?

A. I don't think we have in our direct business; we have participated in some advertising in which the name "Pinus ponderosa" was used as a description of the tree.

Q. You don't regard putting in the word "pondosa" or "ponderosa" in parenthesis in connection with your advertising as tending to confuse the species of lumber, the variety of lumber?

A. Why, I don't think it is necessary. I think with our lumber it is just California white pine. To add to it is confusing.

Q. Those who have used that word "pondosa" or "ponderosa" along with the words "California white pine", that has proved confusing, has it?

A. I don't think they pay much attention to that; they are looking at California white pine. As long as that is there it is

2997 *there it is* not so confusing.

Q. That helps to make a link between the shippers of California white pine and those who are calling the same wood pondosa; is that not true?

A. It might if they kept it up continuously.

Q. And the use of that word in connection with advertising tends to identify the species of Pinus ponderosa throughout its range, does it not?

A. Using the word?

Q. Pondosa in connection with the words "California white pine"?

A. No; I don't think it does as a name. I don't think it is associated with Pinus ponderosa.

Q. Do you think the trade to whom you sell realize that the pondosa lumber and the California white pine is made from the same tree?

A. I think a great many of them do.

Q. A great many do and others do not; is that true?

A. There may be some that don't, but practically everyone that we deal with knows that.

Q. And the using of the word "pondosa" or "ponderosa" in connection with advertising, under the name of California white pine, as the more general term, helps to spread that information—doesn't it?—that California white pine and pondosa are made from the same tree?

A. We don't use that.

2998 Q. I know, but that helps to spread that information.

A. It might, if you used it, but we don't.

Q. You testified that some do.

A. In one or two isolated cases—I think only one.

Q. Which one is that?

A. (Answer ordered physically stricken from the record.)

(Here followed remarks off the record.)

Examiner DE BRULER. The answer is physically stricken from the record. It must be physically stricken under the rules of the Commission.

(Here followed remarks off the record.)

Examiner DE BRULER. Proceed where we left off.

By Mr. BURR:

Q. Do you know whether any of the Arizona companies are members of your organization?

A. Yes; I know.

Q. Are they?

A. They are not.

Q. They are not?

A. They are not.

Q. Are any of the Arizona companies members of your organization?

A. What organization are you speaking of?

Q. I am talking about the association.

A. No; I don't think there is a single Arizona mill that is a member of the California association.

2999 Mr. MATTHEW. I take it that the examiner understands that there is no complaint here against certain respondents as members of the association, but there are a number of individual complaints against certain specific companies.

Examiner DE BRULER. I understand that.

Mr. MATTHEW. Many of which happen to be members of this association.

Examiner DE BRULER. Yes.

By Mr. BURR:

Q. Do you happen to know whether the manufacturers of a white pine further south, so-called, the Arizona white pine and the New Mexico white pine, have used the word "pondosa" or "ponderosa" in connection with their advertising?

Mr. MATTHEW. I object on the ground that it is immaterial.
Examiner DE BRULER. If he knows he can answer.
A. I am not familiar with their practice down there.

By Mr. BURR:

Q. Counsel examined you with regard to the possibility of calling your product Oregon yellow pine, and I believe you testified that you would regard that as confusing to the public on account of the possible mistake as to the distinction between your wood and that of the typical yellow pine of the South; is that true?

A. Yes.

Q. You were referring there to longleaf, most essentially, were you?

3000 A. Longleaf and shortleaf as well.

Q. The shortleaf is rather a different type, isn't it?

A. Yes.

Q. You understand that to be the Arkansas soft pine?

A. Well, lately there has been a change of name down there; they call it Arkansas soft pine?

Q. That would be a wood that competes with you more directly, wouldn't it, than the longleaf?

A. No; not much more directly.

Q. Is there any other type of wood, besides the Arkansas soft pine, that is known to the trade as shortleaf yellow pine?

A. Not that I know of. Southern yellow pine is all that stuff down through Mississippi, but that is largely longleaf.

Q. That is the typical southern yellow pine, is it not—the longleaf?

A. Longleaf is southern pine; yes.

Q. The Arkansas soft pine does make sash and door and window frames and that kind of thing, does it not?

A. They make some sash and door out of that; they also make it out of yellow pine and make it out of cypress and redwood.

Q. Then both of those do compete with you, do they?

A. Yes; but to a minor degree.

Q. But the Arkansas soft pine far more than the others; isn't that true?

3001 A. We don't find it so.

Q. The line of demarcation between what is called California white pine and pondosa shades off, doesn't it, so that in the same piece of forest a log may go one way and be called one and the other way and be called the other; isn't that true?

A. No; I don't think that is true.

Q. Which is the concern that is lumbering just north of where you have your holdings?

A. Do you mean in the western pondosa pine belt?

Q. Just north of you in the ponderosa——

A (interrupting). The Algoma Lumber Company.

Q. They are immediately just north of you?

A. Yes.

Q. What is the one north of the Algoma Company?
A. The Lamb Lumber Company.
Q. And they call theirs California white pine?
A. Yes.
Q. What is north of them?
A. I think there is this Forest Lumber Company.
Q. And they call theirs California white pine?
A. Yes; they are in that belt of timber.
Q. What is immediately north of them?
A. That is the end of the manufacturing end, I think. There is no plant in this basin north of them.

Q. Are you positive that there is no place where the forest
3002 shades off between the pondosa and the California white pine; where they practically meet?

A. Why, this timber belt—this California white pine timber belt—that type of pondosa tree has its end at eighty or ninety miles north of Klamath Falls, then it begins to taper into a different type of tree— but I understand you to ask me whether there was a difference, if there was pondosa trees right in with our California white pine—that is, the pondosa type.

Q. No; what I am getting at is this: Is there not a place in Oregon where, in the same forest, one concern is calling it pondosa and the one immediately south is calling it California white pine?
A. No; I don't know of such a place.
Q. How about the Shevlin-Hixon? *Where are they?*
A. They are in a different belt of timber; they are out of what I have defined at the California white-pine belt. They are at Bend.
Q. In the Bend district, aren't they?
A. Yes.
Q. Are there any others working there in the Bend district?
A. Yes, sir.
Q. Who?
A. There is the Brooks Scanlon.
Q. They are also calling theirs pondosa?
A. Yes.

Q. Who else is there?
3003 A. I think that is all at Bend.

Q. Is there not a California white pine manufacturer in the Bend district?
A. I do not know of one.
Q. The sugar pine people have not appraised you, have they, of any desire to call their product California white pine?
A. No; they have not.
Q. You have heard no rumors of that sort, no wild rumors?
A. Yes; I have heard rumors.
Q. But nobody has told you that, of a responsible character, that they were considering it?
A. I have never discussed the matter with the sugar pine manufacturers themselves.

Q. Were you present when Mr. Danaher testified?

A. I was not.

Q. You didn't hear his testimony that he would regard that as a great mistake?

A. What is that?

Q. You didn't hear his testimony then that he would regard that as a great mistake?

A. I didn't hear his testimony at all.

Q. The sugar pine is sold at a higher price—is it not?—than either the pondosa or California white pine?

A. Some of it is.

Q. If confusion resulted it would be to the detriment of the
3004 sugar pine, wouldn't it?—if there was confusion of California white pine after they renamed the California white pine and the product which is now sold as California white pine?

A. I don't think so.

Q. Wouldn't the confusion act to the detriment of the higher-priced wood?

A. I don't think so.

Q. I wish you would explain that, if you can.

A. Well, the buyers of lumber and the users of lumber know the quality of the goods they are getting. Today there is one concern that is in the business manufacturing California white pine—trees that are in the California white pine belt, I mean, and their plant is too—and they have another plant in the pondosa pine belt, and their timber is in the pondosa pines, and through the same sales organization they sell pondosa and they sell California white pine, and they get a better price for California white pine.

Q. What concern is that?

A. Well, that is the McCloud River Lumber Company and the Shevlin-Hixon Lumber Company at Bend.

Q. They are selling it under two different corporate names?

A. No; it is all sold through the same office, Shevlin-Carpenter-Clark Company, in Minneapolis. So the value of the wood itself helps determine the value, and sugar pine would get a better value where it was capable of rendering a better service, if it
3005 could render that service.

Q. Aren't the Shevlin interests pushing their goods under the special name of Shevlin pondosa, or Shevlin-Hixon pondosa?

A. They call it pondosa pine, and they call their McCloud stock California white pine. Of course, they use the Shevlin name.

Q. I think you misunderstood the last question. My thought was this: You testified that you thought that if the California white pine name were changed, and they began to call it something else, and if the sugar pine manufacturers started to call theirs California white pine, that confusion would result. Didn't you say so?

A. Yes.

Q. Wouldn't that work to the detriment of the higher-priced commodity rather than to the cheaper-priced commodity, if there was confusion?

A. Confusion between the name California white pine?

Q. Between the two products due to the change in name; isn't that true that it would work to the detriment of the higher-priced commodity rather than the lower-priced commodity?

A. You mean if they changed their name to California white pine?

Q. Yes; that was your testimony, that you thought there would be confusion there, if I understood you correctly.

A. Well, I don't know what the result of that confusion would be.

Q. You think it would be confusing, do you?

A. They would be using the name "white pine" for what-

3006 ever merit they think there was in it, instead of sugar pine.

Q. If there was confusion there it would mean that somebody was buying one thing when he thought he was getting another; that is what you mean by confusion in this connection?

A. It would be that he wouldn't know what he was getting if they changed the name and shifted the name; he wouldn't be sure that he was getting the same lumber.

Q. Wouldn't that work to the detriment of the higher-priced commodity rather than the lower-priced?

A. It might tend to.

Q. Doesn't the Shevlin-Hixon pondosa reach right down into the Klamath Basin?

A. Not any timber that they have cut so far that I know of.

Q. Where is the farthe*r*est south they are cutting?

A. Well, it is quite a long ways north of where I consider this district to be. I am not posted on their immediate operation as to how far down they are; they own a little timber down in the Klamath Basin, but they are not operating on that, I am sure.

Q. Isn't that forest continuous, running down there practically with the stand of ponderosa most of the way?

A. There are quite a few openings in there.

Q. This sugar pine at Klamath Falls that you say was affected with shake and stump rot and was dotty—that dotty means overripe timber, doesn't it?

A. Well, it means punky.

3007 Q. Overripe?

A. I suppose it would be overripe, overgrown.

Q. There is overripe timber of all varieties of trees around, allowed to stand too long for the best use; isn't that true?

A. Yes; but there is lots of dotty timber that is not overripe. There are some fir timber that is not overripe; it is a character of the soil it grows in and the character of the stand, as I understand it, that causes this inferior quality in the tree, as well as age.

Q. In sugar pine that stump rot is due to age, isn't it?

A. Well, I am not qualified on that particular thing; I know that is there and that is all.

Q. To whom, in point of classes of business, do you sell to?

A. We sell to various sash and door plants, planing mills, retail yards, wholesalers.

Q. What percentage goes to planing mills and millwork shops generally?

A. Probably 25%.

Q. And how much to wholesalers?

A. About 15%.

Q. To what other classes do you sell?

A. We sell some through our own offices.

Q. What do you mean by your own office?

A. We have an office in Chicago and one in Dallas, Texas.

3008 Q. How large a percentage through them?

A. Let's see—I have 15% and 25%, that is 40%—I should say about 20%.

Q. To whom do they sell? Do they sell to wholesalers? Or how?

A. Our offices?

Q. Yes; those two offices.

A. Principally direct to the trade.

Q. Direct to the retailer?

A. To the retailers and to some box plants, and some sash and door people. We don't keep a distribution of their business.

Q. The remainder of your product goes to whom?

A. Goes pretty largely all to the pine box association in the form of box shook, and what is left goes down to southern California.

Q. The retailers?

A. To retailers.

Q. You maintain no retail establishment, of course?

A. No; I have none.

Q. In testifying that you thought it would be confusing to call your product some kind of yellow pine, you had in mind solely the situation as regards the yellow pines of the South?

A. Yes; largely the yellow pines of the South. They are for a distinct purpose; theirs is for construction lumber, and it is yellow pine that is generally regarded as a construction lumber. They have tried to get away from that name themselves. They call it southern pine now mostly instead of yellow pine. It is construction lumber.

3009 Q. Why should they object to calling it yellow if that is——

A. (Interrupting.) They don't object; they have called longleaf, shortleaf yellow—I mean they have had several names.

Q. You think the word "yellow" would associate you with the yellow pines of the South; is that true?

A. Yes.

Q. The use of the word "white" tends to associate you with the white pines of the North, the Idaho and the northern?

A. It tends to associate us with the lumber to which the white pines have been applied.

Q. And it tends to associate you with that group of lumber, doesn't it?

A. Yes; that lumber goes into those uses.

Q. And that is one of the reasons why you desire to continue that name, is it not?

A. Not because it aligns us with the white pines, but because our lumber is being used for the same purposes as the white pines.

Q. And it has a tendency to align you with that particular lumber, doesn't it?

A. That type of lumber for that use; yes.

Q. And that is one of the reasons why you prefer it?

A. Yes; wherever it defines the use.

Mr. BURR. That is all.

Mr. MATTHEW. That is all.

Examiner DE BRULER. You may be excused.

3010 (Witness excused.)

(Here followed remarks off the record.)

Examiner DE BRULER. We will take an adjournment until February 4, 1930, at 10:00 o'clock a.m.

(Whereupon, at 5:10 o'clock p.m., an adjournment was taken until Tuesday, February 4, 1930, at 10:00 o'clock a.m.)

3011 Docket No. 1620 to 1669, inc.

SAN FRANCISCO, CALIFORNIA, *February 4, 1930.*

Met pursuant to adjournment, 10:00 o'clock a.m.

Before Ellis De Bruler, examiner.

Appearances: Eugene W. Burr, for the Commission.

McCutchen, Olney, Mannon & Greene (by Mr. Allen P. Matthew and Carl I. Wheat) for the respondents.

Examiner DE BRULER. Are the parties ready to proceed?

Mr. MATTHEW. If the examiner please, in order to make Mr. Weyerhaeuser's testimony, upon his last appearance on the witness stand, entirely complete and intelligible, I desire now to tender for the record additional process of respondent's exhibit no. 31, particularly certain data which appears in appendix A, on page 27. Your Honor will recall that you admitted for the record that part of the tabulation which appears on page 28, roughly speaking. Mr. Burr, I think, objected to the receipt of the matter appearing on page 27. And if I remember your ruling correctly as of that time, that portion of the tender was not accepted.

Examiner DE BRULER. That is correct.

3012 Mr. MATTHEW. Following the ruling of the Commission and Mr. Weyerhaeuser's further testimony upon cross-examination, I desire now to offer for the record the nomenclature of the commercial softwoods appearing upon page 27 of respondents' exhibit no. 31. I offer specifically the standard commercial names and

the botanical names of the following commercial softwoods. I shall merely state the standard commercial names in each instance, for the purpose of convenient identification, and shall assume that the botanical name appearing on the table will likewise be of record: Incense cedar, Port Orford cedar, western red cedar, Douglas fir (coast type), red fir (intermountain type), red fir (Rocky Mountain type), and white fir.

Those are the only species concerning which I interrogated the witness.

Examiner DE BRULER. Those species were all mentioned.

Mr. BURR. I think so, and as a matter of comity I am not going to make an objection.

Examiner DE BRULER. It may be admitted.

Mr. MATTHEW. I will call Mr. Walker.

WILLIS J. WALKER was thereupon called as a witness, and after having been first duly sworn, testified as follows:

Direct examination by Mr. MATTHEW:

Q. Please state your name and your place of residence for
3013 the record.

A. Willis J. Walker, Minneapolis, Minnesota.

Q. What is your business or occupation?

A. Lumberman.

Q. And with what company are you identified?

A. I am president of the Red River Lumber Company.

Q. The Red River Lumber Company is a respondent in one of these proceedings, Mr. Walker?

A. Yes, sir.

Q. Throughout what period have you been connected with the Red River Lumber Company?

A. I have been an official of the company since 1896, and before that period I had been around their operations and working for them at various times since its organization in '82 or '83.

Q. Under the laws of what State is the Red River Lumber Company incorporated?

A. Minnesota.

Q. Where are its principal milling operations situated?

A. Westwood, California.

Q. What is the nature of the plant at that point.

A. There is a sawmill with the reworking plants for sash and doors, and moldings and miscellaneous products of our lumber, including a veneer plant.

Q. Can you approximate your average annual cut?

A. About 175 million average.

3014 Q. Do you market both California white pine and sugar pine?

A. Yes.

Q. And where do you find your principal markets for the products of your operations?

A. Our lower-grades lumber goes as boxes into California, Arizona, Texas, and Colorado, to a large extent, and to a lesser extent into the middle west countries as boxes; our common lumber goes into California, Nevada, the same States I have named, and more or less through the East. Our upper grades go, I think, to practically all the States in the Union, largely into the Mississippi Valley, and the territory between the Mississippi and the Atlantic coast, the northerly part.

Q. Through what period has your company been operating at Westwood?

A. Since 1912.

Q. Will you briefly relate your experience in the lumber industry prior to the opening of your operations in California?

A. My personal experience?

Q. Yes.

A. I began sweeping the Camp and Walker mills when I was five years old.

Q. Where?

A. Minneapolis. I worked in those two mills at odd times and in the planing mill, and in '83, I think it was, I worked in the Red River mill at times at Crookston packing, shipping, and similar jobs, including running a lathe in the machine shop.

3015 Mr. BURR. That was in Minnesota?

The WITNESS. Crookston, Minnesota.

I worked a little in our mill at Grand Forks. And when I was eight years old I was on the log drive going down the Clearwater River, the Red Lake, and the Red River, into the north into Canada, one summer.

Examiner DE BRULER: I think the qualifications of this witness would be admitted by reputation anyway.

By Mr. MATTHEW:

Q. Was your company operating largely in the northern white pine in Minnesota?

A. Yes, sir.

Q. When did you first become familiar with the term "California white pine"?

A. In 1889.

Q. Under what circumstances did you become familiar with the term "California white pine"?

A. Father sent his head woodsman, Frank J. Klein, to the Pacific coast to make a general examination and report on the timber on the coast as a whole, and particularly with reference to a wood to replace the apparently disappearing white pine, for the purpose of manufacturing sash and doors. Klein spent nearly a year out here, and when he came back, among other woods he reported on, was the California white pine and sugar pine.

Q. When did California white pine first begin to find a
3016 market, to a noticeable extent, in the Middle West and in the eastern portions of the United States—that is, within your knowledge?

A. I think it was in about 1908 that we first began to get competitive reports from the Mississippi River sash and door factories of quotations from the West.

Q. In 1908?

A. I don't remember that date, but along in approximately that time.

Q. And I assume that you commenced to market your California white pine in 1912, or thereabouts, from your Red River Westwood mill?

A. From the Westwood plant. Previous to that we had sold some lumber from the mill that we bought up in the Sacramento Valley. We had about a half million that we sold off in about 1908. That was an incidental operation.

Q. Does the Red River Lumber Company produce and market sugar pine as well as California white pine?

A. Yes.

Q. Have you been producing and marketing sugar pine during the entire period of your operations at Westwood?

A. Yes.

Q. What proportion of your average annual cut is represented by sugar pine, approximately?

A. It varies decidedly in different years, depending in what group of timber we are logging the heaviest around the mill. Ordinarily I would say it was 20% to 25% of our cut.

3017 Q. Can you approximate the annual cut of sugar pine of your company on the average?

A. Not without adding them up. Last year we cut 65 million, about, of sugar pine, and about 98 million of white pine.

Q. Do you know how the volume of your production of sugar pine compares with that of other lumber producers in California?

A. I think it is one of the larger, if not the largest, individual mill.

Q. Are the terms "California white pine" and "sugar pine" well established in the trade to which you sell your lumber?

A. Yes.

Q. Does your company ever receive orders for sugar pine under any name which includes white pine?

A. Not that I recollect.

Q. Are all of the orders for sugar pine received under the name "sugar pine"?

A. So far as I know.

Q. Has this been the practice during the entire period of your connection with the lumber industry?

A. Yes.

Q. Will you state whether California white pine is commonly used for the same purposes for which the old northern white pine has been and is used for?

A. It is used for the same purposes, as far as I can think of.

Q. It is used generally for the same purposes for which the
3018 southern yellow pine lumber is used?

A. Not to the same extent.

Q. Is the California white pine lumber largely used for structural purposes?

A. It is used more for industrial cutting-up purposes.

Q. Are the shop grades of California white pine lumber obtained mostly from the heartwood or from the sapwood of the tree?

A. From the heartwood.

Q. Just why is that? What circumstances bring that about?

A. The sapwood is largely the clear lumber and goes into the clear lumber grades; and as you get into the heart the defect, the knots, are more typical of the shop than of the clear.

Q. The shop grades of lumber characteristic'ly have these knots to which you refer?

A. Yes; large scattered knots.

Q. Approximately how many logs on the average are required in your operations in order to produce 1,000 feet of California white pine?

A. On the average about two and one half; last year it went about two and a third.

Q. These are logs averaging 16 feet in length?

A. Average as they run to the mills; about 16 feet would be the average.

Q. Approximately how many logs, on the average, are required in order to produce 1,000 feet of sugar pine lumber?

3019 A. I don't know our average in sugar pine. Last year it was slightly less than two; they scaled about 510 feet to the log. But I don't know how that compares for our average.

Q. On the whole, the sugar pine logs are larger than the California white pine logs?

A. Yes.

Q. Are you familiar with the tree from which the so-called "douglas fir" lumber is produced?

A. I am.

Q. Do you know the common name of that tree in the forest?

A. It depends on the locality.

Mr. BURR. If the examiner please, I think douglas fir has been ruled out.

Mr. MATTHEW. I think that was the one thing that was ruled in.

Examiner DE BRULER. I think that is true. I think that ruling was after the cross-examination of this other witness that no further evidence along that line would be permitted.

Mr. MATTHEW. Not as I so understand the ruling.

Examiner DE BRULER. I so understand it.

Mr. BURR. That is the understanding that the examiner had the other day and announced, if I understood it correctly.

Mr. MATTHEW. I desire to take exception and have the question of record.

Examiner DE BRULER. Certainly, for the record.

3020 By Mr. MATTHEW:

Q. Do you know whether or not this tree bears different names in the forest?

A. Yes.

Mr. BURR. I object.

Examiner DE BRULER. Objection sustained.

Mr. BURR. Let's have the "Yes" off the record.

Mr. MATTHEW. It may go off.

By Mr. MATTHEW:

Q. Is any white fir produced in your operations?

I think the operations of this company should be in the record here.

Mr. BURR. He said white fir—I object.

Examiner DE BRULER. His objection is sustained.

Mr. MATTHEW. If the Examiner please, it will be recalled that the witnesses offered by Mr. Burr himself referred to the various kinds and qualities of lumber which they produced. It wasn't at all confined to pines.

Examiner DE BRULER. Are you going to ask him what he produces?

Mr. MATTHEW. It is something more than that. Of course, I want that to be shown, but Your Honor will recall that at the hearings over which you presided in the North there was testimony on the part of Col. Greeley and others as to Douglas fir lumber.

3021 Mr. BURR. If the Examiner please, we threshed this whole matter out a number of times. I don't object to this witness saying he produces Douglas fir and white fir, if it isn't leading up to these other questions that are subject to the Commission's ruling; but I assume, and doubt counsel will deny it, that they were so intended.

Mr. MATTHEW. Certainly, I will not deny it; there is not reason why I should not. The Examiner must understand this: Supposing Mr. Weyerhaeuser has made a statement inadvertently, which we think is incorrect, or incomplete. Am I compelled to stop right there?

Mr. BURR. Unless you appeal to the Commission and get it overruled; yes, sir.

Mr. MATTHEW. I don't so understand the ruling.

May I suggest, Mr. Examiner—and I do not intend to go beyond two or three questions—I suggest that the questions and answers be placed upon the record subject to a motion of counsel to strike out, and that will save time all along the line. It will save a reference to the Commission and the confusion we had before.

Mr. BURR. I object entirely to the proposition, because the Commission has ruled and don't want this irrelevant matter taken.

Examiner DE BRULER. I am bound to sustain the objection under the ruling of the Commission.

3022 Mr. MATTHEW. May we have that ruling produced, if Your Honor please?

(Whereupon Examiner De Bruler produced a telegram received from the Federal Trade Commission.)

Mr. MATTHEW. Now, as I read the ruling of the Commission, as expressed in this telegram of January 31, from its secretary, it certainly does not foreclose me from this line of examination.

Mr. BURR. We were talking, if the Examiner please, in our wires to the Commission about the possible relevency of these issues, and when the Commission says that the trial of collaterial issues be avoided I think he is talking about this very thing, because the context of the telegram demands nothing in the world but that the reference to collateral issues are the references to these other lines of industry outside of the pine industry.

Mr. MATTHEW. I might as well put myself on record and bring this particular controversy to a conclusion. If the Commission sanctions a certain line of cross-examination, then anything within the field of that cross-examination is certainly appropriately the subject of further cross-examination of other witnesses in this record. I understand the Commission merely to admonish us that we should keep out of irrelevant issues and not attempt to expand the field beyond the line of proper cross-examination, but certainly I

3023 am denied to a right belonging to every litigant if I must rest upon the testimony elicited upon cross-examination of an opposing witness and cannot meet that testimony. If that cross-examination was proper cross-examination, and the Commission says that it was, I can certainly meet that testimony.

Examiner DE BRULER. I understand the Commission's ruling to be that that is outside of the issues of this complaint.

Mr. BURR. I think so.

Examiner DE BRULER. And has no place in the introduction of testimony relating to it. Consequently, the objection is sustained.

Mr. MATTHEW. I don't so understand, and I shall ask to have my exception noted of record.

Examiner DE BRULER. Exception noted.

Mr. MATTHEW. I offer to prove at this time that there has been confusion created as a result of the term "Douglas fir," particularly, because lumber from the true white fir is marketed as white fir.

Mr. BURR. If the Examiner please, I am going to object to the introduction of evidence under that offer.

Examiner DE BRULER. The objection is sustained. He made his statement of record.

Mr. MATTHEW. I understand that any further tenders on my part along these lines are denied?

Examiner DE BRULER. That is right.

3024 Mr. MATTHEW. And my exceptions are noted again?

Examiner DE BRÜLER. Exception noted.

Mr. MATTHEW. To make the record clear, the purpose of my tender is to show that commercial names of lumber very frequently have no relation either to botanical classification or to the common names of the trees in the forest.

I will continue with questions which I think will not be subject to objection.

By Mr. MATTHEW:

Q. Mr. Walker, in your milling operations do you find that there are more or fewer defects in sugar pine logs than in California white pine logs?

A. More in sugar pine, very much more.

Q. What is the nature of the defects appearing on the sugar pine logs?

A. Both trees have knots; the sugar pine has a large amount of rot, and a large amount of shake or so-called "wind shake." The white pine has larger knots, they are sounder, and have very little rot and practically no shake.

Q. Is it always practicable to detect or remove this defect that you have characterized as shake before the lumber is marketed?

A. No.

Q. And why?

A. It is not advisable.

Q. What is the effect of shake if it becomes apparent after
3025 the lumber is actually put in use?

A. Shake is a crack or separation of the grain, and the wood parts crack afterwards.

Q. Have you had any recent experience with shake in sugar pine lumber?

A. Yes.

Q. What is the nature of that experience?

A. It was a complaint from one of our large customers, who buys both white and sugar pine for toy blocks, that the sugar pine blocks were cracking open from shake after he manufactured them.

Q. Have you had any such complaint respecting California white pine?

A. No; not that I have heard of.

Mr. BURR. What kind of blocks?

The WITNESS. They are a cube about an inch and a half in size.

Mr. BURR. For children?

The WITNESS. Toy blocks; yes.

By Mr. MATTHEW:

Q. Now, you referred to rot; what is the nature of the rot which you encounter in the logs of sugar pine and California white pine?

A. The largest percent is what is known as "stump rot," which begins at the bottom of a tree and ordinarily runs up through the center of the tree and extends, with age, out toward the bark.

3026 In addition to that we have what is known as ring rot, where a tree may be sound at the base but rotten at some point above there where the water apparently gets in around the dead limb.

Q. Which of these trees is more susceptible to ring rot, in your experience?

A. The sugar pine.

Q. Have you noticed any difference in the relative durability of California white pine and sugar pine lumber when put to use around your plant?

A. No; I haven't detected any difference.

Q. Do you use both discriminately?

A. Yes.

Q. And for the same purposes?

A. Yes.

Q. Do you mill any logs from fire-killed timber?

A. Yes.

Q. Both California white pine and sugar pine?

A. Yes.

Q. Do you make any distinction between the use of logs from either variety of tree?

A. No; we take either tree that appears to be fit to mill.

Q. Do you find that you are able to mill logs from fire-killed timber of both varieties several years after the fire?

A. Yes.

Q. Have you had any recent experience in that connection?

3027 A. We had a bad fire at the head of Sacramento Valley, in one of our timber groups, in 1924. A mill man has been logging that and buying the timber for us for the last three years, and expects to cut more of it this year.

Q. Do you log both sugar pine and white pine after fire killed?

A. Yes, sir.

Q. Have you noticed any difference in the relative susceptibility of sugar pine and California white pine to decay when down in the forest, as from lying on the ground?

A. No; I don't know of any difference.

Q. In your opinion, does the question of susceptibility of decay to the log when lying in the forest have any relation to the durability of the lumber when put into use?

A. Oh, I think a lumber under similar conditions would act the same as the logs do. It is just lumber, after all, in either case.

Q. And to what extent are you familiar with the marketing of southern yellow pine lumber in the Northern States; have you had any contact with it?

A. We have in Minneapolis and in Chicago, where we have a yard.

Q. Do you know whether any of this lumber is ever sold as yellow pine, without specification of short leaf or longleaf?

A. Yes; we have bought both without such designation.

Q. Just as yellow pine?

A. Yellow pine, or southern pine.

3028 Q. If the term "California white pine" should be discontinued as the commercial name under which lumber from Pinus ponderosa is marketed, is there any liklihood, in your opinion, that there would be any resulting confusion in the lumber market, lumber trade?

A. Yes.

Q. Would there be any confusion with sugar pine?

A. Yes.

Q. Why?

A. Not unless the sugar pine took that name which was suggested yesterday.

Q. Is that a possibility in your opinion?

A. In my opinion it is a certainty.

Q. I will ask you to answer the general question as to what, in your opinion, would be the effect upon the lumber trade if this term California white pine were to be superseded by some other term, that is, as to possible confusion or otherwise?

A. I think we would have to adopt a new name that would come as near to describing the characteristics of our lumber as we could in the public mind, and would then have to spend a large amount of money to convince the using and buying public that the lumber that they had formerly known as "California white pine" would be marketed under some other name.

Q. Is there a possibility of confusion between different kinds of lumber in the meantime?

3029 A. Certainly there would be, because the customer wouldn't know under what name they could order the lumber, and if an order came in worded for California white pine, as the trade now knows it, we could not accept it without explaining to the public that we could no longer use that name, or accept an order on that basis, and get the order rewritten under the new name. In other words, if they order California white pine and were furnished lumber that had to have some other name, we would not be complying with the order.

Mr. MATTHEW. You may cross-examine.

Cross-examination by Mr. BURR:

Q. You think there is an advantage in the use of the word "white" in connection with the term "California white pine"?

A. Yes.

Q. Have you at any time estimated that it is worth about $2.00 a thousand to the California white-pine manufacturers?

A. I don't remember ever having tried to put it in dollars and cents.

Q. But you think it has a monetary advantage to you?

A. I do.

Q. Why is that?

A. Because it classifies our woods with the other woods that have been known to the trade, including itself as white pines, the
3030 general group with this (sic) similar characteristics.

Q. Well, now, that is one of the reasons you want to continue to use it, is it?

A. That is one of the reasons; yes.

Q. Do you happen to know whether that was one of the reasons why it was adopted in the beginning?

A. I do not; it was adopted long before.

Q. Before your time?

A. Before my time; as far as I know, it was in use here when Klein was out here, and in use when I came out first in '99.

Q. You think that the California sugar-pine manufacturers would doubtless take the words "California white pine" in case you were forced to discontinue that name?

A. I think they will; I think they are doing it today in advertising that their sugar pine is genuine white pine.

Q. Isn't it genuine white pine?

A. Some of the botanists say it is.

Q. They have been advertising it as a genuine white pine for many years?

A. They have and so have we.

Q. And the association has advertised it as genuine white pine, in contract with the California white pine, haven't they?

A. Yes.

Q. I mean the sugar pine as genuine white pine.

A. The genuine white pine; yes.

3031 Q. You think it would be an advantage to the sugar-pine people to call it California white pine on the market?

A. I think that feature would be an advantage to them.

Q. You think they could make some sales they are not making now?

A. Yes; I think they would.

Q. Isn't there, as a matter of fact, a possibility that there would be a confusion between sugar pine, if they named it California white pine, and the product that you have been selling and calling California white pine for so many years?

A. Yes; but I think they will not give up the name sugar pine. I think they will advertise it both ways so as to get orders under each title.

Q. Well, do you think it would be good sales policy to advertise the same wood two different ways?

A. It is very often done in the lumber business.

Q. Are you of the opinion that they would charge a different price for the same product advertised in two different ways?

A. I don't know.

Q. The word "California white pine" is now attached to a wood that is selling on the market considerably lower in price than the sugar pine, isn't it?

A. Most of the items; yes.

Q. All of the items except some of the common, lower common grades; isn't that true?

3032 A. Yes; excepting there are some purposes that white pine is sold for that the sugar pine is not suited to.

Q. The sale of a higher-priced commodity, under a title that has been used for a lower-priced commodity for a long period of years, wouldn't be helpful to a higher-priced commodity, would it?

A. In general, no; I would say that the tendency would be the other way.

Q. Wouldn't that tendency operate, if they were to rename sugar pine California white pine?

A. That would be the tendency, but the sugar-pine people don't hold their prices at the maximum point.

Q. Neither do the California white-pine people necessarily, do they?

A. No; that is true.

Q. They can't always get the maximum price on the market?

A. No; but for certain purposes, such as enameling, the sugar pine is not suited to it, and they sell it as California white pine under that title and make sales they couldn't otherwise make.

Q. There is a difference in value, corresponding to the difference in price, between the sugar pine as the higher-priced wood, and the California white pine, for most purposes, isn't there?

A. I don't think so.

Q. What is the cause of the difference in price?

A. I think the sugar pine was known to the East first and that the sugar pine thereafter was more uniform in quality than

3033 was the white pine, so-called "white pine", from the various districts, and I think that gradually the spread between those two is diminishing as they find less difference in the working value of the woods.

Q. The sugar pine is better for pattern purposes, isn't it?

A. It is a little easier to work and it is more troubled with shake defects in the pattern after it is made and in use; but, in general, I should say the sugar pine was preferable.

Q. Isn't it preferable for organ and piano work?

A. Yes; they seem to prefer the sugar pine.

Q. Why do you think that is true?

A. I don't know.

Q. It is a little softer, a little easier to work?

A. Yes; but I don't see that it has much benefit in making organs.

Q. Do I understand you to testify that shake cannot be detected before it is marketed?

A. Some of it can and some of it can't; a lot of it *it* is impossible to tell until it is worked or used afterwards.

Q. Was that true of the true white pine of the North?

A. To a considerable extent.

Q. And even there you couldn't tell it until after it is marketed in some cases?

A. Part you can and part you can't.

Q. The white pine of the North has always commanded a
3034 higher price than the California white pine, has it?

A. I don't know. I have seen the northern white pine sell very cheaply.

Q. I mean in general, by and large.

A. In general, since they have been competitive in the eastern market, the white pine has brought the most money. I doubt whether it would bring the most out here.

Q. With treatment the sugar pine takes enamel just as well as anything else?

A. It does not.

Q. Do you know what I mean by treatment?

A. Yes.

Q. It takes an enamel treatment?

A. It covered the wood with shellac, or something else, I think the result thereafter would be the same.

Q. They have a treatment that removes the piny pitch pockets, don't they?

A. Not that I know of; they cover them—they don't try to remove them—they cover them with shellac or some other finish. Those are the small pitch pockets. The deep pitch pockets, you can't cover them; the pitch is always coming out.

Q. On the eastern market strobus is still being sold, the northern white pine?

A. Yes.

Q. You can buy it if you are willing to pay the price, can't you?

3035 A. Yes.

Q. Except for the extremely wide widths, I presume?

A. Widths and thicknesses.

Q. And that is still commanding a little higher price, isn't it, than the California white?

A. Yes, I think it is.

Q. Isn't the word "California white pine", that term, I should say, isn't that term one which has a tendency to help the California white pine to sell as white pine in the eastern markets?

Mr. MATTHEW. I object to that question because that is the whole question in issue. I have been sustained on that objection heretofore.

Mr. BURR. If the examiner please, he is asking the reverse of this very question.

Mr. MATTHEW. No.

Mr. BURR. He is constantly asking the tendency of change of names to confuse.

Mr. MATTHEW. I asked what the effect would be, not any tendency.

Examiner DE BRULER. Ask what the effect is.

By Mr. BURR:

Q. What is the effect on the market of the use of the word "white" in your trade term?

A. I think it has a tendency with the general trade to classify our wood with the other woods that have been known at the
3036 same time as white pine as to general characteristics. It is a direct reference to its color.

Examiner DE BRULER. I think Mr. Walker gave the same answer on direct examination.

Mr. MATTHEW. I didn't ask that question.

Examiner DE BRULER. Practically the same answer.

By Mr. BURR:

Q. Is the effect to confuse the buyer as to whether he is getting northern white pine or California white pine?

A. No; I think it tends to clarify in the buyer's mind what the wood is when we say it is California white pine.

Q. Well, isn't the effect of the use of the word California white pine sometimes to eliminate the word "California" and merely call it white pine?

A. Not intentionally; so far as I know we like to advertise the California feature.

Q. Do you not like to advertise that California white pine is genuine white pine?

A. No; not from the botanical standpoint; I don't think the lumber men care anything about the botanical classification. We are selling lumber, not the names by which the botanists classify wood.

Q. As a matter of fact, are you not using the term California white pine for the purpose of making the public believe that it is virtually the same thing as the old northern white pine?

3037 A. In its characteristics we claim it has the same characteristics, but it is not, as far as I know, that is, we have never advertised it as from the same tree as the eastern white pine.

Q. You do advertise it is equal, as a white pine, with the northern white pine, do you not?

A. I don't know whether we have ever made as sweeping a statement as that, as equal—we advertise it is better in somethings.

Q. You have a slogan "Producer of White Pine for Half a Century" haven't you?

A. I believe so, yes.

Q. And that slogan is being sent abroad in trade journals of national circulation, is it?

A. Yes.

Q. And you have been using that for how long a period?

A. I don't know, several years anyway; I don't know just how long.

Q. Mr. Walker, I will hand you a group of papers and ask you if these are portions of your advertising, sir.

(Here followed remarks off the record.)

A. (Witness examin'g advertisements.) Yes; those are our ads, as far as I know.

Mr. BURR. I ask that they be received in evidence and marked as "Commission's Exhibit No. 48," if the examiner please.

Examiner DE BRULER. Have you any objection, Mr. Matthew?

Mr. MATTHEW. Just a moment! There is no objection. I don't think this is proper cross-examination, but I think counsel
3038 would have a right to introduce them in any event.

Examiner DE BRULER. It will save time.

Mr. BURR. I note there are references to the exhibit number in the examiner's report and I beg that I may be given permission to remove those references in pen and to properly bind these exhibits.

May it appear of record that this exhibit consists of 5 pages.

Examiner DE BRULER. They will be received as Commission's exhibit no. 48.

(Whereupon the five advertisements referred to were received in evidence and marked "Commission's Exhibit No. 48.")

By Mr. BURR:

Q. Do you regard sugar pine as a true white pine?

A. Yes; I think it is white pine in its qualities, and I understand the botanists classify it as a white pine, too.

Q. Is the trade unable or is it able to tell the California white pine from the so-called genuine white pines by appearance?

A. I think so—by appearance—I don't know, not necessarily.

Q. In the clear grades, the California white pine is largely sap, isn't it, rather than heart in character?

A. The clear grade will run more to heart; yes.

Q. More to heart?

A. More to sap—excuse me.

Q. Did I understand you to say that year in and year out
3039 your cut has been about 20% or 25% sugar pine?

A. That would be my estimate.

Q. You are sure it will run that high, are you, as an average over a period of years?

A. I wouldn't say, I wouldn't be sure; my impression is it would run rather higher, but about that.

Q. The California white pine goes into the Middle West more than it does to the Atlantic coast?

A. We market more of all our lumber in the Middle West than we do on the Atlantic coast.

Q. As a matter of fact, doesn't the sugar pine go to the Atlantic coast more than the Middle West?

A. I don't think so.

Q. The northern white pine goes to the Atlantic Coast more than to the Middle West, does it not?

A. A lot of it goes direct to England, from the Canadian mills. I think the tendency would be that way; yes.

Q. Now, when Mr. Klein went to the Pacific coast, did he report also on the availability of Idaho white pine?

A. Yes.

Q. Did he regard Idaho white pine, sugar pine, and California white pine as woods that might appropriately be used in the Middle West and eastern points, did he?

A. Yes.

3040 Q. Has any manufacturer of sugar pine indicated to you that he had under consideration calling the sugar pine California white pine, if the ponderosa lumber was required not to be called "California white pine"?

A. I discussed it with several of the sugar-pine manufacturers, because as a sugar-pine manufacturer we were interested in the outcome of this suit, but I do not know that any have recommended that change.

Q. Did you discuss that change with anyone?

A. Yes.

Q. With whom?

A. Jim Tyson, James Tyson, I should say; Elmer Cox and Ray Danaher.

Q. Anybody else?

A. Burt Lakin, of McCloud.

Examiner DE BRULER. I think this has gone far enough along that line.

Mr. BURR. I would like to clear that matter up. I think it is rather important.

By Mr. BURR:

Q. Did any of them indicate that they had any desire to call sugar pine California white pine?

A. Only to the extent of saying that it does them an injury by calling ours white pine, when theirs was the only California wood that was a true white pine.

Q. Stump rot is a disease of old trees, is it not?

A. Not necessarily; no.

3041 Q. Is your stand of sugar pine a stand of mature trees, practically exclusively?

A. There is no such thing as a mature tree.

Q. I beg your pardon.

A. As I understand, a tree will grow forever unless disease of some kind gets into it to destroy the wood.

Q. But trees that are old are more susceptible to those diseases, are they not?

A. They have been exposed longer and a larger percentage of disease has got into them.

Q. Yes.

A. But I see many small and young trees apparently that are very defective. They are just like a tooth—when the covering is broken the interior decays.

Q. Didn't you ever change your logging operations so as to avail yourself of an old stand that was beginning to decay on account of age?

A. No; I never knew an old stand to decay on account of age.

Q. I mean on account of susceptibility due to age, and being susceptible to various influences of decay and disease on account of age.

A. I have known of timber to be cut because it was defective, or because it was burned, or blown down, but not on account of age. I understand that is the scientific truth, as well as our general experience.

Q. What is that?

3042 A. That a tree does not mature or become of old age.

Examiner DE BRULER. I think that has gone far enough. We are taking up time for nothing, it seems to me.

Mr. BURR. I think that is all.

Redirect examination by Mr. MATTHEW:

Q. Mr. Walker, you referred a moment ago to your advertising, some copies of which are in evidence as Commission's exhibit no. 48. May I ask you whether it is a fact that your company has been producing white pine for half a century or thereabouts?

A. Not under its corporate name for the full fifty years.

Q. But that company, or its immediate predecessors, for about fifty years?

A. Much more than fifty years.

Q. I think you stated you produced sugar pine in California from the very commencement of your operations here?

A. Yes.

Q. And these advertisements which are presented to you, for the most part, apparently cover both the California white pine and the sugar pine?

A. Yes; and the other woods that we manufacture.

Q. Then whether this alignment of lumber nomenclature has got to follow botanical lines, or some other criterion, you are in fact producing white pine and have been for very many years?

3043 A. Yes.

Q. You push the sugar pine and California white pine alike in your advertising, do you not?

A. We push both of them. I wouldn't say just alike—I don't know which we advertise the most.

Q. I didn't mean to suggest one more than the other, but you are actively interested in advertising sugar pine and the California white pine?

A. Yes.

Examiner DE BRULER. I understand his company cuts both sugar pine and California white pine.

Mr. MATTHEW. It does and certainly there is nothing inappropriate in that.

Examiner DE BRULER. I was just asking if that was a fact. I understood him to say they own and cut both. Is that correct?

Mr. MATTHEW. Yes; there is no question about it. I want to make that point clear in the record.

By Mr. MATTHEW:

Q. When you bill California white pine and sugar pine, do you bill them separately and under distinctive names?

A. Bill them?

Q. Yes.

A. On all but the common grades; we mix some of the common grades.

Q. Except where you have one of common grades, do you bill them separately?

3044 A. Yes, sir; as far as I know.

Q. Under what name do you bill the sugar pine?

A. Sugar pine.

Q. And under what name do you bill the other wood?

A. California white pine—C.W.P.—we usually use the initials.

Mr. MATTHEW. That is all.

Recross-examination by Mr. BURR:

Q. When you state that your advertising material, as on page 2 of Commission's exhibit no. 48, "California white pine", and then after a few descriptive lines say "The physical properties that have made white pine the highest standard of quality for generations are found in Paul Bunyan's Plywood Panels", do you intend there to refer to California white pine as distinguished from sugar pine or northern?

A. We do not; because we put the woods into the panels indiscriminately.

Q. You don't say anything in the context at all about sugar pine; you speak of California white pine and then you speak of white pine, and its long reputation, is that true?

A. I didn't prepare this; this is one of the details, like some that Fred Weyerhaeuser mentioned yesterday, that I am not familiar with. I will have to look it over.

3045 Examiner DE BRULER. That is an exhibit that is in the record and that speaks for itself. I think that has been gone into far enough, Mr. Burr.

Mr. BURR. I would like an answer to just that one question and I will not pursue it further.

A. This is a direct application to what we call our Paul Bunyan's plywood made in our veneer plant, in which we put in both the California white and the sugar pine material.

By Mr. BURR:

Q. In each door?

A. Not necessarily—as it happens to run. We use them indiscriminately.

Q. The context, however, ties up California white pine with the white pine produced for a long period, does it not, in the ad?

A. No; it ties it up with the characteristics. We have always maintained it has the same characteristics we do here.

Q. You endeavor to tie up, for the purposes of advertising, in the public mind your California white pine with the white pine of generations, do you not?

A. Not with the characteristics of the two woods. We try and advertise all we can that they are very similar.

Examiner DE BRULER. I think the exhibit speaks for itself. I think you have gone far enough.

Mr. MATTHEW. The examiner understands, I am sure, and counsel understands that considered with respect to quality and
3046 use we think our lumber is properly characterized as California white pine.

Examiner DE BRULER. Sure, that is your position.

Mr. BURR. That is all.

Examiner DE BRULER. That is all.

(Witness excused.)

Examiner DE BRULER. We will take a five-minute recess.

(Whereupon a five-minute recess was taken.)

Examiner DE BRULER. Are you ready to proceed again, gentlemen?

Mr. MATTHEW. I will call Mr. Spaulding.

JOHN D. SPAULDING was thereupon called as a witness and, after having been first duly sworn, testified as follows:

Direct examination by Mr. MATTHEW:

Q. Please state your name and place of residence for the record.

A. John D. Spaulding, Diamond Springs, California.

Q. What is your business or occupation?

A. Lumber.

Q. With what company are you identified?

A. California Door Company.

Q. What is the California Door Company?

3047 A. They have been manufacturers of sugar pine and white pine for thirty years.

Q. What is your position with that company?

A. Sales manager.

Q. What particular part of their product have you charge?

A. The moving of all lumber, except the box lumber, which is converted to the box shook and sold through a sales organization in California.

Q. You are not in charge of the sales of doors?

A. Of the box.

Q. You are not in charge of the sales of doors?

A. No.

Q. You are in charge of sales of lumber?

A. Lumber.

Q. Where do you have the principal markets?

A. All over the world.

Q. How many years have you been the sales manager of that company?

A. About two years.

Q. What has been your prior experience in the California lumber industry?

A. I had charge of the California Sugar and White Pine Company's sales for eight years.

Q. During what period?

A. From 1918 to 1926, inclusive.

Q. Were you selling sugar and white pine both?

3048 A. I was.

Q. For that company?

A. Yes.

Q. Briefly, what was your prior experience in the lumber industry, Mr. Spaulding, before you came to California?

A. I started in at 16 in Wisconsin, and for five years I was learning the grades of Wisconsin white pine and Norway pine, and the hardwoods that grow in the State of Wisconsin, shipping, and then for ten years I was operating sawmills. From there I went to buying for the largest factory in the United States, in the Middle West, and I bought for them for ten years all species of softwood and hardwood.

Q. I think you stated that you were the vice president and general manager of the California Sugar and White Pine Company?

A. Yes.

Q. And had general charge of their sales?

A. I did.

Q. Did you personally visit the trade in the Middle West and Eastern States?

A. All over the United States.

Q. Do you visit the trade at the present time in your capacity as sales manager of the California Door Company?

A. I do, from Canada to the Gulf, and even the West Indies.

Q. Will you state, please, the approximate proportion of your cut represented by the California white pine and sugar pine,

3049 respectively?

A. One year we cut more of one species and the next year more of the other; it averages about 50-50.

Q. Then, you are equally interested in the marketing of sugar pine and California white pine?

A. Equally interested.

Q. Do you find that the marketing of your sugar pine lumber is hampered, or is restricted, in any way, because of the fact that the term "California white pine" is the established commercial name for lumber yielded by the Pinus poderosa tree?

A. No.

Q. When you were vice president and general manager of the Calfornia Sugar and White Pine Company, did you find that the

marketing of sugar-pine lumber was hampered in any respect by virtue of that circumstance?

A. No.

Q. Did you encounter any sales resistance to sugar pine because of the existence of that term "California white pine"?

A. No.

Q. You stated that you are in contact with the trade in the East by frequent visits?

A. Yes.

Q. Are the terms "California white pine" and "sugar pine" well understood in the trade?

A. They are.

3050 Q. Is there any confusion between the two lumbers in the trade at the present time?

A. Not that I know of.

Q. Have you an export trade, Mr. Spaulding?

A. Yes.

Q. In what countries, briefly?

A. Why we ship to Scotland, England, Ireland, some to Switzerland, Africa, South America, West Indies, and the Hawaiian Islands.

Q. Under what commercial names do you offer these two lumbers to your export trade?

A. Sugar pine and California white pine.

Q. If the term "California white pine" were superseded by some other term, would there be any confusion or difficulty in the export trade for your lumber?

A. There would be because we are not in personal contact with those buyers and we would have to do an awful lot of explaining for a long period of time to cause them to understand what we are talking about in species.

Mr. MATTHEW. You may cross-examine.

Cross-examination by Mr. BURR:

Q. You say you have known of no confusion of these names. Have you any information with regard to a naval ammunition depot over at Hawthorn, Nevada, recently?

3051 A. Hawthorn, Nevada?

Q. Yes.

A. Yes, I have.

Q. Don't you know something about that?

A. Yes, I do.

Q. Wasn't there an offer there of California white pine for genuine white pine and a refusal?

A. There was not.

Q. There wasn't?

A. No, sir.

Q. State what happened, if you know.

A. A man went into the office and wanted a price on some pine. He did not state sugar pine. He ambiguously talked pine.

Q. As a matter of fact, wasn't that a Government proposal that asked for it?

A. Yes, but the Government proposal was not submitted to the California Door Company. May I explain?

Q. Yes.

A. You talk to the average architect in the United States and he doesn't know anything about anything that is wood, technically.

Q. Does he practically.

Mr. MATTHEWS. Just answer the question.

Examiner DE BRULER. Let him answer the question.

A. He does not know practically. Therefore you have to catechize him to find out what he does want.

3052 By Mr. BURR:

Q. I don't think that furnishes an explanation of why it was that order, if it was true, that California pine was offered on a Government proposal calling for genuine white pine.

A. It was not offered as genuine white pine to the Government. It was offered to a contractor and it was not to the United States Government at all. We had no contract with the Government.

Q. Well, how did the Mittry people come into that?

A. They took the contract with the Government.

Q. And were they or were they not ordering California white pine on a proposal for genuine white pine?

A. I don't know anything about what their contract was with the Government.

Mr. MATTHEW. I have no objection to asking anything of this witness that he has knowledge of. If I understand your questions and his answers, this is not related to the California Door Company.

Mr. BURR. He testified he was familiar with it.

The WITNESS. I have given you what I know about it. I know our company's side of it.

By Mr. BURR:

Q. Don't you know, as a matter of fact, that the Government declined to accept some California white pine which was offered on a proposal for genuine white pine?

A. I understood they refused some finish product because it
3053 was not sugar pine.

Q. And was it California white pine?

A. California white pine.

Q. How long have you been in the habit of going east on these trips?

A. Since 1918.

Q. And you say you go clear into Canada and to the southern part of this country?

A. I have.

Q. At various times?

A. Yes.

Q. Whom do you call upon under those circumstances?

A. I call on the industrials, which means the steel people in all their varied lines, the electrical people, the sash-and-door people, the planing mills, the wholesalers, and the distributors.

Q. What do you mean by the distributors, the retailers?

A. Well, not exactly a retailer. They sell in carload lots.

Q. You mean jobbers of the various types?

A. Yes.

Q. How much of your time do you spend in the East?

A. It depends entirely on conditions; sometimes I am gone sixty days and again I will be gone longer than that. I have made two trips of sixty days each last year.

Q. And those classes that you wait upon, you say there is no confusion between the white pine that you encounter?

3054 A. No; because we have sold them for years—the people I call on we have sold for years.

Q. Isn't it true, Mr. Spaulding, that for a number of years you were strong advocates for the change of the name California white pine to something else?

A. No, sir.

Mr. MATTHEW. I object to the question.

Mr. BURR. I move it be stricken if counsel objects.

Mr. MATTHEW. It may stand as it is.

Mr. BURR. I will unite in the motion to strike.

Examiner DE BRULER. It may be stricken, if you are agreed.

The WITNESS. I will tell you why if you want to know.

Examiner DE BRULER. No use going into that matter—it amounts to nothing.

Mr. BURR. That is all.

(Witness excused.)

Examiner DE BRULER. Call the next witness, please.

Mr. WHEAT. Call Mr. Dean.

W. B. DEAN, was thereupon called as a witness, and having been first duly sworn, testified as follows:

3055 Direct examination by Mr. WHEAT:

Q. Will you state your full name and place of residence, please?

A. W. B. Dean, Chico, California.

Q. And in what business are you at the present time?

A. Lumber.

Q. And will you state the company with which you are associated and your position with that company?

A. General manager of the lumber department of the Diamond Match Company.

Q. How long have you held that position?

A. Since about 1907.

Q. The Diamond Match Company is one of the respondents in these proceedings?

A. It is.

Q. Were you in the lumber business prior to the year 1907?

A. I was.

Q. Will you please briefly state your general experience?

A. Briefly, I started in as office boy for the Sierra Lumber Company in the same town, Chico, California, in the year 1907, going from office boy to manager of that concern.

Q. By the way, then did I misunderstand you? I thought you said you had been general manager of that concern since 1907. Since when have you been general manager?

3056 A. Since about 1915, general manager of the Diamond Match Company.

Q. Just what are your duties in that position?

A. Manufacturing and disposing of their lumber products.

Q. What products do they produce?

A. Sugar and white pine, fir, cedar.

Q. This is in what part of California, sir?

A. In the counties of Butte, Plumas, Tehama, and Shasta.

Q. Where is your mill located?

A. Sterling City, California.

Q. That is near Chico?

A. Yes.

Q. How long have you had personal knowledge, or been personally familiar, with the term California white pine?

A. It is rather difficult to be exact, but I should say since about 1904 or 1905.

Q. And how long have you been familiar with the term sugar pine?

A. Ever since I have been in the lumber business.

Q. Have you marketed both of those continuously since that time?

A. Yes.

Q. About what proportion of your annual cut is sugar pine?

A. I should say somewhere between 20% and 25%.

Q. And about what proportion is California white pine?

A. About 30%.

Q. And the rest is mixed woods?

A. Fir and mixed woods.

3057 Q. Where do you market your California white pine and sugar pine, in general?

A. The upper grades go to the Missouri and Mississippi River Valley points and in California.

Q. Do you personally control the marketing of this lumber?

A. Yes.

Q. And do you market it yourself, or through some agency organization?

A. Outside of the coast, we market through an agency in Chicago.

Q. What is that agency?

A. Louis Wuichet.

Q. I will ask you whether or not you have encountered what is known as sales resistance against your sugar pine by reason of the fact that the word "white" is included in the term California white pine?

A. No.

Q. Have you ever been hampered in the sale of your sugar pine because of the use of the word "white" in the term California white pine?

A. No.

Q. Have you ever heard of sugar pine being marketed as California white pine, or under any other term containing the word "white"?

A. No.

Q. Are you equally interested in pushing the sales of both your sugar pine and your California white pine?

3058 A. We are.

Q. Have you ever had any complaints come to you on the ground that the word "white" is not a proper word in the name California white pine?

A. No.

Q. Do you know of any confusion which has been caused by the use of the word "white"?

A. None.

Q. Have you ever had any complaints against your California white pine on the ground of durability?

A. No.

Q. I will ask you whether there is any demand from the trade with which you deal for a change in the name from California white pine to some other name?

A. Never have heard of any comments.

Q. To whom do you bill your lumber; just how do you sell it?

A. We sell it, as I mentioned a while ago, through Wuichet of Chicago, for shop and better.

Q. And how do you invoice the lumber?

A. We invoice it as sugar pine or California white pine to Wuichet.

Q. And he acts as your agent, as a sales agent; is that so?

A. Yes—not our direct agent—we sell to him direct and he resells.

Q. Has Mr. Wuichet ever complained to you——

3059 Mr. BURR (interrupting). Wait a minute! I object to that.

Mr. WHEAT. If he is the man to whom he sells, I can ask him whether he ever complained.

Examiner DE BRULER. Objection overruled.

By Mr. WHEAT:

Q. Has Mr. Wuichet, to whom you sell, ever complained to you regarding the use of the word "white" in the name California white pine?

A. No; he never discussed that.

Q. Has he ever complained to you regarding durability with reference to your wood?

A. No.

Q. Are you familiar with southern yellow pine, Mr. Dean?

A. Slightly.

Q. To a very limited extent?

A. Very limited extent.

Q. Well, I will ask you whether you are familiar with northern white pine?

A. The same answer.

Q. I will ask you whether or not you know of any ancient structures in the part of California where your operations are conducted, that are built of Pinus ponderosa?

A. Well, there are many very old buildings in the various towns in the Sacramento Valley, but as to whether they are one or the
3060 other—that is, sugar or white pine—I couldn't say.

Q. Can you tell by your inspection of the outside of the buildings?

A. No; because they are painted.

Q. Even if they were not painted, and were ancient structures, could you tell which wood was used in their construction after many years?

A. Those familiar with the characteristics of the two woods might be able to tell.

Q. Do you think you could?

A. I think I could.

Q. I will ask you whether you purchase any California white-pine lumber in addition to producing it yourself?

A. At times during the war period we bought box lumber and a little of the small mill cuts.

Q. And have you ever bought any California white-pine lumber from the Klamath Falls region?

A. During the war time; yes.

Q. Does your company, under your direction, operate retail yards?

A. Yes.

Q. Where?

A. In the Sacramento and San Joaquin Valley.

Q. How many yards do you have?

A. Forty-seven.

Q. And do you know whether California white pine from
3061 the Klamath Basin, in Oregon, is marketed in those areas?

A. Not through our yards.

Q. Not through your yards, but it is marketed in competition with your wood?

A. I think it is.

Q. Do you believe there would be any confusion if the name California white pine, from the Klamath Basin, were to be marketed in an area in which you operate retail yards, under the term "Oregon pine" or "Oregon yellow pine"?

A. I think it would be.

Mr. BURR. I object to that on the usual grounds.

Examiner DE BRULER. He can answer, give his opinion.

A. (Continued.) I think it would be very confusing.

By Mr. WHEAT:

Q. Why?

A. Because once a trade name is established and people know the article by its name, they would have to be reeducated at expense and trouble.

Q. Would there be—had you finished?

A. To determine what kind of material it was.

Q. And if a purchaser asked for Oregon pine would there be any confusion if the Pinus ponderosa from the Klamath Basin were called by that name?

A. Why the architects in the various cities, particularly the larger cities like San Francisco and Sacramento, have been calling

3062 Oregon pine, which is really a douglas fir.

Q. That is a general practice?

A. That would conflict with calling white pine in Oregon an Oregon pine.

Mr. BURR. I move to strike that reference to Douglas fir.

Examiner DE BRULER. That is out of the record, now, Douglas fir.

Mr. BURR. Did you grant the motion?

Examiner DE BRULER. It may be stricken.

By Mr. WHEAT:

Q. I will ask, then, whether or not there is any other wood—you don't need to state what it is—is there any other wood marketed in California at the present time and known as Oregon pine?

Mr. BURR. I object.

Examiner DE BRULER. Ojection sustained.

Mr. WHEAT. That is exactly the question that was allowed in several times, and I think the record is perfectly clear on that; that is, if we stay within the pines, and I am asking him whether or not, if we should change the name to Oregon pine, if that would make a confusion with any other wood now marketed as Oregon pine.

Mr. BURR. Any other pine now marketed——

Mr. WHEAT (interrupting). We have been through this so——

Mr. BURR (interrupting). You are trying to sneak it in. Put the word "pine" in if you are sincere.

3063 Mr. WHEAT. Stay away from the word "sincere", please.

By Mr. WHEAT:

Q. I will ask you, for the record, whether or not there is any lumber marketed in California as Oregon pine?

A. Yes.

Mr. BURR. Wait a minute!

By Mr. WHEAT:

Q. And I will now ask you whether or not it is pine?

Mr. BURR. Wait a minute! I object.
Examiner DE BRULER. Objection sustained.
Mr. WHEAT. Exception.
Examiner DE BRULER. Exception allowed.
Mr. WHEAT. You may cross-examine.

Cross-examination by Mr. BURR:

Q. Do I understand that Louis Wuichet takes your entire product?
A. Of the uppers; yes.
Q. What do you market through your lumber yards?
A. We market all kinds of building materials.
Q. I don't understand that very well.
A. I might qualify that by saying that Wuichet takes all the uppers in shop and better of the factory grades he handles.
Q. And none of those go through your retail stores; is that true?
3064 A. A small percentage of our uppers go through retail stores.
Q. Then, Wuichet doesn't take them all?
A. No.
Q. Your sales to Wuichet are made outright and no brokerage arrangement?
A. He gets a brokerage, but he resells, but we don't know to whom.
Q. He is not selling as your agent; he buys outright?
A. Yes.
Q. Then, you don't come in contact with his trade at all?
A. We do not.
Q. When you are selling both sugar and white pine, so-called, if a buyer were desirous of having something that was known as white pine you would be able immediately to sell him the California white pine, would you not.
A. I presume we would.
Q. And you make as much margin off the one as you do the other, of profit?
A. That varies in al lines; no one could answer that.
Q. As far as you know, there is no greater margin of profit made on the one than on the other?
A. It is comparable.
Mr. BURR. That is all.
Examiner DE BRULER. The witness is excused.
(Witness excused.)
3065 Mr. WHEAT. Call Mr. Baker.

R. D. BAKER was thereupon called as a witness, and, after having been first duly sworn, testified as follows:

Direct examination by Mr. WHEAT:

Q. Mr. Baker, will you state your full name and place of residence?
A. R. D. Baker, San Francisco.

Q. And in what business are you engaged?
A. Lumber.
Q. With what company?
A. Lassen Lumber and Box Company.
Q. Where is that company located?
A. Susanville, California.
Q. And what is your position?
A. President.
Q. Have you been connected with that company for some time?
A. Since the organization, in 1918.
Q. And prior to that, were you in the lumber business?
A. Yes.
Q. Will you state briefly what your lumber experience has been?
A. I started in Saginaw, Michigan, in 1890, with a manufacturing firm of lumber; later, I went to Toledo, Ohio, for two years as manager of a distributing yard for the lumber produced by the same people from the Duluth, Minnesota, pine, and Canada.
3066 Two years later I went to Pittsburgh, opened a sales office, to sell the lumber. I was with that firm until '97 and I organized a wholesale concern and did a wholesale lumber business in Pittsburgh for twenty-five years until 1918, coming to California.
Q. And in your experience in selling lumber in Pittsburgh, what varieties of pine did you market?
A. Well, yellow pine, white pine largely, Norway pine.
Q. And how long have you known the term, or been familiar with the term, "California white pine"?
A. Since 1897.
Q. How did you become familiar with it, if you recall?
A. We bought it and sold it to the retail and planing mill trade in the East from that time.
Q. And did you ever travel in the West during that period to examine this lumber?
A. Not until 1904; I made my first trip to the coast in 1904.
Q. For what purpose did you make the trip?
A. To get first-hand information as to the product manufactured out here, Idaho pine, and California pine, and sugar pine, and redwood.
Q. And did you at that time introduce those woods into your Pittsburgh trade?
A. We introduced them prior to that.
Q. And do I understand that you sold both Idaho white pine and California white pine?
3067 A. Yes.
Q. Over a period of years, did you?
A. Yes.
Q. Extending up to what year?
A. Up to 1918. I think the first shipment of Idaho pine was in 1904.
Q. Did you sell both Idaho white pine and California white pine after that period?

A. Until 1918, when I came to California. We didn't sell Idaho after that time.

Q. At any time did you find that you encountered sales resistence, or were hampered in any way in the sale of your Idaho white pine because of the use of the term "white" in the trade name "California white pine"?

A. No.

Q. Did you also sell sugar pine?

A. Yes.

Q. During what period, sir?

A. From 1904, more or less, until 1918, until I came out here.

Q. Did you during any of that period find that you encountered sales resistence, or were hampered in any way in the sale of sugar pine by reason of the use of the name "white" in the trade term "California white pine"?

A. No.

Q. You were familiar, were you not, have you been familiar
3068 for some period of years with the eastern or northern white pine?

A. Yes.

Q. Did you sell that in the Pittsburgh market?

A. Yes.

Q. During the whole period you have mentioned?

A. No; I sold it before I went to Pittsburgh; I sold it from Saginaw and from Toledo.

Q. And after that did you continue to sell it?

A. We did; and we also sold it more or less up to the time we left Pittsburgh and closed our office there in 1918.

Q. Did you at any time find that you encountered sales resistence, or were hampered in any way in the sale of northern white pine by reason of the use of the term "white" in the name "California white pine"?

A. No.

Q. As a matter of fact, Mr. Baker, did the northern white pine and the California white pine come into direct competition in the Pittsburgh area during the period when you were engaged in business there?

A. Yes.

Q. And would you explain what that was?

A. Well, the northern white pine was well known in that market. Pennsylvania produced white pine, and some in New York State.

Q. Did it still produce it when you were in business in Pennsylvania?

3069 A. Yes.

Q. In quantity?

A. Yes. We had to follow the timber. That is the reason we came West for lumber later. The pine was getting more scarce in the East.

Q. Explain what you mean by "following the timber"?

Mr. BURR. I don't think it is responsive.

Mr. WHEAT. I think it is not. I will reframe my question.

By Mr. WHEAT:

Q. I will ask you whether or not you found at any time that northern or eastern white pine was becoming scarcer in the market in Pittsburgh?

A. Yes.

Q. Will you explain that in some detail, giving some dates?

A. Well, my recollection is that the decline in the northern pine was very noticeable, began to be very noticeable, about 1905, and being in the wholesale business and trying to make a little profit on lumber, we reached out for something else that could be used and would satisfy the trade as pine, and for that reason we came West. We first went West. We went into Minnesota—in Wisconsin we didn't get strictly white pine in the common grades. It was white and Norway mixed. In Minnesota it was a good deal the same way.

We finally got into Idaho and handled more or less Idaho pine.

3070 Q. You mean the wood commonly marketed as Idaho white pine?

A. Yes. And then we got into California for the reason, particularly for the reason, that we could not get widths and thicknesses in the other woods that our trade required in the northern-pine product, and we introduced in Pittsburgh, and in the east, I believe, we were the shippers of the first car of Idaho white pine. Later we introduced California common grades also, from California, called California white pine.

Q. When you were in Pittsburgh, just what section of the east did you market your lumber in?

A. Ohio, and all over the State of Pennsylvania, and New York very largely, some in Maryland, New Jersey, and some in New England.

Q. Did you find that the California white pine, which you purchased from California, satisfactorily made the uses for which you purchased this lumber?

A. Yes.

Q. And what, in general, were these uses?

A. Our first purchase of California white pine was wide boards, shelving boards. Later it was shop lumber, factory lumber.

Q. And for what purposes was the factory lumber used?

A. For finish and shelving and cornice lumber.

Q. I will ask you whether or not those uses are also uses to which the northern white pine was applied?

A. Yes.

3071 Q. Could you, after around 1905, obtain northern white pine in widths which would meet the demands of your trade?

A. Not entirely.

Q. And will you explain that?

A. We required quite a considerable of wide boards. What I mean by that is boards wider than 12 inches; in fact, 14, 16, 18, and 20 inches was in strong demand in our territory. We had to come west to get those boards and we found them in California. The wide boards were the first California pine that we shipped, after my trip out here in 1904. Previously, we had not bought common from California; we bought sugar pine and California white pine shop lumber, factory lumber.

Q. Have you ever had any experience with the deterioration of Pinus ponderosa lumber in the Pittsburgh area through rotting?

A. No.

Q. Have you ever had any experience in the deterioration of any other lumber through rotting?

A. Well, my own personal experience has been quite limited. I built two houses in Pittsburgh, and I had a retail yard in Pittsburgh select the pine for those houses. The exterior was all pine. They were brick houses, but the cornice lumber and the porch flooring and the pilasters were all pine. I had the stock selected from northern pine.

Q. You mean northern white pine?

A. Yes. I think the pine all come from Minnesota. As for
3072 deterioration, in about two years I had to replace a good portion of the porch flooring and the bases under the pilasters on the porch.

Q. Had they rotted?

A. They had.

Q. What did you replace them with?

A. Pine again.

Q. Has your general experience with Pinus ponderosa, as regards is durability, been satisfactory or otherwise?

A. Satisfactory. We have had no complaints.

Q. Is California white pine, in general, what would be termed in the trade a shop-type lumber?

A. A portion of it.

Q. Will you explain that?

A. When the portion is shop?

Q. Explain why that is true.

A. It is wider, it produces—that is, it is tree that produces wide lumber and thick lumber and it is an excellent shop lumber for sash and doors.

Q. By shop lumber, what do you mean?

A. Factory lumber for general purposes in a factory, and sash and doors are the principal things the shop grades are used for.

Q. What part of the tree does this lumber come from?

A. It comes more or less from all the tree, more particularly from the larger logs, and first and second and third log of the
3073 tree, before you get into the very knotty common type in the upper part of the tree, and the limbs are very knotty, which does not produce a satisfactory shop grade.

Q. Then from that portion of the trees in these first and second and third logs does the shop lumber come?

A. I don't understand the question.

Q. From what portion of the tree does the shop lumber come from in these lower logs; do they come from the outside or inside?

A. It is largely from the heart; there is some shop on the outside of it, some sap shop.

Q. What is it that makes the shop lumber?

A. Large coarse knots with clear cuts between; it is a cutting type of lumber.

Q. Mr. Baker, did I understand you to say that you had experience in your Pittsburgh operations in the safe of southern yellow pine?

A. Yes, sir.

Q. Did that include both short leaf and long leaf?

A. Yes, sir.

Q. I will ask you whether or not the wood of Pinus ponderosa is adapted for the same, or for similar uses, to that of the southern yellow pines?

A. To some extent.

Q. Will you explain?

A. The common boards from Pinus ponderosa and the
3074 common boards from the southern pines are very much the same and there is some factory lumber produced from the yellow pine.

Q. Is that a larger percentage of the cut?

A. No; it is not. The yellow pine, I would say, is a flooring lumber. They have a great deal of flooring from the South—that is, tongue-and-groove flooring—and some finish, but not a large percentage. It is really a structural timber in the main.

Q. Does the California white pine in the eastern market come into more direct competition with the so-called "genuine white pines", or with the southern yellow pines?

A. The white pines.

Q. Are you in direct contact with the sale of California white pine at the present time?

A. Yes.

Q. And how long have you been in contact with that?

A. Since we have been manufacturing it.

Q. Just——

A. (Interrupting.) And prior to that in the wholesale business. That was part of the duties—selling it.

Q. What portion of the country do you market your California white-pine lumber in at the present time?

A. In the Middle West and Eastern States and some in the Southern States. We ship some to Texas and Oklahoma.

Q. What grades, largely, go to the Middle West and East?

A. Factory lumber goes to the Middle West and the upper
3075 grades go to the eastern trade.

Q. How do you invoice your California white pine?
A. California white pine.
Q. Have you done so continuously?
A. Yes, sir.
Q. Ever since you began operation in California?
A. Yes, sir.
Q. Have you ever operated anywhere else except at Susanville?
A. No, sir.
Q. About what is your cut there?
A. About 50 million feet per year.
Q. Are the terms "California white pine" and "sugar pine", respectively, well known to the lumber trade in this country, so far as you have had contact with it?
A. Yes.
Q. Have you ever heard of any confusion between those two names?
A. No.
Q. The distinction between these two woods is well known—I will ask you whether it is well known?
A. Yes; it is.
Q. Have you ever heard of sugar pine being marketed as California white pine, or under any term including the word "white"?
A. No.
Q. Have you ever received any complaints regarding the use of the term "white" in the name California white pine?
3076 A. No.
Q. In your experience in marketing these woods in the East did you encounter any confusion in the trade because of the use of the name California white pine?
A. None after we got it introduced. We introduced it and had to explain what it was.
Q. That was about in what period?
A. 1897; that is, starting, but you are speaking now——
Q. (Interrupting.) Your own experience?
A. From 1897 on.
Q. Did you find that the trade with which you dealt was interested in the botany of the woods which they were purchasing?
A. No.
Q. What were they interested in?
A. The lumber.
Q. And what particular were they interested in the lumber?
A. They were interested in lumber that was suitable for their use.
Q. And would you say that California white pine enters the lumber market for the uses to which it is primarily adapted?
A. I think so, to a great extent.
Q. Can you think of any other name which would more appropriately describe this Pinus ponderosa lumber from California, and its properties and qualities, than the term "California white pine"?
A. No.
3077 Mr. WHEAT. I think that is all.

Cross-examination by Mr. BURR:

Q. You say you had some confusion at first until after you explained what these various lumbers were, is that what you said?

A. I don't know that I would say that; I mean the confusion; we had to explain what we were offering, tell a man what it was, and what we thought it would do, and how it would act, and those things.

Q. That was when you were introducing the western woods, is that true?

A. Yes, sir. Every new wood we have to do that very thing.

Q. Now, in your experience in the East, at Pittsburgh particularly, I think you testified that you had been in the habit of selling large quantities of northern white pine from Pennsylvania and other points, is that true?

A. We did.

Q. And they were in the habit of asking for that as white pine, were they not?

A. Oh, yes.

Q. When you offered them Idaho white pine as an alternative to their northern white pine, didn't that word "white" in the term Idaho white pine help to sell it?

A. Possibly so—we were selling white pine.

3078 Q. And didn't the word "white" in connection with the trade term California white pine have a similar effect in helping you?

A. Possibly so.

Q. You don't regard California white pine as a genuine white pine, do you?

A. No; for the reason that we are told that it isn't.

Q. You don't think it has quite as good characteristics as the northern white pine and Idaho white pine, barring the widths and thicknesses?

A. In some respects we think it is better.

Q. In what respects do you think it is better?

A. It is a sounder timber.

Q. What do you mean by sounder?

A. Just what it says—sounder.

Q. Free from knots or rot?

A. It has, perhaps, as many knots, but it doesn't have the rot, doesn't have the shake. The northern white pine has rot and shake. It is a sounder lumber.

Q. You always got a better price for the genuine white pine, didn't you?

A. I couldn't say that we did for the reason——

Q. (Interrupting.) That was the rule, wasn't it?

A. I think generally it has been a little higher in price.

Q. And the Idaho too, isn't that true?

A. Not always.

3079 Q. As a rule, now?

A. I would say so, possibly.

Q. And the sugar pine is higher than California white, isn't it?
A. I believe so.
Q. Yes.
A. It has been—it isn't today very much.
Q. Well, that is the general rule of the market that sugar pine is higher, is it not?
A. I think so.
Q. The trade regards those as worth more, or they wouldn't pay more, isn't that true?
A. I suppose they pay more because they have to pay more.
Q. They want to get that wood in preference to California white pine and they pay more?
A. If they want it I suppose they would have to pay more to get it.
Q. And there are those that want it badly enough to pay more for it?
A. I suppose so.
Q. Enough so that the market price is higher?
A. Yes.
Q. Don't you think they are right in paying more for the genuine white pine?
A. No; I do not.
Q. You think they are foolish in the head, do you?
3080 A. I do, and I tried to make it clear, and I have convinced some that they were wrong.
Q. And you are selling California white pine to some of these purchasers that you have convinced are wrong in buying and paying more for the other varieties?
A. Yes.
Q. You have never been in the retail business, have you?
A. No, sir.
Q. And your sales as a wholesaler there in Pittsburgh were merely to the retail trade, were they?
A. Largely planing mills, retailers, and some to the manufacturing trade, industrial.
Q. I think you testified there wasn't any sales resistance against Idaho or sugar pine, or northern white pine as the result of the use of the word "white". Now let me ask you this: When a purchaser came in and asked for white pine, and you were able to sell California white pine better, as I think you testified, because it had the word "white" in it, doesn't that as a matter of fact form an outlet for the California white pine that otherwise wouldn't exist?
A. My experience in selling California white pine——
Q. (Interrupting.) Can't you say yes or no and explain afterwards?
A. I don't understand the question.
Mr. BURR. Will you read the question, Mr. Reporter?
3081 (Whereupon the question referred to was read by the reporter.)

A. When a man asks us for white pine we say, "We will quote you on California white pine". That is the only way we quote. We don't quote on white pine. We explain we are quoting on California white pine. We get inquiries for white pine, but we quote California white pine. We say, "We have your inquiry of such and such a date. Our product is California white pine. We are quoting you on that." If we don't get the order, why we don't get it. If they don't want that we don't get the order—they don't order.

Q. I am referring to your experience in Pittsburgh, and I think you testified that there were buyers who asked for white pine and that, in fact, that the word "white" was in the term California white pine, enabled you at that time to sell California white pine better than if the word "white" was not in there. Doesn't that then constitute a sales resistance against the genuine white pine?

A. I don't think so.

Q. You wouldn't call that as being within your definition of what a sales resistance would be?

A. No.

Q. That, however, would form an outlet for the California white pine that would not exist but for the word "white" in the trade term, isn't that true?

3082 A. Well, it might have some influence on some buyer. If you talked "white" to him it might have some influence.

Q. I think you said that when you were in Pittsburgh you were naturally after a profit. The northern white pine went up in price, is that true?

A. It was up and down, like all the other woods are up and down. It wasn't always high.

Q. It was always higher than the California white?

A. Not the common grades. If you will permit me to explain perhaps I can answer the question another way. We sold, or tried to sell, the lumber that would pay us best in the wholesale business, whether western pine or northern pine—the one that would pay us the best. If we could sell one for less than the other, and give the trade something that was right, that is the stock we talked to him about.

Q. In other words, you talked price primarily.

A. We talked price after knowing what the man required, and we would naturally try to sell stock that paid us the best to handle, but we aimed to give him what he needed.

Q. You testified that Pennsylvania white pine became scarce, and the tendency of the increased freight rates for hauling it from a distance tended to make it a higher-priced wood, didn't it?

A. Not necessarily. Idaho white pine was sold very much lower at times than northern.

Q. I intended to specify northern—as Pennsylvania north-

3083 ern white pine became scarcer, and you had to ship what

northern white pine you sold from greater distances, the tendency was an enhanced price, isn't that true?

A. The product from a distance, regardless of higher freight rate, was sold in competition and at the same price, possibly sometimes a little more, sometimes a little less.

Q. Then there wasn't any general enhancement of the price of northern white pine before you left the East?

A. No; no, I wouldn't say that—the price has been gradually increasing.

Q. As that gradual increase took place your tendency was to sell more and more of the California white pine, rather than to pay the higher price and charge the higher price for the northern white pine, is that true?

A. Well, as I said before, I answered that when I said we sold the product that paid us better, whether northern pine or the other. We gave the man what he wanted.

Examiner DE BRULER. I think he fully answered that.

By Mr. BURR:

Q. I think you testified that California white pine was satisfactory to your trade?

A. Yes.

Q. Now that is a question of time, when the matter of durability enters a wood, isn't it?

A. The trade we sell is the lumber dealer, not the consumer.
3084 What he does with the lumber after he gets it we don't know anything about it.

Q. That doesn't come back to you?

A. No, sir; unless he found that our lumber was bad when he received it, that was the only time we would get a complaint.

Q. The select grades of California white pine are largely sap, are they not?

A. Well, perhaps more of the log, more of the upper grades contains sap than the lower grades, possibly. It depends on the size of the tree from which the lumber is made.

Q. Just generally speaking, there is more sap in the higher grades of ponderosa than there is in the higher grades of sugar pine, or the Idaho white, isn't that true?

A. I think there is more sap in the ponderosa pine than there is in the Idaho. I am not so familiar with the sugar pine; I couldn't say.

Q. There is more sap in the shop grades of the ponderosa than there is in the shop grades of the Idaho white, isn't that true?

A. Yes; I suppose so, because it is a much larger tree.

Q. The porch flooring that was made of northern white pine, did you personally check up to ascertain whether it was really northern white pine?

A. I sold the lumber myself from Minnesota to the retail dealer who had it in stock and I told him I wanted him to pick me out the lumber to go into these houses, which he did. I gave you
3085 that experience because it is the only personal experience I had in deterioration of lumber.

Q. Did you personally check up as to whether it was northern white pine?

A. Yes.

Q. You are competent to tell whether or not it was northern white pine?

A. I think I am. I was then—I might not be today.

Q. Do you know it was sap or heart?

A. We tried to get away from the sap.

Q. Tried to?

A. But it had more or less sap in it; we couldn't get away from it.

Q. When you speak of the yellow pine of the South, and you say that most largely goes to the heavier structural work, is that true?

A. I think so—it is timbers and flooring.

Q. That isn't quite so true of the Arkansas soft pine?

A. I believe not. There is more finish and more cutting type of lumber and more clear lumber.

Q. That does compete with California white pine, doesn't it, for shop grade lumber, etc., to quite an extent?

A. Not very much shop in the Arkansas soft pine. It is a clear lumber, more clear in it possibly, and a softer type of lumber, but it is not the structural timber material.

Q. And when you are referring to the typical yellow pine
3086 of the South it is not so much of the Arkansas soft pine as it is the longleaf, isn't it?

A. If a man wants longleaf we talk longleaf; if he says yellow pine we give him anything we have for sale. If a man says he wants yellow pine we don't make any distinction.

Q. When you get orders for white pine, and you explain that it is California white pine, you don't explain that is botanically a yellow pine?

A. No.

Q. Do you explain that it differs from the genuine white pines in its characteristics as lumber?

A. No.

Examiner DE BRULER. I think he has gone fully into that. I think those questions have been carefully gone over.

Mr. BURR. That is all.

Redirect examination by Mr. WHEAT:

Q. I want to ask you whether or not, when you are getting them introduced in the trade in the Pittsburgh area, the confusion that you mentioned with reference to getting California white pine intro-

duced, was equal and was similar to the confusion you met in getting sugar pine and Idaho white pine introduced?

A. Same thing.

Mr. BURR. I think that is leading.

3087 Examiner DE BRULER. The record is clear on that.

By Mr. WHEAT:

Q. Was there any greater confusion in getting California white pine introduced than the other two?

A. No.

Q. Did you ever have a buyer who seemed to be interested in botany?

A. No; they don't know anything about it.

Q. Does Idaho white pine produce a shop type of lumber?

A. Not very much, a smaller percentage.

Mr. WHEAT. That is all.

Mr. BURR. That is all.

(Witness excused.)

(Here followed remarks off the record.)

Examiner DE BRULER. We will take a recess until 2:00 oclock p.m.

(Whereupon, at 12:25 o'clock p.m., a recess was taken until 2:00 o'clock p.m.)

3088 AFTER RECESS

2:00 O'CLOCK P.M.

Examiner DE BRULER. Are you ready, Mr. Wheat?

Mr. WHEAT. I think so.

I will call Mr. Cone.

GEORGE B. CONE was thereupon called as a witness and, after having been first duly sworn, testified as follows:

Direct examination by Mr. WHEAT:

Q. Mr. Cone, what is your business, please?

A. Lumber.

Q. State what position you hold now, if any?

A. Sales manager of the Fruit Growers Supply Company.

Q. And state the nature of that concern?

A. Well, in the manufacturing of California white and sugar pine, principally for shipping cases for Sun Kissed products, citrus products.

Q. Is the Fruit Growers Supply Company the organization which owns the so-called "Sun Kissed" brands?

A. That is correct.

Q. And what materials are shipping under that brand?

A. Oranges, lemons, and grapefruit.

Q. And where does the Fruit Growers Supply Company own lumber mills?

3089 A. One at Hilt and one at Susanville, California.

Q. And what varieties of lumber do you cut at those mills?

A. California white and sugar pine, California red fir and white fir, and some cedar.

Q. And what is your position with the company?

A. Sales manager of the lumber division.

Q. Just exactly what does the lumber division do?

A. Well, we sell the grades that are not used in box products, the upper grades.

Q. How long have you been in the lumber business, Mr. Cone?

A. Since 1906.

Q. Will you relate briefly your lumber experience?

A. I started in Mississippi in the spring of 1906 and was down there a little over three years.

Q. What were you doing there?

A. In the sales of yellow pine.

Q. What?

A. Yellow pine. And I came to California in 1909 and sold retail here until the fall of 1915.

Q. What did you sell here?

A. Douglas fir, redwood and white cedar, Port Orford cedar.

Q. Sugar pine?

A. No sugar pine or white pine.

Q. Did you have a planing mill?

A. Not directly in connection with our yard; no.

3090 Q. Did you sell construction lumber, or what type?

A. Construction lumber.

Q. And after 1915 what did you do?

A. Went to Los Angeles and was in the retail there.

Q. What branch of the lumber business, sir?

A. In the wholesale, selling just about the same as here, Douglas fir and redwood.

Q. And after that?

A. I went with the Fruit Growers Supply Company in 1919.

Q. And have you been continuously with that organization since 1919?

A. Yes, sir.

Q. In your present position?

A. Sales manager of the lumber division.

Q. You are familiar with the so-called "southern yellow pine"?

A. Why fairly so, as I recall it, after these years.

Q. What did you say the years were that you were selling yellow pine?

A. 1906 to 1909.

Q. You sell both sugar and California white pine?

A. Yes, sir.

Q. Which is produced in greater quantity at your two plants?

A. California white pine.

Q. At both plants?

A. Yes, sir.

3091 Q. Do you cut any sugar pine at the Susanville operation?
A. Yes; a limited amount.
Q. Do you cut more sugar pine at your Hilt operation?
A. Yes, sir.
Q. Where is Hilt?
A. Hilt is about a half mile from the Oregon line in California, on the Shasta line of the Southern Pacific.
Q. Have you ever been in the actual manufacturing end of the business?
A. Yes, sir.
Q. When?
A. In Mississippi and both at Hilt and Susanville.
Q. How long have you been personally familiar with the term California white pine?
A. I would say 18 or 20 years.
Q. And have you been familiar with it generally ever since that time?
A. No; I wouldn't say that I have—I have been familiar with it since my connection with the Fruit Growers Supply Company.
Q. Have you ever known of the lumber produced from the tree Pinus ponderosa, from California, being marketed under any other name than California white pine?
A. No, sir.
Q. In connection with your duties as sales manager for the Fruit Growers Supply Company, do you have occasion to travel
3092 throughout the United States?
A. Yes, sir.
Q. And just where do you market the larger portion of your lumber?
A. From the Mississippi River factories on east to the Atlantic coast.
Q. Just specify in some detail where your main markets are and what you sell?
A. The sash and door factories along the Mississippi River, the State of Ohio, Pennsylvania, New York, New Jersey, Maine, Rhode Island and some of the Southeastern States.
Q. Do you sell any lumber already remanufactured, or do you sell only the raw lumber?
A. We sell lumber that requires more manufacturing to make it useable.
Q. Just specify?
A. For sash and door cut, but we don't make that finished. We just dress it to size and sidings and moldings.
Q. How do you market your Pinus ponderosa lumber?
A. Almost entirely through wholesalers.
Q. And under what name?
A. California white pine.

Q. Do you invoice it as such?
A. Yes, sir.
Q. How do you market your sugar pine?
3093 A. California sugar pine.
Q. Do you invoice it as such?
A. Yes, sir.
Q. Have you ever heard of California sugar pine being sold under any other name than sugar pine, or California sugar pine?
A. No, sir.
Q. And do I understand you to state that the terms "California white pine" and "sugar pine" are well known to the trade with which you deal?
A. Very.
Q. Do you receive orders under those names?
A. Yes, sir.
Q. Is the distinction between those two woods well known?
A. Very.
Q. I will ask you whether or not you encounter any sales resistance or are hampered in any way in the sale of your sugar pine lumber because of the use of the word "white" in the term California white pine?
A. Not at all.
Q. In your experience have you ever heard of sugar pine being marketed as California white pine, or under any term containing the word "white"?
A. No, sir.
Q. Are you interested equally in pushing both of these woods?
A. Yes, sir.
3094 Q. Have you ever had any complaints from any of your customers regarding the use of the word "white" in the term California white pine?
A. Not at all.
Q. Do you know of any confusion which has resulted from the use of the word "white" in the term, California white pine?
A. Never.
Q. Have you ever had any complaints from any of your customers regarding the durability of California white pine?
A. No, sir.
Q. Have you ever received any demand from any of your customers for a change in the name of California white pine?
A. No, sir.
Q. Do you find that the customers whom you deal with are interested in botany?
A. No, sir.
Q. What are they interested in?
A. What they can get out of the plank they are buying.
Q. Just what do you mean?
A. The purpose for which the lumber is intended. In buying California white pine it isn't so much the name as it is the utility of the plank.

Q. And what are the main uses to which California white pine is put?

A. For cut stock purposes and finish.

3095 Q. If the name California white pine were replaced by any name suggesting or including the word "yellow", would it or would it not in your opinion create confusion in the lumber trade?

Mr. BURR. May I have the usual objection?

Examiner DE BRULER. Objection overruled and exception allowed.

A. Undoubtedly.

By Mr. WHEAT:

Q. Will you specify why?

A. Well, anything with "yellow" in it pertains to the South and there is——

Q. (Interrupting.) You mean anything containing the word "yellow"?

A. Yes, relative to the wood; the natural thought is of the south.

Q. What are the general uses of southern yellow pine?

A. Almost entirely construction.

Q. Is Pinus ponderosa, which you sell, adapted or suited to construction work?

A. Not as compared with the southern pines.

Q. Are you familiar with northern white pine?

A. No; only as I might encounter it in our sales.

Q. I will ask you whether or not California white pine is, in your opinion, naturally what is known as a shop-type lumber?

A. It is.

Q. And specify why?

A. Because of the large clear cutting between defects that

3096 are required in door cuts.

Q. Just what happens to a piece of shop board when it gets to one of these board factories?

A. They size it up for the possibilities of obtaining clear cuts suitable for door production.

Q. Then what do they do?

A. Cut them out, eliminate the defects, that will result in the clear pieces for door construction.

Q. Is the same true in connection with the shop type lumber which is used for sash purposes?

A. Yes, sir.

Q. Would you say that the shop lumber which you market is or is not largely obtained from the heartwood of the tree?

A. Yes, sir.

Q. Would you say it is or is not?

A. It is obtained from the heartwood.

Q. Why is that?

A. Well, there is where you get your knot defects, and it is from those, cutting from those boards, in the inside log that you get your shop timber.

Q. Have you ever had a complaint from anyone who purchases from you that California white pine is not adaptable to this shop use?

A. No, sir.

Q. Does it go into the market in large quantities for that use?

3097 A. Tremendous.

Q. Is there any other wood in the United States which goes into shop use in as great quantities as California white pine?

A. No, sir.

Q. Are you familiar with Idaho white pine?

A. No.

Q. I will ask you whether southern yellow pine is suitable or adaptable for these remanufacturing uses?

A. No, sir; not compared with our California white pine.

Q. I will ask you whether or not you can think of any other name which would more appropriately describe the Pinus ponderosa lumber from California, and its general properties and qualities?

A. I could not.

Mr. BURR. I would like to make the usual objection.

Examiner DE BRULER. Objection overruled. Exception allowed.

A. No.

By Mr. WHEAT:

Q. In your opinion does the Pinus ponderosa, which is marketed under the name California white pine, go into the uses in the trade to which it is primarily adapted?

A. Yes, sir.

Q. In your opinion is California white pine selling on its merits as lumber or for some other reason?

A. On its merits as lumber.

3098 Mr. WHEAT. You may cross-examine.

Cross-examination by Mr. BURR:

Q. Did I understand you to say that you sold the under grades of the product of the Fruit Growers Supply Company—under grades, was that your word?

A. I might have used lower grades.

Q. You sell the box lumber, and things of that kind, do you?

A. We sell some box lumber; most of it is used in our own production of boxes.

Q. That comes under you, does it?

A. Yes, sir.

Q. Are there not some kinds of boxes for butter and egg crates that you can't use in the ponderosa?

A. Yes, sir.

Q. That is on account of the odor, isn't it?

A. Well, it is on account of—the odor doesn't affect the citrus fruit.

Q. I say, the butter and the egg boxes; you can't use the California white pine for that, can you?

A. Yes.

Q. Pardon?

A. Yes, sir.

Q. You do use that kind of lumber for those purposes, do you?

A. Yes, sir.

3099 Q. You have never been in the retail business, have you?

A. Yes, sir.

Q. Where?

A. San Francisco and Los Angeles.

Q. How long was that period?

A. I was here from 1909 to the fall of 1915.

Q. And in connection with that business, did you have people who recently came from the East to deal with?

A. Well, not to my knowledge; no.

Q. Well, those towns are full of people from the East, aren't they, particularly Los Angeles?

A. Yes.

Q. And they doubtless bought from you for building purposes, did they not?

A. I wouldn't know whether they were from the East or not.

Q. But you did deal with the people from the East, without doubt?

A. I imagine so.

Q. Did you have some calls for white pine when you were in that trade?

A. My department didn't handle the white pine.

Q. What was your department?

A. Wholesale.

Q. I know, but I thought you said you had been a retailer?

A. Yes; I have.

Q. But you were in the wholesale department?

3100 A. Yes, sir.

Q. So you had no experience on the retail end?

A. No, sir; not in Los Angeles.

Q. How about San Francisco?

A. All retail experience here.

Q. And you had experience in the San Francisco retail business, did you?

A. Yes, sir.

Q. How long a period was that?

A. From 1909 to 1915.

Q. Did you have calls from the trade for white pine during that period?

No; we didn't handle it.

Q. Didn't handle it then?

A. No.

(Here followed remarks off the record.)

By Mr. BURR:

Q. In connection with your work, I think you said you sold largely to wholesalers and the rest to mills; is it?

A. Sash-and-door trade and planing mills.

Q. I think you testified that the association of the word "yellow" in connection with California white pine, if the name were changed to include the word "yellow", would be with the southern pines; is that true?

A. Yes, sir.

3101 Q. You particularly referred to longleaf in that connection?

A. Not necessarily; no.

Q. Isn't that the typical hard pine of the South rather than short leaf?

A. That is true.

Q. The word "white" in connection with California white pine has a tendency to connect this type of lumber with the northern white pine of the early days, does it not?

A. Why, I imagine so.

Q. And the Idaho also?

A. I presume.

Q. I think you said that the shop grades of California white pine are more heart than sap?

A. That is right.

Q. The shop grades of sugar pine, insofar as sugar pine is used for that purpose, is still more largely heart, isn't it, than is the case for California white pine?

A. So I understand.

Q. Practically all heart, isn't it, in that variety?

A. Yes, sir.

Q. The sugar pine has rather a better reputation in the trade for durability than California white pine, hasn't it?

A. I understand it does.

Q. That is one of the reasons why it is a higher-priced wood?

A. I assume so.

3102 Q. The Arkansas soft pine is used for shop purposes, sash and door, and things of that kind?

A. I didn't know that it was.

Mr. BURR. That is all.

Redirect examination by Mr. WHEAT:

Q. Mr. Cone, do you believe it is appropriate for the lumber of the tree Pinus ponderosa, which has been marketed as California white pine, to be associated as lumber with the white pine group rather than with the yellow pine group?

A. I think it should be associated with the white pine group.

Mr. WHEAT. That is all.

Examiner DE BUTLER. You are excused.

(Witness excused.)

Mr. WHEAT. I will call Mr. Adams.

B. W. ADAMS was thereupon called as a witness and, after having been first duly sworn, testified as follows:

Direct examination by Mr. WHEAT:

Q. State your full name, Mr. Adams?

A. B. W. Adams.

3103 Q. What is your business?

A. General sales manager of the Pickering Lumber Company.

Q. Where is your office?

A. 703 Russ Building, San Francisco.

Q. And how long have you been occupied in that position?

A. I have been with the Pickering Lumber Company since January 1, 1929.

Q. And prior to that what was your experience in the lumber business?

A. Well, approximately eight years prior to that I was sales manager for the Fruit Growers Supply Company, the same concern represented by the gentlemen just preceding me.

Q. When did you start in the lumber business, Mr. Adams?

A. July 1, 1901.

Q. And where was that?

A. In the sash and door business at Dubuque, Iowa, as their purchasing agent.

Q. What was the concern?

A. Karr Ryder & Adams Company, Dubuque, Iowa.

Q. How long did you occupy that position?

A. For approximately 18 years.

Q. And when did you first come to California?

A. I first came to California about April 1, 1905.

Q. And what was the purpose of your coming to California at that time?

3104 A. To take the place of their California representative who preceded me in looking after their shipments of California white and sugar pine lumber for sash and door purposes at Dubuque, Iowa.

Q. Do I understand that the Karr Ryder & Adams Company, of Dubuque, maintained a representative in California for the purposes mentioned by you?

A. Yes.

Q. And what was your experience after 1905?

A. I was in California from April 1905 until April 1906, at the time of the fire, when I temporarily moved my residence back to Dubuque, Iowa, expecting shortly to return, but taking up other duties and I didn't return to California as a resident of California until January 1916.

Q. But during the interval of ten years did you visit California and, if so, for what purposes?

A. I visited California regularly and a number of times, from two to seven times a year, to secure their supply of California white and sugar pine.

Q. After 1916 will you briefly relate your lumber experience?

A. I continued for two or three years after that, picking up this lumber for the Dubuque concern, but started out in January 1916 to organize and operate a line of retail lumber yards in California, which were located, as we purchased them, from the towns of Nord, on the north, to San Martin, on the south, in Santa
3105 Clara County.

Q. How long did you remain in the retail lumber business?

A. I had those retail lumber yards—that is, was interested in them—from 1916 to 1921.

Q. And then what did you go into?

A. Well, it overlapped a little; I think it was in 1919 I commenced to sell, as sales manager, the lumber for the Fruit Growers Supply Company, which was the position I held up until a year ago, January.

Q. And since that time you have been with the Pickering Lumber Company?

A. Yes.

Q. And did you state what your present position is?

A. Yes, sir; general sales manager.

Q. In selling lumber for the Pickering Lumber Company, and also for the Fruit Growers Supply Company, did you have occasion to visit various parts of the East and Middle West and there get in touch with the purchasers of lumber?

A. Yes, in a way; although my acquaintanceship started in the earlier years when my headquarters were at Dubuque, Iowa, and I became acquainted, I would say, with a large majority of the people in the manufacturing business who utilized west coast lumber for their products.

Q. Will you tell me why the sash and door concern of the Middle West utilized these so-called "west coast" products?

3106 A. Because the California white pine filled more nearly than any other wood available the place of what was formerly used and known as northern white pine, which I understand botanically as Pinus strobus.

Q. Have you known that the tree from which California white pine is produced is not botanically classified by botanists as a white pine?

A. Yes.

Q. Are you familiar with southern yellow pines?

A. Yes, sir.

Q. Have you ever marketed southern yellow pine?

A. Not selling it, but I bought millions of feet of it for the same concern in Dubuque, along with the other.

Q. I will ask you whether, in that connection, southern yellow pine finds its way very largely into the sash-and-door trade in this country?

A. I would say no.

Q. Why not?

A. Because yellow pine in no way takes the place of or is like either the white pine, Pinus strobus, or California white pine, so-called "Pinus ponderosa." There was a time—if it is all right to mention this—when the customers of the sash-and-door people in the Middle West would specify trim, that is, casings, base, even doors, moldings, etc., yellow pine, and at no time would we have con-
3107 sidered that California white pine would in any way fill that bill.

Q. Did you sell California white pine as yellow pine?

A. We did not, and it would not have been accepted.

Q. Why not?

A. Because of the appearance of the lumber being so nearly that of white pine that it could not be used in the place of yellow pine, which, in the sash-and-door fraternity, is always understood as yellow pine coming from the South. I have forgotten the botanical name.

Q. In mentioning yellow pine, do you include what has been commonly known and marketed as Arkansas soft pine?

A. Arkansas short leaf, yellow pine, was the lightest, softest, most workable of the yellow pines that we received in that territory. From that I would say that Georgia yellow pine was perhaps as hard as any we ever got.

Q. In its general mechanical qualities and workability, did you find that Arkansas soft pine was of such a character as to be classed with the wood marketed as California white pine?

A. Absolutely no.

Q. Will you explain?

A. Because any of the yellow pine, whether from Arkansas, Texas, Louisiana, Georgia, or other points, has a grain that is distinctive of itself and in no way, or at least only in a very remote way, resembles the texture, grain, and appearance of the California white pine.

3108 Q. Do you include the wood marketed as Arkansas soft pine?

A. I do.

Q. Then I will ask you, Mr. Adams, whether you consider it appropriate for the lumber, Pinus ponderosa, which has been marketed as California white pine, to be associated as lumber with the white pines, rather than with the yellow pines of the South?

A. Yes; but the lumber used by these manufacturers is not sold for its botanical characteristics.

Q. I am not asking about botany now.

A. That is right.

Q. I will ask, Mr. Adams, whether you are familiar with sugar pine as a tree, as well as lumber?

A. Yes.

Q. Does the company for which you now sell lumber cut sugar pine as well as California white pine?

A. They do.

Q. Can you state approximately the proportions which they cut, the average?

A. It will vary from year to year depending on the location they are logging, but in a general way it would be in the neighborhood of 40 percent sugar pine.

Q. 40 percent sugar pine?

A. Yes.

Q. Well, have you had occasion to observe dead and down
3109 logs of both California white pine and California sugar pine in the forests?

A. Yes.

Q. Is it your opinion that the lasting qualities of logs dead and down in the forest—what is your opinion as to relation of the lasting qualities of logs which are dead and down in the forest, to the durability or lasting qualities of the lumber produced from those several species of wood when in use as lumber?

A. Lumber is sold on grades and whatever grades of a certain kind that develop from a log, whether it would have been dead and down, or whether cut alive, they would properly fall in the sphere in which they belong. Does that answer the question?

Q. Well, I will ask you it this way: From your experience as a lumber man, do you believe that the relative lasting qualities of logs dead and down in the forest has anything to do with the durability of the wood in use as lumber?

A. I should say not.

Q. Have you ever had any complaint as to the durability or lasting qualities of the California white pine which you have sold?

A. No.

Q. I will ask you whether the shop lumber which you market from the Pinus ponderosa tree comes more largely from the heart of the tree or from the sap?

A. Very largely from the heart.

Q. Why is that?

3110 A. Because the defects that constitute shop lumber are largely knots and the knots appear in what we understand as the heartwood of the log, rather than the sap.

Examiner DE BRULER. Let me ask; is that matter in dispute, that question?

Mr. WHEAT. I think, Your Honor, that the Government has introduced certain testimony which would indicate that it is in dispute.

Examiner DE BRULER. That is in dispute, Mr. Burr?

Mr. BURR. I think that the evidence for the Government shows that a very much larger percentage of the shop grades of Pinus

ponderosa are sap than is the case in the genuine white pines in the shop grades.

Mr. WHEAT. I take it, it is, perhaps, a matter of dispute and those questions are appropriate.

Examiner DE BRULER. Go ahead, then.

By Mr. WHEAT:

Q. Let me ask, how long have you known the term California white pine?

A. Since 1901.

Q. That was when you first entered the lumber business, was it?

A. Yes, sir.

Q. Are you familiar with Idaho white pine?

A. I have seen a great deal of it; I wouldn't say that I was familiar with it.

3111 Q. Did you purchase——

A. (Interrupting.) Not in the use of it, except in the common boards.

Q. You did not, then, purchase Idaho white pine for shop purposes when you were with Karr Ryder & Adams?

A. Practically none, because the shop type of lumber does not occur in Idaho white pine as it does in California white pine.

Q. When you were with Karr Ryder & Adams do you recall any complaints of the failure of the manufactured products produced from California white pine by them?

A. I do not.

Q. Can you tell me whether sugar pine varies over its range in its qualities and characteristics?

A. It does.

Q. Will you state your experience in that line?

A. The softest textured sugar pine is produced along the Sierras from the neighborhood of Fresno, or Kings River, above Fresno, a line running east and west, with Fresno as a base, and perhaps the American River on the north; and as you go further north in varying differences the character of the sugar pines grows harder, as indicated by that species harvested around Grants Pass and that locality in Oregon, which is a very much harder, flintier type than that in central California.

Q. Is the price, the general market price, of sugar pine cut in the Grants-Pass region in Oregon greater or less than the average

3112 price of California white pine of equal grades?

A. The sugar pine produced in Grants Pass and that territory is generally considered of no more, if as much, value as the California white pine, except perhaps in a very limited instances.

Q. Your company is engaged very largely in the cutting of sugar pine at the present time, is it?

A. No; as I stated, the cut would approximate, I should say, 40% of the present operation at Standard and Tuolumne. The third mill, which is now under construction at Alturas, or near Alturas County,

in Modoc County, will produce practically no sugar pine, but a very fine type of California white pine.

Q. Does that—is that mill already in operation?

A. It is not; it is under construction.

Q. Are you familiar with sugar pine in actual use, Mr. Adams?

A. I would say so.

Q. In your opinion, is sugar pine any more nearly adapted to the general uses to which California white pine is put than California white pine is?

A. My judgment is that there uses are more widely separated than is ordinarily understood. The sugar pine contains more shake than does the California white pine. There are certain purposes to which sugar pine is put where it is more adaptable, perhaps, than white pine.

Q. I will ask you whether, on the other hand, there are certain purposes to which these woods are put to which the Cali-

3113 fornia white pine is more adaptable than sugar pine?

A. Yes; that is true. A number of millwork operators in the Mississippi Valley, at least some of them, have told me personally that they would not——

Mr. BURR. I object to hearsay.

By Mr. WHEAT:

Q. Just say what your experience has been, rather than what anyone has told you.

A. My experience has been that our customers would not accept sugar pine at the same price as white pine for millwork purposes in the Mississippi Valley.

Q. What has been the reason for this rejection of sugar pine?

A. The white pine is better—the California white pine is better adapted for enamels, paints, staining, or sand blasting than is the sugar pine. It is not so likely to tan when exposed to the sunlight in a manufactured state. And California white pine is obtainable in sufficient volume to take care of the uses for which, to which, it is put.

Mr. BURR. May I have that answer read?

(Whereupon the answer referred to was read by the reporter.)

By Mr. WHEAT:

Q. Mr. Adams, just why is the California white pine better adapted to the purposes which you have mentioned?

A. For the enamels, paints, etc., it is better adapted by rea-

3114 son of the fact that the California white pine does not exude a resinous or saccharine—what we call sugar—deposit that appears in sugar pine, and which in the sugar pine, if not properly treated, this saccharine deposit will come through the enamel or the paint and discolor it, which situation does not exist with California white pine.

Q. Does California white pine take a superior finish in millwork to sugar pine?

A. I would say not with the exceptions that I previously mentioned.

Q. Can you approximate the amount of shop lumber which is used annual'y by the large sash and door factories?

A. The information is available.

Q. I thought the witness had the information with him.

A. I would rather not estimate that because it would be approximate only.

Q. Does sugar pine require more care in being seasoned than California white pine?

Mr. BURR. You mean the kiln dried?

Mr. WHEAT. Either kiln or air.

Mr. BURR. I will admit it does for kiln drying.

By Mr. WHEAT:

Q. I will ask for air drying, does sugar pine require more nursing, so to speak?

A. I would say it does.

Q. I wish you would explain.

3115 A. A large number of the pine producers in California aim to put through their dry kiln as large a quantity as possible of the California white pine which is produced; whereas most of the sugar pine is air dried; on the one hand it is because a better condition can be obtained by air drying than by kiln drying it by reason of the fact that under certain conditions in the kiln the cellular tissue of sugar pine is apt to collapse or stain, which generally does not occur under the same careful conditions in drying the white pine.

Q. I am talking now entirely of air drying. Is there any difference in the way these two woods act in seasoning in the air?

A. Sugar pine takes longer to dry than does white pine; and if tests were made under identically the same conditions I would say that the sugar pine requires the more care.

Q. When you were with Karr Ryder & Adams, in Dubuque, Iowa, in the early 1900s, was northern white pine used to any large extent in the sash and door trade?

A. That was just about the diminishing point of northern white pine for general use by the aggregate of the sash and door manufacturers.

Q. And would you say, from your experience, that California white pines does appropriately find its way into the uses for which the northern white pine was formerly used?

A. More nearly than any other species of wood they were able to find.

3116 Q. Will you explain that, please, having in mind Idaho white pine and sugar pine and California white pine, and any others that you have in mind?

A. The general appearance of California white pine, which is the basis upon which it is sold to the trade of the door and sash manu-

facturers, and the necessity of obtaining it in sufficient quantities to permit an economical operation of their plants.

Q. Perhaps I should reframe my question. I think you said that California white pine, in your opinion, more nearly fits into the place of the old northern white pine than any other wood. I am asking you why?

A. Because the material is sold on its appearance and it more nearly fills the place of the northern white pine than any other wood obtained.

Q. Why couldn't the Idaho white pine fill that fill?

A. For the reason that Idaho white pine does not produce the width, shop type cuttings, as does the California white pine.

Q. And why couldn't sugar pine fill that?

A. Sugar pine, according to my experience, has never been available in sufficient quantities to warrant taking *taking* it up as a single product of manufacture.

Q. What do you mean by available in sufficient quantities?

A. Well, there are estimated to be produced in California about
225 to 250 million feet of sugar pine annually, of which, probably
as an extreme, 40%, including 1, 2, and 3 shop, would be
3117 suitable for sash and door manufacture, so that that percentage of 250 million feet would in no way take care of the needs of these various manufacturers who use many times that amount of material in the manufacture of their softwood doors, and the California white pine, as I stated before, more nearly fills the place of the northern white pine than any other pine. Sugar pine in appearance is not like the northern white pine although it is botanically a true white pine.

Q. Do you know whether or not the names California white pine and sugar pine, are well known to the lumber trade throughout the country?

A. They are, and have been since 1901, when it was first shipped east in quantities.

Q. Have you every been aware of any confusion between these two woods?

A. No—you mean between sugar pine and California white pine?

Q. Yes.

A. And compared to northern white pine?

Q. As compared to each other first.

A. No.

Q. As compared to northern white pine?

A. I would make an exception to that, if I may explain.

Q. Explain, please.

A. And that is, there is a type of California white pine which I
believe the Jeffery pine comes under the same class, as our
3118 California white pine. There are instances where, as a buyer of sugar pine—and I did buy sugar pine for certain purposes in years gone by—I would have accepted without question a plank cut from certain Jeffery pine trees. The appearance of which, after

it was manufactured, it would take an expert to determine whether it was sugar pine or whether it was California white pine.

Mr. BURR. And it was actually neither, but Jeffery pine.

The WITNESS. Jeffery pine. I am not discussing the botanical——

Examiner DE BRULER (interrupting). Where is that cut?

The WITNESS. Jeffery pine?

Examiner DE BRULER. Yes.

The WITNESS. Jeffery pine appears in a limited quantity, I think, as far south as El Dorado County.

Examiner DE BRULER. You mean in California?

The WITNESS. Yes, sir.

By Mr. WHEAT:

Q. It is marked as California white pine, is it not?

A. We usually market it as California white pine.

Q. The Jeffery pine is mentioned in this complaint as one of the two types of pine that are marketed as California white pine?

A. I wanted to make that exception.

Q. Now, in selling sugar pine, have you ever encountered
3119 any sales resistence, or have you ever been hampered in any other manner because of the use of the term "white" in the name California white pine?

A. No, I haven't; I sell both of them right now.

Q. Are you equally interested in pushing both of them?

A. Yes.

Q. And you are selling as much as you can of both?

A. Yes, sir.

Q. Have you ever heard of sugar pine being marketed as California white pine, or under any other term containing the word "white"?

A. Not generally. It has been termed by some people a true white pine.

Q. But have you ever seen it invoiced as California white pine?

A. Never.

Q. Or any other name containing the word "white"?

A. No.

Q. Have you ever had any complaints from the people with whom you deal regarding the use of the name California white pine?

A. I have not.

Q. Are you conscious of any confusion which has resulted from the use of the name California white pine?

A. I am not.

Q. Have you ever had any complaints from your trade regarding the durability of the wood marketed as California white pine?

A. I have not.

3120 Q. Have you been conscious of any demand from the trade with whom you deal for any change in the name of California white pine?

A. No; on the contrary I have had their support in continuing that.

Q. Do you find that the people who purchase lumber from you are interested in its botany?

A. We do not sell lumber from a botanical designation.

Q. I will repeat the question and will ask whether you find the buyers are interested in the botany of the tree?

A. Never have known of any.

Q. What are they interested in?

A. They are interested in the service, grade, and price.

Q. You have discussed this matter——

A. (Interrupting.) And texture.

Q. In your opinion, does the wood now marketed as California white pine go into the trade for the uses to which it is primarily adapted because of this mechanical quality?

A. Yes.

Q. In your opinion, is California white pine selling on its merits as lumber?

A. It is.

Q. Now, Mr. Adams, have you ever had any experience in the use of California white pine for pattern purposes?

A. I have some.

Q. Will you state what that experience has been?

3121 A. It probably won't be interesting to you, but a party from Pittsburgh came into the office when I was with the Fruit Growers Supply Company, and I tried to sell him our California white pine as pattern lumber. His remark was that California white pine, he didn't think, was adaptable for pattern purposes; and to demonstrate to my own satisfaction that it might properly be used for that purpose, I took a piece of four-inch plank and carved from it the specimen of an elephant that you see in that box. [Indicating specimen of elephant carved from wood.]

Mr. WHEAT. Mr. Examiner, I do not wish to offer this as an exhibit, but I wish to ask the witness some questions about the matter.

(Here followed remarks off the record.)

By Mr. WHEAT:

Q. I will ask you whether or not you yourself carved this elephant, and ask you what wood it was carved from?

A. It was carved from a piece of California white pine. I did it myself.

Q. Did you ever attempt the same process with sugar pine?

A. Yes; I did. There is an elephant, a little different possibly than that, in Mr. Steinmitz office in the Pickering Lumber Company manufactured from sugar pine.

Q. Did you have as good results from that as you did from the California white pine?

3122 A. The sugar pine is a more delicate wood and it requires more care and skill in carving a thin portion like the ear than does the California white pine, because the wood itself is more delicate.

Q. Now, Mr. Adams, was this specimen, which you have now before you, ever used actually as a pattern?

A. Yes; it was. I think there is a date on there, 1925, is there not?

Mr. BURR. Yes, sir.

A. (Continuing.) Early in that year was the time I cut out that elephant and it was left, just for experimental purposes, for, I should say, two years, without having anything in the form of a preservative, like shellac or varnish or anything on the outside, just to see what the results would be; and the pattern, as you will notice, remained perfectly intact and didn't check, warp, or split. A friend of mine came along one day and wanted to make a pattern of that, which he did, and the bronze casting made from that as a pattern is now in my home.

I never attempted to make a pattern from the specimen I referred to as made of sugar pine for the reason that I doubt very much if it would stand the strain of wrapping—I think that is the term used.

By Mr. WHEAT:

Q. W-r-a-p-p-i-n-g—you mean?

A. Yes. In drawing the mold from the flask when it is put into the sand.

3123 Q. This particular specimen was actually used, I understand it, then, as a pattern for a casting?

A. It was, and that is why it shows that discoloration. I tried to scrape the shellac, or whatever preparation they put on it, off, but I was only partially successful.

Mr. WHEAT. You may cross-examine.

Cross-examination by Mr. BURR:

Q. Now, this Karr Ryder & Adams firm, to whom did they sell, what classes of buyers?

A. They distribute their products through a number of jobbing houses in different parts of the country in which they are interested in various proportions, as well as serving the retail lumber yards to such an extent as their freight rates will permit.

Q. To what extent, what proportion of their business is to retailers?

A. I couldn't tell you that.

Q. That is a minor proportion, is it; do you know?

A. I would imagine so; yes.

Q. They didn't conduct any retail establishments?

A. No, they didn't.

Q. You have never been in the retail business yourself, have you?

A. Yes; I was in the retail lumber yard business in Cali-
3124 fornia from 1916 to 1921.

Q. Well, in that connection did you have purchasers who had recently come to California, among others?

A. Which situation are you referring to?

Q. When you were in the retail business.

A. Well, I never inquired as to where they came from.

Q. No doubt quite a percentage of the population was from the East?

A. California was populated from people outside the State.

Q. And you had requests for white-pine lumber, did you?

A. The retail yards of California used practically no California white pine. It was almost entirely a redwood and douglas fir, commonly known as Oregon pine.

Q. Then you virtually didn't handle the California white pine, or any other variety of pine, is that right?

A. Not through these retail yards, but during that same time, understand, please, I continued to supply, up until about 1918, or something of that kind, the people back East. I looked after their interests.

Q. Looked after the retailers back East?

A. No; the Karr Ryder & Adams Company which, while I was building up this string of retail yards, the principals of Karr Ryder & Adams, were also interested in a very small way and, by the way, to that extent, they were interested in retail yards. You asked that question. I didn't think of it at the time.

3125 Q. They were interested in retail yards?

A. In a small way; they were interested with me in building up the retail yards.

Q. You didn't meet the actual trade in connection with that retail business, did you, in the East?

A. In the East?

Q. Yes.

A. Not the trade of the retailers.

Q. No?

A. No.

Q. Now, there is a considerable amount of sap in the California white-pine shop, is there not?

A. There is a proportion of sap that will occur in the shop grades of California white pine.

Q. And that is greater than the sap that occurs in the genuine white-pine grades, isn't that true?

A. The sap of the white pine, of California white pine, varies in different localities in the State. The sap on the sugar-pine tree is less in proportion to the size of the tree than it is in the California white pine. Does that answer the question?

Q. Yes, in part. And less of the sap gets into the shop grades of the sugar pine than in the case of California white pine?

A. I would say so.

Q. If one tree, in its dead-and-down condition, was found to decay more rapidly than the other, wouldn't you regard that as an indication that the lumber, when exposed to the weather in

3126 building-construction purposes, would decay more rapidly than the other?

A. No.

Q. You wouldn't regard that as an indication at all to relative durability?

A. I don't think I would be qualified to answer the first question for the reason that I know of no reliable experiments or observations that have been made to properly compare the decaying characteristics of a sugar pine tree as compared to that of a white pine tree, because one might grow on one slope of a hill in a wet or dry situation, while the other one was the reverse; and I have never known of any reliable experiments along that line having been conducted. It is simply a matter of conjecture.

Q. Assuming, for the purpose of your answer, that it had been ascertained that one variety was more durable than another, in the form of dead and down logs, wouldn't you regard that as an indication that the one that was more durable in the shape of a log would have a greater durability where exposed to the weather in building-construction purposes?

A. I would still think that was a matter of conjecture because the lumber, after it is manufactured, if it is not properly taken care of, it will deteriorate—either one of them would deteriorate.

Q. Suppose we granted that, yet at the same time would not the condition——

3127 A. (Interrupting.) It might be assumed so, yes.

Q. There is a greater reputation in the trade for durability in favor of sugar pine than there is California white pine—isn't that true?

A. It has been more largely advertised to that effect.

Q. Isn't there a greater reputation in the trade, to ask my question again?

A. I didn't mean to avoid the question.

Q. I think not; I think you are a candid witness.

A. My personal experience wouldn't so indicate; but, as I say, it has been advertised to the trade and advertising is the thing that puts a thing into the minds of the public a suggestion until at times it becomes to be accepted as a fact.

Q. My question didn't relate to your own experience, but to the repute.

Examiner DE BRULER. I think he has answered that.

Mr. BURR. I don't think he has. He said his own experience wouldn't so indicate.

The WITNESS. I couldn't answer for somebody else.

By Mr. BURR:

Q. Do you know what the repute of sugar pine is in the trade for durability?

A. Sugar pine is, to my knowledge, not advertised for its superior qualities of its lasting characteristics, but for its adaptability to a certain use.

3128 Q. You say, sugar pine?

A. Yes.

Q. I am not talking about the advertising. I am talking about the status of sugar pine in the trade. Hasn't sugar pine a higher repute for durability than California white pine?

A. I wouldn't say so.

Examiner DE BRULER. He has answered that fully, it seems to me. You have taken up a lot of time on this one question. It has been gone over and over.

Mr. BURR. He never answered it before.

Examiner DE BRULER. This is cummulative.

Mr. BURR. That question has been disposed of now.

By Mr. BURR:

Q. Ponderosa also varies, does it not, in various localities?

A. It does.

Q. It varies more widely than sugar pine, don't it?

A. I don't know that it does. I would say no. I think I explained that formerly.

Examiner DE BRULER. You have answered that.

Mr. BURR. I don't think you did.

By Mr. BURR:

Q. Now, I think you said that the uses of sugar pine and California white pine were more widely separated than is ordinarily understood. Which are the purposes for which sugar pine is best adapted?

3129 A. Sugar pine is more largely used for pattern purposes than is California white pine. That is one example.

Q. Are there any others?

A. The fact that the logs are so much larger generally than the California white pine enables the manufacturers to produce therefrom a larger proportion of wide upper grade lumber, which is sometimes desirable, especially in thick stock, like cutting boards for clothing manufacturers where they cut 15 or 20 thicknesses of cloth on a board and they want a very soft textured board upon which to cut. And it is used, in some instances, for incubator material. Its tensile strength is not as great as that of California white pine.

Q. Its density is not quite so great?

A. No; where a soft even grain of wood is desired, where there is practically no growth of shake in the piece of wood that is being used, it is very desirable.

Q. That is what makes it most used for pattern purposes?

A. Yes. I sell both sugar pine and white pine. I am not decrying the qualities of sugar pine. It is a good wood.

Q. Really better for pattern purposes than white pine?

A. I don't think so.

Q. You don't?

A. I do not, as has been demonstrated by my own experience.

Q. It sells better to the trade for that purpose?

A. It does, but in that connection I would like to say a
3130 word. In former times, most pattern makers were used to the northern white pine, which was a splendid wood for pattern purposes, more nearly like the California white pine than is sugar pine. And as the supply of that became less, it was a difficult thing to even get them to change from the northern white pine to sugar pine, because of the personal like or dislike for a certain thing that had been in use for a certain number of years. But wherever people had used California white pine for pattern purposes it has proven equally as desirable as has sugar pine.

Examiner DE BRULER. I think you fully answered and I think practically all the witnesses agree.

Mr. BURR. No; they don't.

Examiner DE BRULER. I haven't heard any here that haven't agreed on the pattern proposition.

Mr. BURR. If the examiner please, you haven't heard half of this case.

Examiner DE BRULER. I mean only on the coast, I haven't heard any different.

Mr. BURR. I think you will have to leave to counsel a little bit this question of cross-examination for the simple reason that half of the case was taken back East.

By Mr. BURR:

Q. I think you spoke of a resinous deposit that exudes from sugar pine. As a matter of fact, the California white pine, on the whole, is more resinous than sugar pine, is it not?

3131 A. It is not.

Q. It is not?

A. No; it is not.

Q. Would you be surprised to learn that you are the first witness that has testified to that effect?

A. No.

Q. You would not?

A. No.

Q. You regard yourself as in the minority on that point, do you?

A. I judge from my own experience—if you mean by resinous, pitch.

Q. I mean the resinous content on the whole, that sugar pine is less resinous than is the California white pine, on an average.

A. My experience is that it is not.

Mr. MATTHEW. I think possibly the witness may be confused by what you mean by resinous.

Mr. BURR. I think so.

The WITNESS. Unless I don't understand what he means by resinous.

Mr. MATTHEW. The witness is referring to these little exudations.

Mr. BURR. That isn't the only form in which it appears in wood.

The WITNESS. There are pitch pockets—I am talking about
3132 the pitch streaks that occur, and particularly in the sugar pine of the North you will find that the butt logs of the sugar pine are very often heavily impregnated by pitch, which I am including as a resinous substance.

By Mr. BURR:

Q. What is this treatment you refer to that is given to sugar pine to remove those pitch pockets?

A. I don't recall that I made any statements as to that.

Q. You spoke of a treatment that was given on account of those sugar deposits, which you refer to as saccharine, I think.

A. I said unless a proper treatment were given.

Q. Yes; what is that proper treatment?

A. There have been a number of experiments conducted by the University of California, as I understand it, and the most suitable one of those is a preparation of shellac to be put over the wood when it has been reduced to the smoothest possible situation, after which it gives satisfaction. That is not necessary in the treatment of California white pine.

Q. That does take care of that pitch pocket difficulty, does it, in the sugar pine that you sell?

A. That has been the only thing that the professor who made these experiments—I think it was Professor Ritz—I think that is the only way you could find that he could keep from discoloring the enamel, paint, Duco, etc. This saccharine deposit comes out in little beads that look like the gum that would exude from a cherry tree.

3133 Mr. BURR. That is all.

Examiner DE BRULER. That is all.

(Witness excused.)

Mr. WHEAT. I will call Mr. Pray.

R. F. PRAY was thereupon called as a witness and, after having been first duly sworn, testified as follows:

Direct examination by Mr. WHEAT:

Q. Mr. Pray, what is your business?

A. Lumberman.

Q. How long have you been engaged in the lumber business?

A. Since 1892.

Q. Will you relate briefly your experience in the lumber business?

A. I started in with Mr. T. B. Walker, of the Red River Lumber Company, in Minneapolis, in the fall of 1892. I remained there until the spring of 1896 and then was sent to Crookston as office manager in the Red River Lumber Company. I was there nearly three years and was back in the Minneapolis office about six months, and went to Akely, Minnesota, where the Red River Lumber Company had a mill, and I was there for fourteen years as resident manager.

3134 Q. What did you produce at those mills?

A. Minnesota white pine and Norway white pine and some spruce and jack pine.

Mr. Burr. That is Akely, Minnesota?

The Witness. Yes.

By Mr. Wheat:

Q. What proportion was Norway pine?

A. About 60%.

Q. In the lower grades did you sell northern white pine as such as what it mixed?

A. We sold it as white pine in the upper grades; in the grades of 4 and 5 they were mixed.

Q. Mixed what?

A. Norway and white pine.

Q. How was it sold, under what name?

A. Northern pine.

Q. Continue with your lumber experience.

A. In June 1913 I was sent by the Red River Lumber Company to what is now Westwood. I was resident manager there from the time I got there in June 1913 until the spring of 1923.

Q. And since then what has been your business?

A. Wholesaling lumber.

Q. Under what name?

A. Lumbermens' Exchange. I have done some special work in connection with that, with other companies, however, not directly concerned with the selling.

3135 Q. You say you cut the old northern white pine at your mills in the East?

A. Yes.

Q. Can you tell me about how many logs to a thousand you were cutting prior to the time the mill closed down at Akely?

A. When we started in 1899 they were running 14 to the thousand and the last year I was there they ran 22 to the thousand.

Q. About what was the smallest size log that was cut?

A. We cut everything that would make a 2 by 4.

Q. How long have you been familiar with the term California white pine?

A. Since the fall of 1898.

Q. How did you become familiar with that term then?

A. When I left Crookstown and went to the Minneapolis office for that six months, Mr. Klein had been west and had reported to the office there on the California white pine, and subsequent to that I saw estimate books of which estimates were given as California white pine and sugar pine.

Q. Have you ever talked with the logger in the woods in the California operations of your company, or have you ever heard them mention names of the trees in their vernacular?

A. Yes.

Q. What do they call the sugar pine tree, and what do they call the tree from which California white pine comes?

A. They call them white and sugar.

3136 Q. Referring, respectively, to which trees now?

A. To the California white pine and the California sugar pine.

Q. Do you know whether or not the lumber called California white pine comes from a tree which is botanically a so-called "genuine" white pine?

A. What?

Q. Do you know whether the wood marketed as California white pine comes from a tree which is botanically a so-called "genuine" white pine?

A. I understand it is not.

Q. Were you engaged in selling northern white pine at any time?

A. Yes.

Q. During what period?

A. From the spring of 1899 until 1913, when I left there.

Q. Were you engaged in selling the California white pine at that time?

A. No, sir.

Q. Was California white pine in the market in competition with northern white pine at that time?

A. It was toward the latter end of our experience, or my experience; in Akely.

Q. Did you ever encounter any sales resistance, or were you hampered in any way in marketing your northern white pine because of the use of the word "white" in the term California white pine?

A. No, sir.

3137 Q. Will you tell me what is the character known as shake in sugar pine, or in any pine?

A. Well, it is a shattering of the grain, the different layers become separated from each other.

Q. Is that always perceptible prior to the making of the lumber?

A. No; it isn't.

Q. I will ask you whether sugar pine or California white pine, and which of the two, is most susceptible to this difficulty?

A. The sugar pine; you very seldom find shake in California white pine.

Q. Have you had any experience, any concrete experience, with shake in sugar pine?

A. Well, I have one in my pocket.

Q. Produce it, please.

A. (Witness producing toy blocks.)

Q. Will you explain what this is you have in your hand?

Mr. BURR. Let me see it. (Examining toy block.)

By Mr. WHEAT:

Q. May I ask you what this object is?

A. That is a toy block that has been embossed on both ends.

Q. Will you explain what has happened to it?

A. When the pressure was applied to put on the embossing the shake is shown up in the block and it has broken off at that point where the shake was.

Q. That is, the shake which has appeared destroyed the quality of that particular piece of lumber for the use to which it was
3138 intended?

A. It has.

Mr. BURR. We will stipulate it has.

By Mr. WHEAT:

Q. A question was put to a previous witness as to the amount of pitch in sugar pine, as compared to that in California white pine. Will you state what your experience has been?

A. My experience is that the sugar pine has considerably more, what lumber men call pitch.

Q. Just what is that?

A. Well, there are several forms in which it is found; one is a pitch pocket, that is impossible to eradicate without cutting the thing out physically. Another is the streaks of pitch that appear, especially in the lower logs of a tree, and then there is the sap, or exudation that comes out in the form of bubbles, little bubbles.

Q. Which is more susceptible to stain in the yard, sugar or California white pine?

A. Sugar pine.

Q. I should have asked you before, when you were resident manager of the Red River Lumber Company at Westwood, was sugar pine cut in considerable quantities?

A. Yes; about 25%.

Q. In the use as patterns, does the shake that you have mentioned cause any difficulty?

3139 A. Oh, yes.

Q. Have you found it to be your experience that rot is found frequently in growing California white pine trees, the Pinus ponderosa?

A. Very little in the California white pine.

Q. What has been your experience with reference to sugar pine?

A. Frequently find it.

Q. What is the result in the lumber?

A. You find it in the lumber.

Q. What are, in general, the uses for which the northern white pine of the East and North is suited to be best adapted to?

A. Do you mean the eastern white pine?

Q. Yes.

A. We consider it adapted to every purpose that soft lumber was used for.

Q. Was it adapted to heavy structural uses?

A. They used it for such.

Q. Was it adapted primarily for heavy structural uses?

A. I think it was adapted for that; yes.

Q. What was it used for in general?

A. Well, first as finish, to start with the higher grades, and lap siding and molding, cornice lumber, and sheeting.

Q. Was it introduced in re-manufacture?

A. Sash and doors.

Q. What are the general uses to which California white
3140 pine has been put in the market?

A. That is more particularly a factory or industrial lumber, because of its characteristics and its size. You get larger pieces of clear cuttings out of California white pine than you could from the northern pine.

Q. Can you tell whether or not the northern pine is going into the trade for shop purposes in as large a quantity as it did 20 years ago?

A. I know it is not; it is not used in as large proportions as it was sometime ago and every year it is much less.

Mr. WHEAT. That is all, you may cross-examine.

Cross-examination by Mr. BURR:

Q. Mr. Pray, I believe you spoke of the differences between these two woods. Which has the heavier specific gravity, the Pinus ponderosa or the sugar pine?

A. The California white pine is heaviest.

Q. Heavier?

A. Yes.

Q. It is therefore denser wood, isn't it—density and weight are the same thing?

A. Yes, I would like to qualify it. You will find many more sugar pine logs going to dead head than you will the California white pine.

Q. What do you mean by dead head?

3141 A. It does not indicate that the specific gravity is greater. It is hard to handle sugar pine without getting an excessive amount of dead head.

Q. Well, now, this pitch that appears in the sugar pine, that is mostly in the form that you described as bubbles or exudation of bubbles?

A. Yes.

Q. The California white pine has more in the way of streaks of pitch and the larger pitch pockets than the sugar pine, doesn't it?

A. I don't agree with you.

Q. I am not testifying, I am asking you.

A. The way you ask I thought you were trying to put something in my mouth. I don't remember finding any pitch pockets, so-called, in the California white pine; you very seldom find any pitch pockets.

Q. I am not talking about the tiny pitch pockets.

A. I am talking about the large ones.

Q. You never found in that lumber?

A. Very seldom in California white pine.

Pardon me! I think that you misunderstand what I mentioned as a pitch pocket. That is why I think you are amused, because I don't think you understand.

Q. Suppose you go ahead and clear it up.

A. A pitch pocket is an opening varying in width from say
3142 a sixteenth of an inch to a quarter of an inch, and from an inch to five or six inches long, that is wide open and has nothing in it but pitch. That is what I call a pitch pocket.

Q. And you say you practically never see those in California white pine; is that right?

A. That is true.

Q. Do you regard resin as pitch, as being practically the same thing, or don't you?

A. I don't know anything about resin.

Q. You don't know whether that appears in either of these woods or not?

A. Resin, no; I never had any experience with resin.

Q. Do you make a distinction between resin and rosin?

A. I understand that rosin is resin after it is treated.

Q. Do you find resin in either of these woods?

A. Yes.

Q. In both of them?

A. Yes, sir.

Q. Which has the more of that?

A. I would say that the sugar pine has.

Q. Has more resin?

A. Yes.

Mr. BURR. That is all.

Mr. WHEAT. That is all.

(Witness excused.)

3143 Examiner DE BRULER. We will take a five-minute recess.

(Whereupon a five-minute recess was taken.)

Mr. WHEAT. I will call Mr. Gaetjen.

HARRY W. GAETJEN was thereupon called as a witness and, after having been first duly sworn, testified as follows:

Direct examination by Mr. WHEAT:

Q. What is your business, sir?

A. Planing mill, retail planing mill.

Q. Have you been engaged in the lumber business for some time?

A. Yes, I started in to learn the trade of bench hand in 1901 at the old Pacific, Sixth and Berry, San Francisco. About 1906 I became draftsman in the Empire Planing Mill; about 1912 I became the superintendent; in 1915 the manager; and in 1919 I became the president and manager of the concern, owning one-third interest.

Q. You are engaged in what branch of the lumber business?

A. Planing mill; we manufacture sash and door and interior trim and cabinet work.

Q. Do you use a wood known as sugar pine in that business?

A. Yes, sir.

Q. And do you use a wood known as California white pine in that business?

A. Yes, sir.

3144 Q. I will ask you whether or not those terms are known respectively to the trade in this area?

A. They are.

Q. Have they been known for a period of years?

A. Yes, sir.

Q. Have they been known throughout the entire period of your lumber experience?

A. Yes, sir.

Q. Do you buy any California white pine from the Klamath Falls region?

A. We have; we buy it from different section, but we have bought from Klamath Falls.

Q. If the term California white pine, as respects that particular lumber, were to be changed to Oregon pine, or Oregon white pine, I will ask you whether there would be any confusion which would result in the trade?

Mr. BURR. The usual objection.

Examiner DE BRULER. Objection noted and exception allowed.

A. I would say yes there would be confusion.

By Mr. WHEAT:

Q. Will you state why, sir?

A. Well, I think that the trade around the bay area here has been used to having sash, particularly, and doors made of white pine, or sugar pine. And if we were to call that sash Oregon

3145 pine it would probably be rejected and sent back.

Q. Why?

A. Because they have been built up with the thought that sash should be made of sugar or white pine and they wouldn't use an Oregon sash in this district.

Q. To what does the term Oregon pine in this district refer?

A. Douglas fir.

Q. When you said "white pine" a moment ago, did you have reference to California white pine?

A. Yes.

Mr. WHEAT. You may cross-examine.

Mr. BURR. No questions.

Examiner DE BRULER. That is all.

(Witness excused.)

Mr. WHEAT. I will call Mr. Johnson.

WALTER S. JOHNSON was thereupon called as a witness and, after having been first duly sworn, testified as follows:

Direct examination by Mr. WHEAT:

Q. What is your business, Mr. Johnson?

A. Lumbering, principally wholesaling and manufacturing.

Q. With what company are you connected?

3146 A. The Tarter, Webster & Johnson, the American Box Corporation, the Associated Lumber and Box Company, the Klamath Pine Lumber Company, the Stockton Box Company, the Harper Box and Lumber Company, the American Tile Box and Lumber Company, the American Tile Box Company, and the Underwood Lumber Company.

Q. State what your connection is with these various companies?

A. Well, I am a director in all of them, and president of three or four of them, and vice president of some others. But that is the substance of it.

Q. In what general business are these organizations concerned?

A. Well, they are engaged in the manufacturing and milling and distributing of lumber products.

Q. Where are your mills?

A. The sawmill for the Klamath Pine Lumber Company is at Klamath Falls; the Associated Lumber and Box Company is a box factory principally, handling upper grade lumber as well as box. is located at Dorris, California, Siskiyou County; the Underwood Lumber Company is a box factory, at Lakeview, Oregon, southern Oregon; the Harper Box and Lumber Company is a box factory at Los Angeles; the Stockton Box Company is located at Stockton, California, and makes shook; the American Tile Box Company makes shook in Oakland.

Q. In addition to that——

A. (Interrupting.) The American Box Corporation acts as a distributor for the products of most of our factories in shook;

3147 and the Tarter, Webster & Johnson Corporation sells the lumber.

Q. When you say "sells the lumber" you mean lumber which is not used for box-shook purposes?

A. Yes.

Q. What lumber is that?

A. Upper grades, principally white pine.

Q. And that is the California white pine that is under discussion in this case?

A. California white pine and sugar pine, and other lumber, but principally California white pine.

Q. Where do you market this lumber?

A. All over the United States, and some goes export.

Q. I will ask you whether or not the terms "California white pine" and "sugar pine" are respectively well known in the trade with which you deal?

A. They understand thoroughly what we mean when we quote on either California white pine or sugar pine.

Q. How long have you been familiar with these terms respectively?

A. Ever since I have lived in the State of California, which has been about thirty years.

Q. Do you know whether sugar pine has ever been marketed as California white pine, or under any name including the name "white"?

A. I understand, in all our experience, that sugar pine has been marketed under the name of sugar pine exclusively, and never
3148 is confused with white pine in quoting.

Q. Have you met with any sales resistance or have you been hampered in any other manner in selling sugar-pine lumber by reason of the fact the term "white" is used in the name California white pine?

A. Never had any confusion of any kind.

Q. Are you equally interested in pushing both of these lumbers in the trade?

A. Yes, we sell them both.

Q. Have you received any complaint from your customers regarding the use of the name "California white pine"?

A. Never have heard anything but favorable comment, as that name describes the wood we are selling.

Q. Do you know of any confusion which may have resulted in the use of that name?

A. No; in addition to that we made a special effort through correspondence to ascertain if there was any confusion and everybody that answered the letters replied that they——.

Mr. BURR (interrupting). I object to what they replied.

By Mr. WHEAT:

Q. I believe you may omit that portion of that, Mr. Johnson.

Have you ever had any complaints from your customers regarding the question of durability of California white pine?

A. How do you mean that?

Q. Have you ever had anyone claim that it had failed in
3149 practice, was not a durable wood?

A. No, never.

Q. Are you conscious of any demand from your trade for a change in the name from California white pine to some other name?

A. No, we are requested by all means to retain the name if possible.

Mr. BURR. I object to that.

Mr. WHEAT. The latter part of the answer may go out.

By Mr. WHEAT:

Q. Do you find that the people who purchase lumber from you are interested in the botany of the trees from which the lumber is cut?

A. I find that they know less about the botany of the trees than I do, and that is very little.

Q. I am asking you whether or not you find that they are interested in the botany?

A. They are not at all interested.

Q. What are they interested in?

A. They are interested in getting a wood that is suitable for the purpose for which they intend to use it.

Q. In your opinion is California white pine selling on its merits in the lumber markets for the uses to which it is now put?

A. Exactly so, I think the customers in every instance are getting exactly what they want under that name.

Q. I will ask you whether it is your opinion that California white pine goes into the trade for the uses to which it is primarily
3150 adapted?

A. Yes, in all instances that I know of, because the customer wants that particular wood for the particular purpose which he buys it for and he gets it when he buys it under that particular name.

Q. Are you familiar with southern yellow pine?

A. Yes, sir; we sell it.

Q. What has your experience been with it?

A. I might say in that connection that we operate a plant in Plant City, Florida, where we sell orange boxes, and other shook items in that territory for vegetables, strawberries, tomato's, etc.

Q. You are familiar then with what is known as southern yellow pine?

A. Yes, sir.

Q. In your opinion if the name California white pine were replaced with any name which contained the word "yellow" to describe the wood now marketed as California white pine, would there there be a resulting confusion?

A. There would be a decided confusion, particularly in the Southern States where they know what yellow pine is.

Q. Do you market California white pine in the Southern States?

A. We market pine shooks in the Southern States, including Texas and Florida.

Q. Do you market any of the upper grades in the Southern States?

A. Not of the upper grade yellow pine.

3151 Q. You market upper grades of the California white pine in the Southern States?

A. We do in all States.

Q. What other grades of California white pine do you market in the Southeast?

A. We market shook grades principally in the South and East in California white pine; that is, what I mean by shook grades is cut shook.

Q. Why do you say there would be a confusion if the term California white pine were replaced by the term, or any term including the word "yellow"?

A. The persons in the South or Southeast, or in southern California, in the Imperial Valley, would presume that, if we named it yellow pine, that that was the same hard texture pine that is used in the South for shook, and it wouldn't be what they wanted at all.

Q. Getting away from the matter of box shook for a moment, and into the matter of upper grades of lumber, would there be any resulting confusion in your opinion?

A. I would say there would be a decided confusion. If persons familiar with white and yellow pine were to order yellow pine, thinking they were to receive the southern wood, and get California white pine, which would not have the necessary strength for the particular work they intended to use it for, and it certainly would not be suitable for their purposes, being an entirely different
3152 type of wood, certainly there would be confusion and complaint.

Mr. WHEAT. You may cross-examine.

The WITNESS. Can I make an additional statement?

Examiner DE BRULER. If you wish.

The WITNESS. In connection with the selling of shook, we move shook from Idaho, eastern Washington, Oregon, California, along the west coast of Washington and Oregon, and we move shook that comes out of Mexico, in southern woods, and we are very familiar with what the trade requires in shook requirements in the various sections. In receiving shook out of Idaho we receive considerable shook that is made from the fall downs of upper-grade lumber that comes out of the planing mills up in that section, door factories, etc., and——

Examiner DE BRULER. I think that is sufficient.

The WITNESS. What I was bring out is that we get a great deal of Idaho white pine that comes into the field with California white pine, and we are familiar with them all.

Cross-examination by Mr. BURR:

Q. When you speak of distributing in your direct examination, you are not referring to retailing, are you?

A. No; we do some retailing, yes.

Q. You do retailing?

A. We do retailing of shook.

3153 Q. Retailing of shook?

A. Yes.

Q. What is that used for?

A. Fruit boxes, all kinds of containers for canned goods, vegetable crates, etc.

Q. That is something that goes into common grades, isn't it?

A. Common grades; yes.

Q. The lower grades, is that right?

A. Yes.

Q. Now, that retail work in selling these shooks, that isn't sold to private individuals, that is sold to people who are in the business of boxing fruit stuffs, etc., is it?

A. Largely.

Q. In other words, you don't sell to the ordinary retail-lumber trade, do you?

A. Not like a lumber-yard trade; no.

Q. In those yards are not the pines quite frequently intermingled on those common grades?

A. Very frequently; yes.

Q. In other words, when you are selling the common grades it makes no difference whether it is from sugar, Idaho, or white pine?

A. It makes a great deal of difference in the shook whether it is Idaho or sugar pine or California white pine; yes, it does.

Q. Can't you combine those grades together and sell them as
3154 common pine without distinguishing the variety?

A. In some particular item, like a rough crate, it might not make a great deal of difference, but in, say, a pear or apple box, we couldn't dare make them out of sugar pine because they are inclined to split; they don't have the tensile strength. We have to make them out of California white pine because of superior strength.

Q. It is harder and stronger?

A. It is stronger, not harder.

Q. A little denser wood on the average?

A. Well, I wouldn't say denser; I don't know what you mean by denser.

Q. It has a little more compact fiber, otherwise it wouldn't be stronger, would it?

A. Well, it must be different construction there that I don't know anything about; that would be a technical thing.

Q. Do you use California white pine, or what, for orange boxes?

A. We use principally California white pine for orange shook. We use some sugar pine, if it is for slats, or something narrow; but the trouble is with wider sugar pine we find too much shake, wind shake, too likely to split.

Q. Now, is there any product where you have to use something other than California white pine, on account of any odor that is due to California white pine?

A. Yes.

3155 Q. That is butter and eggs?

A. That wouldn't be true only of California white pine, but all woods in the West have an odor except spruce, and it would scent butter and eggs.

Q. You said you found that your trade did not desire a change of the name of California white pine; is that my understanding?

A. Yes, indeed.

Q. What classes of customers did you write for that information, wholesalers or what?

A. All classes of customers whom we sell to.

Q. How long ago was that?

A. Within the last six or seven months.

Q. I believe you said the use of the word "yellow" would tend to confusion if applied to California white pine with the yellow pines of the South; is that true?

A. Yes.

Q. The use of the word "white" has a corresponding tendency to associate California white pine with the northern white pines, and its reputation, doesn't it?

A. Yes.

Mr. MATTHEW. Would you amend that question so as to omit the word "tendency"?

Mr. BURR. It has that effect, does it?

The WITNESS. How do you mean?

Mr. BURR. Read the question.

(Whereupon the question was read by the reporter.)

3156 Mr. BURR. I will agree to strike the answer and question both and I will reframe it thus:

Q. The use of the word "white" in the term California white pine, does that have the effect to associate the California white pine product with the northern white pine products in the mind of the public?

A. Well, I don't believe that would be so among certain classes of trade, and yet it might be true of other classes. For instance, all the westerners out here have no idea of northern white pine; they don't know what it means. But back East where they have been using northern white pine for years, where they are cutting out the forests of Maine, Michigan, Wisconsin, and so on, they might associate the names together, yes—but we don't.

Q. And the easterners who have just arrived from the East, out here, have the same mental effect produced upon them, wouldn't they, by the use of the word "white"?

A. Well, that would be only a guess of mine; some might and some might not.

Mr. BURR. That is all.

Redirect examination by Mr. WHEAT:

Q. Do you know of any confusion which has resulted because of the use of the word California white pine?

Mr. BURR. I think he has already testified about that.

3157 By Mr. WHEAT:

Q. Just a minute. Do you know of any confusion which has resulted because of the use of the term California white pine with northern white pine?

A. Never heard of any at all.

Q. And does that include both the East and the West?

A. I would say our experience has been, wherever we have sold lumber, and we have sold lumber all over the world; sold shook in

South Africa and lumber at all points, and they know what they are getting when they get California white pine.

Mr. BURR. But you never deal with the actual consumer or his representative, the architect?

The WITNESS. We don't deal with the architect; no.

Mr. BURR. That is all.

Examiner DE BRULER. That is all, you are excused.

(Witness excused.)

Examiner DE BRULER. Call the next witness.

Mr. WHEAT. I will call Mr. Browne.

RICHARD H. BROWNE was thereupon called as a witness and, after having first been duly sworn, testified as follows.

Direct examination by Mr. WHEAT:

Q. Mr. Browne, will you state your name, address, and
3158 present business?

A. Richard H. Browne, 2960 Divisadero Street, San Francisco; at the present time I am in the employ of the California White Pine Manufacturers, who are respondents in this case.

Q. And you have been employed for a particular purpose in connection with this hearing?

A. I have.

Q. What has your lumber experience been?

A. My first experience was tallying shop lumber in Chokio, Minnesota, in 1901. I came West in 1903 for the Red River Lumber Company, and the T. B. Walker interests, and was with them continuously to 1923, with the exception of a few months during the panic of 1907, when I was employed by the C. A. Smith Lumber Company at Coos Bay, Oregon. Since 1923 I have been engaged in the wholesale lumber business in San Francisco up till last February.

Q. You were engaged with the Red River Lumber Company for from 1903, in California, until 1923?

A. Yes.

Q. And what was your work in connection with that employment?

A. My work was examining timber lands, purchase of the same, filing scrip, and handling all matters pertaining to the timber.

Q. You were in the woods a great deal?

A. Practically, until 1914, until the big mill was built at Westwood. I assisted in laying out the mills, the small mills, at Westwood, and afterwards I worked in the sales department and
different division in Westwood, but my principal work was
3159 looking after timber.

Q. In connection with the present proceedings have you, at the request of the respondents represented by the firm McCutchen. Onley, Mannon & Greene, procured certain photographs of ancient structures in the State of California?

A. I have.

Q. I will hand you these sheets containing photographs and ask you if they are the ones which you mentioned?

A. (Witness examining photographs.) They are.

Q. I hand you a sheet of paper marked "Roop cabin, Susanville, Lassen County, California, built in 1854", containing three photographs numbered 1, 2, and 3. I will ask you what the photographs represent and when they were taken.

A. That is a photograph of a cabin which is called the Roop cabin built at Susanville, Lassen County, California, in the year 1854. The photograph was taken on December 23, 1929.

Q. By whom?

A. By myself.

Mr. BURR. I object to his testimony as to when it was built.

By Mr. WHEAT:

Q. Mr. Browne, have you been a resident of Susanville?

A. I have.

Q. During what period of time?

A. I resided in Susanville from 1908 until 1916.

3160 Q. And can you tell me whether the Roop cabin is a well-known ancient structure in this area?

A. It is.

Q. Where is it located?

A. It is located on Wetherill Street, 250 feet north of Main Street.

Q. Did that cabin figure in an important historical incident?

A. It did.

Q. Explain what that was.

A. It was used as a fort at the time when the boundaries of California and Nevada were not understood definitely by the settlers. Plumas County endeavored to claim that portion of the valley as belonging to them and endeavored to collect taxes from the inhabitants thereof, and they resisted by armed force and there was a battle fought and the invaders were repelled.

Q. May I ask you what the general reputation of the Roop cabin is in the Susanville area for age?

A. It is without any question, that is, it has been determined without any question, that the cabin was built in the summer of 1854. We have the Fairfied history of Lassen County; we also have the daughter of Mr. Roop, Susan, after whom the town was named, and we have photographs of the cabin back as early as 1860. We also have the register of the——

Mr. BURR (interrupting). I waive the objection.

Mr. WHEAT. I thought I would prove it.

Mr. BURR. You have done well.

3161 By Mr. WHEAT:

Q. Will you tell me whether or not any wood of the species now known and marketed as California white pine is in this cabin?

A. In view 1, all of the logs shown there are of California white pine.

Q. And are there any of them with the bark still remaining?

A. There is. I also took a piece of bark and laid it up near the edge where it can be plainly seen in the photograph.

Q. Will you state where it is and point it out to the examiner?

A. Yes. It is on the right-hand corner, the fourth log up. I can only state that the other logs are, to the best of my knowledge and belief. California white pine logs.

Q. Mr. Browne, what is the elevation of Susanville and what is the average rainfall and climate?

A. It is situated at an elevation of 4,195 feet; the average rainfall is about 16 inches; the snowfall is about 6 feet—that is, the entire snowfall of winters. The summers are warm; the temperature is as high as 100 to 105 degrees above zero, while in the winter time it drops as low as 16 to 20 degrees below zero. The summers are dry and warm, while the winters are wet and cold.

Q. I will ask you whether or not—I hand you a sheet of paper with two photographs numbered 4 and 5, and certain writings, and ask you if you will state what these photographs represent, when they were taken, and the general reputation as to age of the building which they represent?

3162 A. This is known as the old Goodrich house, at Mountain Meadows, Lassen County, California. More definitely described——

Mr. WHEAT (interrupting). Before we go further I would like to have the first sheet, to which the witness has already testified—that is, the Roop cabin—marked as "Respondent's Exhibit No. 35" for identification.

Examiner DE BRULER. It may be so marked.

(Whereupon the photographs of the Roop cabin were marked "Respondent's Exhibit No. 35" for identification.)

The WITNESS. I would like to finish my answer—which is more definitely described as the southeast quarter of section 35, township 29 north of range 9 east, Mt. Diablo base and meridian.

By Mr. WHEAT:

Q. That describes the location of this house?

A. Yes.

Q. What is the reputation in the community as to the age of this particular house?

A. The reputation in the community of that house is that it was built early in 1860. I further confirmed that by taking the official United States map, as filed by the surveyor with the United States Government on December 31, 1866, in which he shows in the southeast quarter section 35 a house which he calls the Gooch house, which is shown on the official map of the United States Government of township 26 north, range 9 east.

3163 Q. Can you tell me whether the reputation in the community is that this house is the Goodrich house?

A. Yes. Furthermore, in Fairfields history of Lassen County it was referred to as the voting precinct of the county in the year 1861

and was afterwards referred to as the C. C. Goodrich place in Mountain Meadows.

Q. Now let me ask you whether or not the climate at that point in Mountain Meadows is similar to that at Susanville?

A. It is more severe; the rainfall is greater, approximately 25 inches, of which a greater portion is snow. The storms and winters start in earlier in the fall and the snow remains on the ground a longer time in the spring. The summers are not as warm as they are in Susanville, as this is 1,000 feet higher than at Susanville, an elevation of approximately 5,000 feet.

Mr. WHEAT. I ask that that be marked "Respondent's Exhibit No. 36" for identification.

Examiner DE BRULER. Very well; it may so marked.

(Whereupon photographs of the Goodrich house were marked "Respondent's Exhibit No. 36" for identification.)

Mr. WHEAT. Respondent's exhibit no. 36 for identification shows two photographs.

Examiner DE BRULER. Yes.

By Mr. WHEAT:

Q. Mr. Browne, can you state whether you examined the Goodrich house to ascertain from what variety of lumber it was constructed?

3164 A. I did.

Q. And what was the result of your investigation?

A. The exterior lumber, as near as I can see— that is, the siding— was made of California white pine. I also took a sample from the wood from the house and had the same tested by Mr. M. R. Brundage, of the United States Forest Experiment Station, Hilgard Hall, University of California.

Q. Will you produce the sample that you took from the Goodrich house?

I may state, for the purpose of identifying the lumber in these various structures, that we asked Mr. Browne to take a sample of the lumber and we have had them identified by the wood technologist at the University of California, whom we will present on the stand at the next session.

I merely desire now to identify these small samples of lumber.

A. Here are the two samples which I removed from the Goodrich house [indicating].

Q. Just where did you procure these two samples from, and are they fair samples of the lumber which is on the house at the present time?

A. Those samples were taken from the front of the house, a piece of siding, approximately about four feet from the foundation, which is a wet exposure.

Q. And may I ask you whether or not the other siding
3165 which you examined on this house is in approximately the same state of preservation as the piece which you obtained?

A. It is. In fact, I took the pieces that were split, easy to get off, so as not to deface the house, or take off a piece of siding which I would have to replace.

Q. On what date did you do this?

A. December 28, 1929.

Mr. WHEAT. I will ask the examiner that these two pieces of wood be marked for identification.

(Here followed remarks off the record.)

By Mr. WHEAT:

Q. I hand you a sheet of paper with three photographs on it and ask you to explain it briefly.

A. It is known as the old Spaulding house, which is located in Susanville and was built in the year of 1863 by S. N. Spaulding, whose son, John B. Spaulding, is a banker and druggist of Susanville at the present day. From him I received the information that this house was built the year before he was born, setting the date as 1863.

Q. I will ask whether or not, in addition, there is any general reputation around the community as to the age of this house?

A. There is, because when I made the inquiries among the old timers of Susanville they all directed me to this house as the oldest house then standing in the town of Susanville.

Mr. BURR. You say that is about 4,000 feet elevation?

The WITNESS. 4,195.

3166 Mr. BURR. And you already described the climate.

The WITNESS. Yes.

By Mr. WHEAT:

Q. Will you tell me whether or not the outside lumber on this house—what is it made of?

A. The lumber is made out of California white pine.

Q. Did you take these photographs, and if so, on what date?

A. I did. It was approximately December 23 or 24.

Q. 1929?

A. Yes. I took all these photographs between December 20 and December 31, 1929.

Mr. WHEAT. May that stand for all of them?

Examiner DE BRULER. Yes.

By Mr. WHEAT:

Q. Have you procured a piece of siding from this house?

A. I have.

Q. And was the method of procuring it similar to that of procuring the piece from the Goodrich house?

A. It was, only it was taken from a lower place near the bottom, near the foundation.

Q. Does that place show on any of the photographs?

A. It can be seen in the lower photograph, no. 8, to the left of the door.

Q. Was this side of the house exposed to the weather, that is, was the piece that you obtained exposed to the weather?

3167 A. Yes.

Q. Did you state whether or not you saw any evidence, on this house, or any of these other houses, pieces from which you obtained, of rebuilding or reconstruction or recovering of the outside?

A. No; I did not; and also from the fact that the windows, the design of the door, and the siding matter itself, shows its age. Furthermore, this siding was put on with square-cut nails, which will show in the wood samples taken off as one of the square-cut nails was taken out with the sample.

Q. This same testimony applies to the second piece?

A. Yes.

Mr. WHEAT. I ask that the photographs of the Spaulding house be received as respondent's exhibit no. 37 for identification.

Examiner DE BRULER. So received.

(Whereupon the photographs of the Spaulding house were marked "Respondent's Exhibit No. 37" for identification.)

By Mr. WHEAT:

Q. I hand you another sheet of paper and ask you what it contains?

A. This contains two photographs of the old Wright house, built in Susanville approximately in 1870. The date was determined by me by interviews with Mr. Wright's daughter, Mrs. C. D. De Forest, who is at present living in Johnsonville.

Q. I ask you whether or not also, by common reputation,

3168 the age of that house was approximately determined?

A. It was. And in explanation I will state that the lower photograph on the page shows the south and west exposure and that the prevailing storms in that country come from the south and west. I will also state that I removed samples of siding from this side of the house, which is shown very clearly on the lower part of the window on the extreme left of the photograph, which was the bottom board next to the foundation.

Q. Have you those pieces with you?

A. I have.

Mr. WHEAT. I will ask that this sheet, with two photographs, be received and marked "Respondent's Exhibit No. 38" for identification.

Examiner DE BRULER. They will be received and so marked.

(Whereupon the two photographs of the Wright house were marked for identification, "Respondent's Exhibit No. 38.")

By Mr. WHEAT:

Q. I now hand you another sheet of photographs and ask you what that contains?

A. This is known as the Judge Harris house, at Alturas, Modoc County, California. I ascertained the age of this house by confer-

ring with the old timers, and particularly with Col. Thompson, the old Indian fighter who has written a book, "The History of Modoc and the Troubles in the Early Days with the Indians." I also photographed this house and took samples from the same,
3169 from the outside siding, which is exposed to the weather.

Alturas is approximately, that is, the elevation is about 4,800 feet; the climate is very similar to Susanville with the exception the rainfall may be deficient by about an inch, and not quite as much snow, but more extreme cold weather. I have personally been in Alturas when the thermometer registered about 33 degrees below zero and I have been there in the summertime when it was as high as 105 degrees.

Q. I will ask you whether or not the siding which you mention on this house is composed of California white pine?

A. It is.

Mr. WHEAT. I will ask that this sheet of photographs headed, "Judge Harris house", regarding which the witness has just testified be marked "Respondent's Exhibit No. 39" for identification.

Examiner DE BRULER. So marked.

(Whereupon the photographs of the Judge Harris house were marked "Respondent's Exhibit No. 39" for identification.)

Mr. WHEAT. Mr. Examiner, may the two samples testified to by the witness as pieces taken from the Goodrich house, referred to in the photographs marked "Respondent's Exhibit No. 36" for identification, be marked, respectively, "36A" and "36B" for identification.

Examiner DE BRULER. They may be so marked.

(Whereupon the two samples of wood referred to were
3170 marked "Respondent's Exhibit No. 36A and 36B" for identification.)

Mr. WHEAT. I will now ask, Mr. Examiner, that the two pieces of wood testified to by the witness as having been taken from the Spaulding house, mentioned in respondent's exhibit no. 37 for identification, be marked, respectively, "Respondent's Exhibit No. 37A and 37B" for identification.

Examiner DE BRULER. They may be so marked.

(Whereupon the two pieces of wood referred to were marked "Respondent's Exhibit No. 37A and 37B," respectively, for identification.)

Mr. WHEAT. Now I will ask that the two wood samples mentioned by the witness in connection with his description of respondent's exhibit no. 38 for identification, be marked "Respondent's Exhibit No. 38A and 38B", respectively, for identification.

Examiner DE BRULER. So marked.

(Whereupon the two samples of wood referred to were marked "Respondent's Exhibit No. 38A and 38B", respectively, for identification.)

By Mr. WHEAT:

Q. Mr. Browne, is the Wright house, regarding which you testified, also known in the community as the Folsom house?

A. It is at the present time known as the Folsom house.

Mr. WHEAT. I will ask that the sample of wood mentioned
3171 by the witness, in connection with his testimony regarding respondent's exhibit no. 39 for identification, be marked "Respondent's Exhibit No. 39A" for identification.

Examiner DE BRULER. So marked.

(Whereupon the sample of wood referred to was marked "Respondent's Exhibit No. 39A" for identification.)

By Mr. WHEAT:

Q. I will now show you another sheet with photographs on it and ask you to explain what that is?

A. That is the Rice house in Cedarville, Modoc County, California, which was built approximately in 1870. In making my investigations in this community I was referred to this house as being the oldest house standing in that town. One of the Rice girls is at present living in this house.

The samples of siding were taken from the front of the house, which is a south exposure. The climatic conditions of Cedarville are approximately the same as that of Alturas, it being situated on the west side of Surprise Valley.

Q. At an altitude of approximately what?

A. Approximately 4,400 feet.

Mr. WHEAT. I will ask that the sheet with the two photographs be marked "Respondent's Exhibit No. 40" for identification.

Examiner DE BRULER. It may be so marked.

(Whereupon the two photographs of the Rice house were marked "Respondent's Exhibit No. 40" for identification.)

3172 By Mr. WHEAT:

Q. Did you produce samples of this house?

A. I did.

Q. Will you tell what your investigation showed that the exterior siding of this house was constructed of?

A. California white pine.

Q. And have you samples here?

A. I have two samples.

Mr. WHEAT. I will ask that these two samples be marked, respectively, "Respondent's Exhibit No. 40A and 40B" for identification.

Examiner DE BRULER. So marked.

(Whereupon the two samples of wood referred to were marked "Respondent's Exhibit No. 40A and 40B" for identification.)

By Mr. WHEAT:

Q. I will ask you whether or not the siding on this Rice house was in fair condition when you examined it?

A. It was in very good condition.

Q. I hand you another sheet of photographs and ask you what it contains?

A. That is a photograph of the Masonic Hall in Cedarville, Modoc County, California. The lower portion of this hall, which is a two-story building, was the first schoolhouse built in Surprise Valley.

Q. That is the general reputation in that community?

3173 A. Yes.

Q. About what date was it built, according to general reputation?

A. Approximately 1870. The photographs shown are a north exposure. The samples are taken from the north side of the building. I removed four samples of siding from this building and determined that the wood was California white pine.

Mr. WHEAT. I ask that these photographs on this sheet headed "Masonic Hall, Cedarville", be received as respondent's exhibit no. 41 for identification.

Examiner DE BRULER. So received and marked.

(Whereupon the two photographs of the Masonic Hall, Cedarville, were marked "Respondent's Exhibit No. 41" for identification.)

Mr. WHEAT. I will also ask that this sample of wood which Mr. Browne has just testified to, be received as Respondent's Exhibit No. 41A for identification.

Examiner DE BRULER. So received and marked.

(Whereupon the sample of wood referred to was marked "Respondent's Exhibit No. 41A" for identification.)

By Mr. WHEAT:

Q. I hand you another sheet of paper and ask you what it contains?

A. This is the photograph of a log cabin which was erected in Cedarville and was known as the Cressler and Bonner Trading Post, which is quite a historical building. It was the first building in Surprise Valley and was erected in 1854 and used as a

3174 trading post for a number of years. It is at present in a park set aside for the purpose of preserving this, but still there has been no repairs made to the building.

The photograph on the lower portion of the page shows California white-pine logs. This I determined by the bark which is still on the logs on the north side of the building.

Q. That includes the sapwood, does it?

A. The entire logs—sap, heart, and bark.

The climatic conditions are the same as I have spoken of at Cedarville.

Q. And the reputation of this building in the community is that it was built approximately at the time you stated?

A. It is.

Mr. WHEAT. I will ask that the sheet, the two photographs, be received as respondent's exhibit no. 42 for identification.

Examiner DE BRULER. So received.

(Whereupon the two photographs of the Cressler and Bonner Trading Post were received and marked "Respondent's Exhibit No. 42" for identification.)

Mr. WHEAT. If Your Honor please, I will ask that these respective exhibits for identification, respondent's exhibit nos. 35 to 42, inclusive, for identification, be received as respondent's exhibits nos. 35 to 42, inclusive for the record; and, in addition, the wood samples,
3175 respondent's exhibit nos. 35A and 35B, and such similar matter for each of these exhibits for identification, be also received under those numbers.

Mr. BURR. I would like to ask if it is not the intention to have the expert testify as to whether or not they are California white pine?

Mr. WHEAT. Yes.

Mr. BURR. May I ask that the reception of the wood samples be postponed until that time?

Mr. WHEAT. It is agreeable. You have no objection to the photographs going in at the present time?

Examiner DE BRULER. The photographs may go in now.

Mr. WHEAT. We ask that respondent's exhibit no. 35, 36, 37, 38, 39, 40, 41, 42, for identification, become the same numbers for the record.

Mr. BURR. No objection.

Examiner DE BRULER. So received.

(Whereupon respondent's exhibits nos. 35 to 42, inclusive, were received in evidence.)

Mr. WHEAT. You may cross-examine.

Cross-examination by Mr. BURR:

Q. Did you notice any sugar pine in any of these structures?

A. No, I didn't; because that is not a sugar-pine territory, Mr. Burr, and I went up there principally for that reason because
3176 I was familiar with that territory and knowing that these houses in the early days would be built of the lumber closest to their present location; that they wouldn't go back into the mountains to get sugar pine, so I felt that I would be more apt to find California white pine in that locality.

Q. And California white pine and ancient structures were what you were looking for?

A. Yes, indeed.

Q. Did you make any examination of the roofs of these buildings?

A. No, I did not because most of the roofs there were shingled, and of course the log cabins showed the shakes, but the shakes are very badly decayed there, and rotted out, and I thought that there wouldn't be any advantage gained by making an examination.

Q. You don't know whether those shakes were made out of California white pine or not, do you?

A. No, but my impression would be that they were made out of California white pine because in my timber work throughout the mountains I found that shake makers used a great deal of California white pine in the manufacture of shake.

Q. Without going through these eight buildings in detail, did you notice replacement work?

A. No, I did not; I looked for that carefully to see if there were replacements. I tried to get the structures showing the age in which they were built. You will see the old doors and the windows
3177 that show in the photographs.

Q. All these samples that have been marked for identification, they were in each case exposed to the weather?

A. Siding in every case.

Q. They were siding and exposed to the weather?

A. Yes.

Q. There is no sign here of paint; were these unpainted buildings?

A. There are signs of paint there.

Q. There are?

A. Yes, indeed; you will find on the Spaulding house the yellow paint very heavy there on the piece underneath your hand there.

Q. How much sign of rot did you notice?

A. The siding as a whole was very sound. But so that there could be no question in regard to the samples I took them off where they had been split and knocked off a piece. You know how a siding will split off, or where the nail is. I removed that portion so that sample should show decay because the water has been in it and running through from where the nail and split was. I could have removed better samples by taking an entire piece of siding off the building, which would have shown sounder condition than those I have.

Q. Those buildings are now being occupied?

A. They are all being occupied with the exception of the two log cabins, the Cressler and Bonner Trading Post and the old Roop cabin. I will say that the old Roop cabin is now being used
3178 for a cow barn; the grandson of Governor Roop is using it.

Q. There is some sign of rot then in connection with the exterior of these ancient buildings?

A. There is in the log buildings, and also you will notice in the Judge Harris house, of Alturas, that there is some rot on the porch; the wood has rotted off the edge. I think the photograph will show that very clearly.

(Here followed remarks off the record.)

Q. In that connection you refer to respondent's exhibit no. 39, do you?

A. Yes. I might qualify that statement and say that all the houses are not occupied. The Spaulding house in Susanville is not occupied at the present time. There is a "For rent" sign that shows in the photograph, but it is just temporarily vacant.

Q. Now the Cressler and Bonner Trading Post, respondent's exhibit no. 42, is in rather bad condition isn't it?

A. Yes.

Q. Would you say that the condition is due to decay, to a large extent?

A. Partially so and partially from neglect on account of the roof not being taken care of the shakes, which have rotted away, has allowed the snow to pile up in the winter time and there will be snow on the inside and outside of the building and the snow on the outside would naturally melt, and would leave snow on the inside which would cause rot.

3179 Mr. BURR. I think that is all.

Redirect examination by Mr. WHEAT:

Q. In taking these samples you were carrying out my directions, were you, to procure something by which you could prove the identity of the wood, and not determine by the samples the state of the building?

A. That is correct.

Mr. WHEAT. That is all.

(Witness excused.)

Examiner DE BRULER. We will take an adjournment until February 5, 1930, at 10:00 o'clock a.m.

(Whereupon, at 5:15 o'clock p.m., an adjournment was taken until February 5, 1930, at 10:o'clock a.m.)

3180 Docket No. 1620 to 1669, inc.

SAN FRANCISCO, CALIFORNIA, *February 5, 1930.*

Met pursuant to adjournment 10:10 o'clock a.m.

Before Ellis De Bruler, examiner.

Appearances:

Eugene W. Burr for the Commission.

McCutcheon, Olney, Mannon & Greene (by Mr. Allen P. Matthew and Carl I. Wheat) for the respondents.

Examiner DE BRULER. We will proceed if the parties are ready.

Mr. WHEAT. I will call Mr. Brundage.

M. R. BRUNDAGE was thereupon called as a witness and, after having been first duly sworn, testified as follows:

Direct examination by Mr. WHEAT:

Q. Please state your full name and address?

A. Marsden R. Brundage.

Q. And your residence, please.

A. 1708 Milvia Street, Berkeley.

Q. Mr. Brundage, what is your business or profession?

3181 A. I am associate forester with the California Forest Experiment Station engaged in research of various kinds of forest products.

Q. By whom are you employed?

A. By the United States Forestry Service, branch of research.

Q. What particular field is yours?

A. My field is mostly research in the utilization and in the sylvacultural relationships with utilization.

Q. May I ask are you a wood technologist?

A. I am a wood technologist by training and that is the part of my duties there at the station. We are called upon to identify wood specimens. We deal usually with the local specimens and send others back to the forest-products laboratory.

Q. And have you had training in the identification of wood samples?

A. Yes.

Q. Where?

A. I had training in Michigan State College at East Lansing, Michigan, where I was given that course in connection with the general four years' course in forestry.

Q. After that what has been your experience in that line?

A. My experience since that time—since I have been in the forestry service, I have been called upon to identify probably 30 or 40 times a year specimens of wood which are usually California woods send to the office requesting identification.

Q. May I ask whether the portion of your duties for the Forest Service is this wood identification?

3182 A. A portion is; yes.

Q. May I ask you whether or not you can microscopically identify the various species of pine grown in the United States, and to what extent that identification can go?

A. The identification of pines is rather difficult because of the similarity of microscopic features. The pines are usually classified in groups only, unless the origin is known, in which case they can be assigned to perhaps one or two species if the region is definitely known.

Q. May I ask whether there is among these pines a group known to botanists as the white-pine group?

A. Yes.

Q. And another generally known as the yellow-pine group?

A. Yes.

Q. Can you always identify, microscopically, pieces of small samples of wood as being one or the other of these groups?

A. You can always identify any group as belonging to one group or the other with certainty with a compound microscope.

Q. If you know the region which the sample was obtained from, can you, with reasonable certainty, identify the sample as belonging to some particular species within the particular group?

A. You can.

Q. I will ask you whether or not, during the past month, you have made certain wood identifications at the request of the respondents in the present proceedings?

3183 A. I have.

Mr. WHEAT. The examiner will recall that at the Spokane hearing certain wood specimens were produced and were marked with exhibit numbers.

Examiner DE BRULER. Yes.

By Mr. WHEAT:

Q. I will hand you respondent's exhibit no. 26 and ask you whether you examined this sample of wood, and if so, what your identification proved to be?

A. I examined this sample of wood and found it to be one of the yellow-pine group.

Q. And knowing the location from which it was obtained, what species would you say it was?

Mr. BURR. Were you informed where it was obtained?

The WITNESS. I was not informed where this was obtained.

Mr. WHEAT. I will now state that the records shows this was obtained at Spokane, Washington.

By Mr. WHEAT:

Q. What would you say the species is?

A. If you said it grew in the vicinity of Spokane, Washington, as a tree, was produced naturally in that region around that vicinity, I would say in all probability it is Pinus ponderosa.

Q. I will hand you a sample marked "Respondent's Exhibit No. 29" and ask you if you identified that sample?

A. I did.

3184 Q. Will you state for the record what you found that to be?

A. I found that to belong to the same group as the preceding specimen.

Q. And assuming that this specimen came from the Spokane territory, and was grown in that area, what would you state as to the species?

A. That is probably also Pinus ponderosa.

Q. I will hand you a specimen marked "Respondent's Exhibit No. 25" and ask you to state what you found that to be, if you examined it?

A. I examined that and found it to belong to the yellow pine—ponderosa group or yellow pine group.

Q. I will hand you a specimen marked "Respondent's Exhibit No. 27" and ask you if you examined and identified that specimen?

A. I identified that specimen as a member of the white pine group.

Q. And if you were informed that this specimen was obtained at Spokane, Washington, to what particular species of the white pine group would you assign it, in all probability?

A. To Pinus monticola, western white pine.

Q. I will hand you a specimen labeled "Respondent's Exhibit No. 28" and ask you if you examined this specimen and identified it?

A. I examined that specimen and identified it as a member of the white pine group, and if it came from that region around Spokane, it is undoubtedly western white pine.

3185 Mr. BURR. Or monticola?

The WITNESS. Yes.

By Mr. WHEAT:

Q. I will hand you another specimen which was mentioned, Mr. Examiner, in the testimony of the witness Klopp at the Spokane hearing, and ask you if you examined this specimen and identified the same?

A. Yes; I examined that specimen and identified that as belonging to the yellow pine group.

Q. I will ask you whether or not, if you were informed that this specimen came from a house in the city of Spokane, you would be able to identify it, as to species?

Mr. BURR. Just came from a house, you said?

Mr. WHEAT. Yes. You recall the testimony of the witness Klopp.

A. (Examining specimen referred to as having come from a house.) Not knowing what other species are shipped into Spokane, I wouldn't want to confine it to any particular species, just by knowing what house it came from. If we know the origin of the tree, from the wood from which it was cut, if it grew in the vicinity of Spokane before it went into the house—in other words, if it is locally grown timber, it would undoubtedly be Pinus ponderosa.

Q. May I ask you whether or not members of the yellow pine group lumber produced from members of the yellow pine group other than Pinus ponderosa are, if you know, generally
3186 shipped into the area?

Mr. BURR. That was some years ago you mean?

Mr. WHEAT. Thirty-five years ago.

Mr. BURR. Do you know about that 35 years ago?

The WITNESS. I don't know definitely, but I would consider it extremely doubtful that any lumber, timber, was shipped into the western region of any kind for construction purposes.

By Mr. WHEAT:

Q. On that assumption what would you say that wood in all probability is?

A. Undoubtedly western yellow pine. It has the characteristics of western yellow pine.

Q. What species do you refer to?

A. Pinus ponderosa.

(Here followed remarks off the record.)

Mr. BURR. I think it should show on the record that he produces a specimen taken from that, from respondent's exhibit no. —.

Mr. WHEAT (interrupting). This has not been introduced yet as an exhibit.

(Here followed remarks off the record.)

Mr. WHEAT. I will ask, Mr. Examiner, that this wood sample regarding which the witness has just testified be received and marked "Respondent's Exhibit No. 43."

3187 Examiner DE BRULER. Respondent's exhibit no. 43 will be received.

(Whereupon the sample of wood referred to was received in evidence and marked "Respondent's Exhibit No. 43.")

By Mr. WHEAT:

Mr. Brundage, I will hand you a wood sample marked "Respondent's Exhibit No. 36A" for identification and ask you whether you investigated this wood sample and ascertained the species from which it was obtained, and making the assumption with reference to all the samples which I am now about to hand you, that they were procured from structures in the northeastern portion of the State of California.

A. And a good many years ago—I think that time element would be important.

Q. And a great many years ago.

A. I examined this specimen and I identified it positively as belonging to the yellow pine group and, if it came from that section of the State—it will be necessary to repeat that.

Mr. BURR. I don't think so. We can stipulate you can make a blanket question.

The WITNESS. How could I state that?

By Mr. WHEAT:

Q. Do you believe it to be Pinus ponderosa?

A. Yes.

Q. Under the explanation which you have made?

3188 A. Yes, from the explanation I have made.

Q. I will hand you now a sample of wood marked "Respondent's Exhibit 36B" for identification, and ask you whether you examined this sample of wood and what the result of your investigation was?

A. I examined this specimen under a microscope and found it to be a member of the yellow-pine group and it is probably Pinus ponderosa.

Q. I will hand you a wood specimen marked "Respondent's Exhibit No. 37A" for identification, and ask you whether you inspected this wood sample and, if so, what you found it to be?

A. I identified this specimen also as a member of the yellow-pine group, and if it was cut from California forests it is probably Pinus ponderosa.

Q. I hand you specimen marked "Respondent's Exhibit No. 37B" for identification and ask you whether or not you examined this specimen and, if so, what you found it to be.

A. I examined this specimen and found it to be also a member of the yellow-pine group, and if grown in the State of California is probably Pinus ponderosa.

Q. I hand you now the following exhibits for identification, respondent's exhibits nos. 38A, 38B, 39A, 40A, 40B, and 41A, all marked for identification, and ask you whether you examined these specimens and, if so, what the result of your examination was.

A. I examined all these specimens microscopically and found them to be members of the yellow-pine group and, if grown

3189 in California forests, are in all probability Pinus ponderosa.

Cross-examination by Mr. BURR:

Q. None of those could be lodgepole pine, in your judgment?

A. None of those could be lodgepole.

Q. That is a yellow pine, is it not, lodgepole?

A. That is of the yellow-pine group also; yes.

Q. You could tell by examination infallibly whether it was lodgepole or Pinus ponderosa, can you?

A. I could be fairly certain about the possibility of its being the lodgepole pine grown in California. The lodgepole pine grown in outside regions I am not so familiar with, but lodgepole pine grown in this State is a different texture.

Q. So there is no real possibility that that could be lodgepole?

A. I don't believe there is any possibility of any of those being lodgepole.

Q. Is there any yellow pine, native to California other than Pinus ponderosa and the lodgepole?

A. Pinus jeffreyi is a member of that group.

(Here followed remarks off the record.)

A. I should qualify that—that is either Pinus ponderosa or Pinus jeffreyi. They can't be distinguished when they are mixed indiscriminately by the lumberman.

3190 By Mr. BURR:

Q. Do you know whether jeffreyi is sold as California white pine commonly?

A. It is as far as I know; it is usually sold and mixed with Pinus ponderosa and sold as the same species.

Q. Some botanists regard jeffreyi as a subspecies of Pinus ponderosa, do they not?

A. Some botanists do, although it is definitely recognized in Sudworth's Check List as a distinct species.

Q. Do you regard it yourself as a distinct species?

A. I regard it as a distinct species in the woods where it can be identified by tree characteristics and where it has the marked characteristics that are assigned to the jeffreyi pine species by botanists. There are intergrading species. That is, there are trees intermediate between Pinus ponderosa and Pinus jeffreyi, which have the characteristics of both in needles, cones, bark, etc., but the distinct Pinus ponderosa and the distinct Pinus jeffreyi are very easy to tell apart in the woods.

Q. There are gradations between the characteristics of the jefferyi and the characteristics of ponderosa shading all the way between the two?

A. Yes; there are.

Q. I think you testified that you would be able to distinguish without doubt or hesitation the white pines from the yellow pines?

3191 A. Miscroscopically, yes.

Q. Is that due to a different cell structure?

A. That is due to a different cell structure in what is known as the tracheid cell and also to a difference in the pits between the cell walls of the parenchyma and the wood tracheids.

Q. Respondent's exhibit no. 28, I believe you said was ponderosa. Can you tell whether it is heart or sap?

A. That is not ponderosa—that is a member of the white-pine group.

Q. Will you state whether it is heart or sap?

A. The sapwood extends—do you want it in inches approximately; that is, part heart and part sap?

Q. Well, just what is it?

A. About 40% sap on that side and 60% heart here.

Mr. WHEAT. Which you mean the reverse side.

By Mr. BURR:

Q. The part with the stamp of the number of the exhibit is heartwood, is it?

A. That is heartwood; yes.

Q. Referring to respondent's exhibit no. 25, will you state whether that is heart or sap?

A. Exhibit 25 appears to be 100% sapwood.

Q. And that is what kind of wood?

A. That is one of the yellow-pine group.

Q. How about respondent's exhibit no. 26? You testified
3192 that is yellow pine. Is that heart or sap?

A. That is a member of the yellow pine group; it has the appearance of being all sapwood.

Q. And respondent's exhibit no. 27 is heart or sap?

A. There is some slight appearance of that being partly heartwood but I wouldn't want to swear to you without having it cleaned off or polished up on the end.

Q. What did you testify that was?

A. That is a member of the white pine group.

Q. And you think it is largely heart, do you?

A. I would like to whittle that off a little bit (whittling on respondent's exhibit no. 27). That appears to me to be about 50% heart, but I wouldn't want to be real definite about that.

(Here followed remarks off the record.)

By Mr. BURR:

Q. You say that is white pine, do you, exhibit no. 27?

A. Yes, white pine group.

Q. Handing you respondent's exhibit no. 29, which you testified was——

A. (Interrupting.) My mark is on it here; that is a member of the ponderosa group.

Q. That is heart or sap?

A. That specimen is about 70% heart and 30% sap by volume; one surface is 90% heartwood and the other surface is 60% heartwood.

Mr. WHEAT. By the first surface you mentioned, you
3193 referred, did you, to the surface opposite to that on which the stamp of the exhibit number appears?

The WITNESS. Yes.

Mr. WHEAT. And that surface is nearly all heartwood?

The WITNESS. Yes, just a narrow strip of sap along one edge.

By Mr. BURR:

Q. You are positive that is not all sap, are you?

A. It is possible for a board to become darker by exposure to the light, but from the end section the darker color follows across the end grain and the lighter color remains, and the line of division is along one of the annual rings. I could classify it about 70%, that is, I would classify 70% of that piece, as I said before, as heartwood from the darker color.

Q. That is a question on which experts might differ, is it?

A. Yes, it is.

Q. Would you be able to tell as to these respondent's exhibits for identification 36 to 44, but given letter designations along with those numbers, would you be able to tell whether those exhibits, after this lapse of time, were heartwood or sapwood?

A. I wouldn't want to make any identification as to heart or sap of a specimen of that size and that age. The color characteristics of the original wood are lost due to aging.

Q. In view of the length of time that they have lasted, namely, from the 1860's down to beginning, in some cases, in the 70's would you say those were more apt to be heart or sap?

3194 A. I wouldn't say that heart or sap would make much difference, provided the specimens had not been in a locality where the conditions were unfavorable for decay. If they had been conditions, if they had been under conditions favorable to the growth of wood-rotting fungi, they would probably be heartwood.

(Here followed remarks off the record.)

Mr. WHEAT. The respondents object to any questions to this witness on cross-examination which have to do with anything except the identification of these wood samples regarding which he has been questioned.

Mr. BURR. If the examiner please, the whole purpose of the offering of these exhibits is to show the long durability of this wood under conditions that it was used in these structures in that part of the country, and it seems I may certainly cross-examine on anything which goes to that purpose.

Examine' DE BRULER. You may cross-examine with that exception noted.

Mr. WHEAT. I want it understood that our objection goes to anything except the identification of these specimens, and he has been produced by us as an expert on that single question.

Examiner DE BRULER. I understand that the witness won't answer anything except what he knows about.

Mr. WHEAT. I take it that your ruling does not allow general examination of this witness.

3195 Examiner DE BRULER. No; not general examination; no indeed.

Mr. BURR. I don't anticipate any general examination. In fact, I am about done.

By Mr. BURR:

Q. Are you familiar with the climate in Modoc County in and about Alturas?

A. I am not.

Q. You don't know whether that is a climate which is particularly susceptible to decay conditions as regards wood, or do you?

A. No; I have no knowledge of the weather conditions, or the winter conditions in that region.

Q. And the same is true of Susanville, is it; are you familiar with the Susanville climate?

A. I have been there in the summer; as in most parts of California it is very dry there in the summer.

Q. Does altitude have anything to do with the degree of fungi inroads upon lumber?

Mr. WHEAT. Of course, my objection will run to this line of questions?

Examiner DE BRULER. Objection overruled and exception allowed.

A. I am not qualified as a pathologist to answer that question.

Mr. BURR. I think that is all.

Examiner DE BRULER. That is all. You may be excused.

(Witness excused.)

3196 Mr. BURR. I will call Mrs. Fitzgerald as a Commission's witness.

May the record show the respondents are not resting, as far as this hearing is concerned, but at their request we at at this point, for convenience sake, going to the Commission's rebuttal to resume the defense somewhat later in the day.

Mrs. MELBA FITZGERALD was thereupon called as a witness and, after having been first duly sworn, testified as follows:

Direct examination by Mr. BURR:

Q. Your name is Miss Melba Fitzgerald?

A. Mrs. Melba Fitzgerald.

Q. And, Mrs. Fitzgerald, you are in what line of work?

A. Secretary to Mr. Scott.

Q. And Mr. Scott is the——

A. (Interrupting.) Acting secretary-manager——

Q. (Interrupting.) Of the California White and Sugar Pine Manufacturers' Association?

A. Yes.

Q. Located in the Call Building in this city?

A. Right.

Q. You appear here, do you, under subpoena calling for the production of certain papers?

A. Yes, sir.

3197 Q. Did you bring with you, under that subpoena, a copy of the circular of your association no. 1831?

A. Yes.

Q. You appear here in the absence of Mr. Scott, do you?

A. Yes.

Mr. BURR. I will ask that that circular be marked "Commission's Exhibit for Identification No. 49." Wait a minute! That isn't what I want.

Mr. Examiner, I find that certain papers which are apparently part of the exhibit I desired to have produced do not seem to be attached and I will, therefore, ask a little different line of questions.

By Mr. BURR:

Q. Handing you a circular purporting to be circular no. 1831, in mimeograph form, I will ask you if that is a document which was circulated by your organization?

Mr. MATTHEW. Just a moment!

Examiner DE BRULER. Show that to the attorney.

Mr. MATTHEW. I want to be very certain, Mr. Examiner, that my right to object is not being lost by not making a timely objection.

Examiner DE BRULER. That is all right.

Mr. BURR. I am trying to identify the paper.

By Mr. BURR:

Q. That was circularized to your membership?

A. Yes.

3198 Mr. BURR. It is that, rather than the other one, that I desire to have marked "Commission's Exhibit No. 49" for identification. May it be so marked?

Examiner DE BRULER. Sure.

(Whereupon the circular referred to was marked "Commission's Exhibit No. 49" for identification.)

The WITNESS. These first two pages, the list of the letters, and also these are copies of the letters and apparently they were separate and——

By Mr. BURR:

Q. (Interrupting.) In the one that you produced?

A. Yes.

Q. But the paper with the letters attached was the circular complete which went out?

A. Yes.

Q. Handing you now Commission's exhibit for identification no. 49, will you state whether the letters, which form a part thereof, are letters or copies of letters, I should say, of members of your association to the various parties named?

Mr. MATTHEW. I object to the question as absolutely immaterial. I cannot see that it makes any difference whether this association has sent out a circular, or whether it has copies of letters from members of the association to individuals.

Mr. BURR. If the examiner please, that is merely a preliminary question.

Examiner DE BRULER. You may answer the question.

3199 Mr. MATTHEW. I object to the line of preliminary questions. This is an effort to go into a line of inquiry which is not only not germane to these proceedings, but it involves an association which is not concerned in the proceedings at all.

Examiner DE BRULER. I don't know what is being offered.

Mr. BURR. If Your Honor please, you may look at it. I am agreeable.

(Here followed remarks off the record.)

Mr. BURR. My contention, if the examiner please, is that this paper, which I am proposing in a moment to offer, contains admissions which are inconsistent with the answers herein and, therefore, are thoroughly germane and pertinent. These parties are all parties respondent, insofar as these letters are concerned, and, I think, practically all of them, as far as the vote is concerned.

Mr. MATTHEW. The examiner has ruled out heretofore all testimony about the association, or any action which might have been taken by the association, or any action by its membership.

Mr. BURR. I am not offering it yet. Wouldn't the objection be better when I offer it?

Mr. MATTHEW. You are spreading upon the record a lot of material which, even though it be of a preliminary character, is calculated to create erroneous impressions, and I want my

3200 objections noted immediately.

Examiner DE BRULER. Your objections are noted.

Mr. MATTHEW. I think it is preposterous to have this line of inquiry on this record.

Mr. BURR. I think it is vital and pertinent and directly to the point.

What is the question pending?

(Whereupon the question referred to was read by the reporter.)

Mr. BURR. Strike the question. I will ask a little different question.

By Mr. BURR:

Q. These letters are written by members of the association in connection with the questionnaire that was sent out by the association?

Mr. MATTHEW. I object to that as leading, in the first place; in the second place, because it is absolutely immaterial and irrelevant.

Examiner DE BRULER. Is that association action only? Are you offering something that is association action?

Mr. BURR. This is a preliminary question to the offer of the exhibit. I want to show the circumstances under which the letter was

written, not to find or charge the association in the slightest, nor to indicate that the association is in any way a party to this proceeding, but merely to show the circumstances under which the letters
3201 were written, which is a preliminary matter. Then I will offer it and then the objections can properly be made.

Examiner DE BRULER. Go ahead.

Mr. MATTHEW. I want to have the record show that I object to this line of query.

Examiner DE BRULER. Very well.

(Here followed remarks off the record:)

Mr. MATTHEW. At the time when Mr. Dwight was on the witness stand in this case there was a direct ruling by Your Honor that nothing regarding the association could or would be asked.

Mr. BURR. That is not regarding the assoc'ation.

Examiner DE BRULER. I am trying to find out. Proceed as fast as you can and we will see what you are going to introduce.

Mr. BURR. Read the question.

(Whereupon the question referred to was read by the reporter.)

A. Yes.

Examiner DE BRULER. Let me ask, are these letters written by respondents in this case?

Mr. BURR. Yes; and the record will show that. I don't need to ask that; she don't know who they are.

Examiner DE BRULER. That is true.

Mr. BURR. I will say for the record that these letters
3202 are written by the McCloud River Lumber Company; by Arther Fleming, of the Sugar Pine Lumber Company; by the Siskiyou Lumber Company; by the Big Lakes Box Company; by F. J. Solinsky, Jr., of the Hobart Building; by the Hobart Estate Company; by the Lassen Lumber and Box Company; by the Owen and Oregon Lumber Company; by the Forest Lumber Company; by the Pelican Bay Lumber Company; by the Ewauna Box Company; by the Hess Lumber Company. And without characterizing them further I will say that the record, in my judgment, will show that they are all respondents.

By Mr. BURR:

Q. I desire, however, to ask the witness who F. J. Solinsky is? Do you know what company he is connected with?

Mr. MATTHEW. I——

A. (Interrupting.) Castle Craig.

Mr. MATTHEW. I move that be stricken physically for a moment. I was trying to object.

Examiner DE BRULER. Yes.

Mr. BURR. That completes the list.

Mr. MATTHEW. This question and answer don't belong in the record if my point is right. I understand that we are dealing with rebuttal testimony at this point.

Mr. BURR. Surely.

Mr. MATTHEW. All right. There isn't a word of testimony
3203 in this record about the Castle Craig Lumber Company, for example, and no witness has appeared on its behalf or against it. Now upon what possible theory of the conduct of any proceeding, can any reference to the Castle Craig Lumber Company be appropriate rebuttal testimony? I offer that as one illustration of my point.

Mr. BURR. That exhibit contains letters in which they say they do not regard——

Mr. MATTHEW (interrupting). I object to counsel stating what it contains.

(Here followed remarks off the record.)

Mr. BURR. If the examiner please, I now desire to offer the circular described and marked "Commission's Exhibit No. 49" for identification and offer to prove thereby that this question was asked of the membership of the association, including a large number of the respondents herein, to wit: "Since the Federal Trade Commission has been requested to issue a cease and desist order against the use of the word 'white' in the trade name 'California white pine' on the ground that 'California white pine' is not a true white pine, do you wish to continue the name 'California white pine'?"

I wish to further offer to prove that the annual board footage of 580,333,000 answered "Yes" and that 845,862,000 answered "No."

I further offer to prove that various members of the associa-
3204 tion, in letters to the association, included as part of the proposed exhibit, who are respondents in this case, gave answers inconsistent with the defense testimony as to the probably effect of the change of the name from California white pine to some other name; and that some of the respondents favored such a change and suggested names which they would prefer to California white pine for such purpose.

I now offer this exhibit as an exhibit for the record.

Mr. MATTHEW. I object first, on the ground that this tender is not responsive to proper rebuttal; in fact, it is not rebuttal at all. I object, in the second place, because the mere circumstance that the members of an association may have been polled by one of its officers for the purpose of ascertaining what their course of action might be in the event of a threatened procedure against them by governmental authorities, is not properly the subject of the introduction of evidence in this proceeding, or in any proceeding. I object, in the third place, upon the ground that there are certain respondents which, while respondents in legal contemplation, are hardly respondents in point of fact, and that the several letters and that the data which counsel desires to introduce is not appropriate evidence upon any theory in the case.

Mr. BURR. I would like to make a brief reply before you rule.

Examiner DE BRULER. You may.

3205 Mr. BURR. As regards the objection that this is not rebuttal in its nature, I would say that the effect of this evidence, to the extent that it is given weight, will be to offset testimony which has been given by several defense witnesses with regard to the effect which, in their judgment, they testified would ensue from a change of name.

As regards to the objection that these parties are not making admissions for one another, I would say that if the examiner desires I would stipulate that each of these letters be received as evidence against that particular concern for the purpose of this consideration.

Examiner DE BRULER. Objection sustained and exception allowed. Proceed with the hearing.

By Mr. BURR:

Q. Mrs. Fitzgeral, did you produce certain letters?

A. Yes, sir; those listed.

Q. Did you bring a letter from Mr. Presnell to the Pickering Lumber Company?

A. Yes.

Q. Also a letter from the Long-Bell Lumber Company to Col. Greeley? Just give me the group.

A. (Witness handing letters to counsel.) There is a duplication on that list; two letters of the same date and I only found one.

Q. Who is Mr. E. R. Irwin, whose name is signed to one of these telegrams?

A. In 1924—I didn't know the gentleman.

3206 Q. 1928?

A. I don't know.

Mr. BURR. May these be marked for identification "Commission's Exhibit No. 50" for identification?

I now offer copies of the following items of correspondence: J. M. White, general manager, Long-Bell Lumber Company, to W. B. Greeley, chief forester, of February 14, 1928; B. W. Bacon, general manager of the McCloud River Lumber Company, to C. Stowell Smith, January 9, 1927; also the Pickering Lumber Company, by D. H. Steinmitz, vice president, to Col. Greely, dated February 15, 1928; also telegram California White and Sugar Pine Manufacturers Association to M. B. Nelson, Long-Bell Lumber Company, Kansas City, April 2, 1928.

I ask that they be marked as "Commission's Exhibit No. 50" for identification.

Examiner DE BRULER. They may be so marked.

(Whereupon the items of correspondence referred to were marked as "Commission's Exhibit No. 50" for identification.)

Mr. BURR. I might add that Commission's exhibit no. 50 for identification comprises five pages.

If the examiner please, I now desire to offer these letters so incorporated as Commission's exhibit no. 50 for the record as admissions on the part of respondents. Long-Bell Lumber Company, McCloud River Lumbers Company, Pickering Lumber Company, and as re-

gards the last item, as in the nature of proof that a majority
3207 of the California and Oregon members of the association using the word white pine were willing to eliminate that word from their trade name.

Mr. MATTHEW. Mr. Examiner, I trust that neither Your Honor nor counsel will think that I am lacking in deference to my adversary if I protest earnestly, but without heat, against a procedure which seems to me to violate all of the rules of procedure and all of the canons of correct conduct in the presentation of a cause. I do not use those words offensively and when I make that statement I make it sincerely.

I have no doubt that counsel for the Commission is proceeding as he sees fit. But I am satisfied equally, in the course of comment of this character, is exactly of a character to do injustice to respondents which may be very difficult to remedy. It is not unlike making a statement as to contemplated testimony in the presence of a jury, which even though subsequently ruled out and with the jury instructed to disregard it, may yet have an impression created which may find its way into the verdict and finally in the judgment.

If I may start with the last item in this list first: A telegram from the California White and Sugar Pine Manufacturers Association to the Long-Bell Lumber Company, dated April 2—the objection is obvious in the first place. The telegram purports to recite the results of certain investigation and the attitude of certain Ore-
3208 gon and California pine manufacturers. Obviously it is not the best evidence of the facts which it purports to recite. That is one fatal objection.

A second objection is that this association is not competent to make admissions on behalf of these respondents or any of them.

In the third place, the matter herein set forth is irrelevant and immaterial in any event.

And, in the fourth place, it is not proper rebuttal.

Mr. BURR. You are not disputing the authenticity. My understanding was you wouldn't require proof of authenticity.

Mr. MATTHEW. I have been careful to say I don't object to these because they are copies. I say that a telegram which purports to recite that somebody said so and so, or voted so and so, is not the best evidence of what that party actually did.

Mr. BURR. When you said "best evidence" I thought you referred to the fact that they were copies.

Mr. MATTHEW. No——

Examiner DE BRULER. Have you finished?

Mr. MATTHEW. I am not through yet.

The first letter which appears in this exhibit, no. 50 for identification, is one which is apparently signed by the general manager of the Long-Bell Lumber Company, a respondent not represented by us, and as far as I know there has been no appearance in behalf of the Long-Bell Lumber Company in these proceedings.

Mr. BURR. Mr. Andrews represented them.

3209 Mr. MATTHEW. I think not. He appeared for the Pickering Lumber Company and for the Forest Lumber Company. I am certain in that respect.

There has, in any event, been no evidence offered either on behalf of the Long-Bell Lumber Company, or on the part of the Long-Bell Lumber Company.

Examiner DE BRULER. I understand that.

Mr. MATTHEW. I could not purport to offer evidence in their behalf so this letter is not rebuttal; it does not tend to refute or contravene anything that may have been said by the Long-Bell Lumber Company or any one of our witnesses.

We have a letter next from the McCloud River Lumber Company, another respondent not represented in this hearing, one of these nominal respondents, if Your Honor please, in this trade-name controversy in whose behalf no evidence has been introduced. Now, can a letter signed by a representative of that company be rebuttal to anything in this case? It is impossible in the very nature of things.

Third, we have a letter here from the Pickering Lumber Company signed by Mr. Steinmitz, but dealing with a matter as to which there was no testimony on the part of a single witness which we called on behalf of the Pickering Lumber Company. We called Mr. Adams, of the Pickering Lumber Company; he gave no testimony whatever as

3210 to whether or not the change in that name would be hurtful to his company or otherwise. So this is not rebuttal. But in any event, if Your Honor please, and this is in accordance with Your Honor's ruling the other day, it would be appropriate for counsel to ask any question of Mr. Adams in the scope of proper examination, but to offer a letter of another party dealing with another matter, of course, it falls far outside the bounds of propriety.

Examiner DE BRULER. Mr. Burr, have you anything to say?

Mr. BURR. Yes; please, sir.

If the examiner please, in the first place, I am offering the letter signed by the Pickering Lumber Company, the Long-Bell Lumber Company, and the McCloud River Lumber Company, respectively, as against those particular companies. I do not regard them as admissions as against the entire group of respondents and I think I tried to make that clear in my offer a moment ago.

Mr. MATTHEW. They have not appeared, so it cannot be rebuttal.

Examiner DE BRULER. Let's proceed.

Mr. BURR. These companies have all answered and I take it that under the consolidation of these cases, for purposes of trial, all matters which are offered for and against the Government in this proceeding inure to the benefit of each respondent or to the purposes of each respondent. These companies having all answered put in issue the very facts that are here sought to be proved on the Government's

3211 part and seems to me that correspondence in the way of admissions, when there is no objection as to the authenticity should undoubtedly go in the record for the purpose of show-

ing that these matters which have been alleged in the answers and which have been attempted to be proved in the defense testimony, are proper rebuttal and should be received for what they are worth.

Examiner DE BRULER. These respondents, mostly all of them, are contesting this proceeding.

Mr. BURR. They have answered; we have to prove it.

Examiner DE BRULER. And many witnesses have been put on the stand concerning these matters and you have had an opportunity to cross examine them, and for that reason I think the objection should be sustained to the introduction of these letters.

Mr. BURR. If the examiner please, I would like to have an exception.

Examiner DE BRULER. Exception allowed.

Mr. BURR. I want to bring the matter before the Commission whether the matter is argued either interlocutory or finally.

Examiner DE BRULER. I understand that. My position is that the respondents are now contesting this proceedings and whatever they might have said they have a right to contest the proceedings on its merits at the trial of this case and for that reason I am sustaining the objection to the introduction of these letters.

3212 Mr. MATTHEW. I assume that the objections that I have specifically urged are included in Your Honor's ruling?

Examiner DE BRULER. Certainly they are.

Mr. BURR. Are included?

Examiner DE BRULER. I have heard both of you.

Mr. BURR. On the grounds you mean?

Examiner DE BRULER. Yes; on the grounds. I heard both of you.

Mr. BURR. That is all.

Mr. MATTHEW. No cross-examination.

(Witness excused.)

Mr. MATTHEW. I am sure that counsel and I are not in disagreement as to the tentative understanding between us as to the conduct of these proceedings. As I recall it, there are some fifty complaints.

Mr. BURR. Fifty.

Mr. MATTHEW. We appear for a number of the respondents in those separate proceedings, there being a separate complaint against each company. Mr. Burr discussed with me his testimony, I think at least twice, the difficulties of making up a separate record against each respondent, which I have, of course, recognized. He suggested that at some appropriate time we might join in some kind of a

3213 stipulation as to the extent of which testimony offered either by the Government or on the part of the respondents might be deemed to be available to all, or to be prejudicial to all, as the case might be. I told him that I was with him in an effort to arrive at some such stipulation, but that I apprehended the difficulty in arriving at the form of the stipulation, and we have not as yet entered into any stipulation. I wouldn't want my silence here to give rise to the impression that I will agree that the testimony which may be offered against a single respondent may be, and which may seem prejudicial,

may likewise be prejudicial to all or taken against all. It might be that a single respondent is subject to criticism in some respect and the others are free. So I do not wish counsel to gain the impression, or Your Honor, that I assent to the suggestion that all evidence here is available equally for and against the parties. I think we will have to sometime agree on some stipulation.

Mr. BURR. It seems to me that there are two propositions which must be proved individually, or admitted individually, as regards each individual of the fifty respondents, and those two are contained in paragraph two of the complaint and the first part of paragraph three. They are the question of interstate commerce and also the question of whether or not each given respondent has used a trade name with the word "white" incorporated therein. It seems to me that all other questions relate to the practice of calling Pinus
3214 ponderosa a trade name which includes the word "white", and that that evidence should be regarded as not individual to each individual complaint, I mean each individual respondent, but as covering the entire range of the respondents, with this possible exception: There has been testimony with regard to the character of the Pinus ponderosa wood as differing in certain respects and in certain different territories as manufactured by certain different respondents; that right on the face of it shows how wide the scope of the evidence is that is being given in that respect. For example, we have had special testimony with regard to the character of the Pinus ponderosa in the inland empire, special testimony as to the character of it in the Klamath Falls district, etc. That might have some local bearing as contrasted, but that appears in the face of the testimony, so that it seems to me that we may regard the testimony as received once and for all for the entire body of the respondents, with the two exceptions contained in the allegation, or the issues set forth in paragraph two and the forepart of paragraph three; paragraph one merely being formal as to where they are incorporated.

It seems that that is the line of demarcation.

Mr. MATTHEW. I cannot assent to that fully. I don't want to argue it with you now, but I think you and I should agree we haven't yet had a definite stipulation on that point. I think the record should show that.

3215 Mr. BURR. We haven't had any stipulation on that. I have corresponded with you and talked with you about it, and with Mr. Andrews also.

May the record show that Mr. Andrews is here present, he having just come in the room a moment ago?

Mr. MATTHEW. We have no desire to put the Government to any unnecessary difficulty of proof. That isn't the thought. I have tried to cooperate fully with counsel all through to avoid that.

(Here followed remarks off the record.)

Mr. WHEAT. I will now offer for the record the following respondent's exhibits previously marked for identification: "Respondent's Exhibit No. 1" for identification, "Respondent's Exhibit No. 2" for

identification, "Respondent's Exhibit No. 5" for identification, "Respondent's Exhibit No. 6" for identification, "Respondent's Exhibit No. 8" for identification, and "Respondent's Exhibit No. 17" for identification, and ask that those be received under those same numbers for the record.

Mr. BURR. I do not desire to waive any right to avail myself of such detraction from the validity of the exhibits as may have been brought out by cross-examination, which I have not distinctly in mind, and I wish also to say that I am not receding from my view heretofore expressed that most anything pro or con can be proved with regard to these types of lumber by exhibits, and I do not
3216 regard the exhibits as persuasive evidence in the final case.

Examiner DE BRULER. Your statement is of record and the exhibits are all introduced in evidence and so received.

(Whereupon respondents exhibits no. 1, no. 2, no. 5, no. 6, no. 8, no. 17, previously marked for identification, were received in evidence and so marked.)

Mr. BURR. If the examiner please, it will be recalled that at Spokane, and earlier in the San Francisco hearing, I had identified four exhibits, nos. 40, 41, 45, and 46, of the Commission's series of exhibits. The witnesses were tendered for cross-examination. I wish to add here to my former statement, that these exhibits are put in the record only for defensive purposes, or rebuttal purposes, in view of the fact that the defense has been putting in the exhibits which they have just offered for the record. I do not regard exhibits as the way in which to prove the issues in this case. I am merely offering them only because opposing counsel have offered theirs.

I now ask that they be received.

Examiner DE BRULER. They will be received.

(Whereupon Commission's exhibits no. 40, no. 41, no. 45, and no. 46, having previously been marked for identification, were received in evidence and so marked.)

Mr. MATTHEW. The only comment I wish to make is that the presiding examiner in the eastern hearings was particularly insist-
3217 ent that samples of these woods should be produced. He made the suggestion before we volunteered any suggestion on our part.

Examiner DE BRULER. The record will doubtless show that.

Mr. BURR. I would like permission to mark the word "identification" from those four samples.

Mr. MATTHEW. No objection.

Examiner DE BRULER. Very well.

(Here followed remarks off the record.)

Examiner DE BRULER. We will take an adjournment until 1:30 o'clock p.m.

(Whereupon, at 12:00 o'clock noon, a recess was taken until 1:30 o'clock p.m.)

3218 AFTER RECESS

1:30 P.M.

Examiner DE BRULER. We will proceed with the hearing.

Mr. WHEAT. If the examiner please, I request that the wood samples marked "Respondents' Exhibits No. 25, 26, 27, 28, and 29" be received for the record.

Examiner DE BRULER. They may be so received.

(Whereupon the samples of wood, having been previously marked "Respondents' Exhibits No. 25, 26, 27, 28, and 29", were received in evidence.)

Mr. BURR. I would like to call Mr. Hemphill as a rebuttal witness.

Examiner DE BRULER. Proceed.

JOHN P. HEMPHILL was thereupon called as a witness and, having been first duly sworn, testified as follows:

Direct examination by Mr. BURR:

Q. Mr. Hemphill, you are connected with the Madera Sugar Pine Company?

A. I am.

Q. And for how long a period have you been so connected?

A. Since 1910.

Q. And your capacity is that of general manager, is it?

A. Yes, sir.

3219 Q. And how long have you held that position?

A. Since 1927. The reason I hesitated was because I did the work for many years before that, but didn't use the title.

Q. Mr. Hemphill, has your work brought you into familiarity with the Pinus ponderosa and the sugar pine also?

A. Yes.

Q. Is that in the forest or in the form of lumber or both?

A. Both.

Q. Have you had an opportunity to become familiar with Pinus ponderosa and sugar pine in various parts of California?

A. I have.

Q. I wish you would tell us about that a little.

A. About my opportunity or about——

Q. (Interrupting.) About your opportunity to observe and know the characteristics of these lumbers.

A. It has always been the policy of our company to have men in responsible positions visit about so as to get new ideas, and I visited practically all the important operations in this State and in southern Oregon.

Q. In the pine lumber business, you mean?

A. In the pine business, yes. I have also visited redwood operations.

Mr. BURR. Never mind the redwood. Do you desire that stricken?

Examiner DE BRULER. Yes, strike out redwood.

The WITNESS. I did some special work for the Long-
3220 Bell Lumber Company at Weed, in about 1920, and I was in their woods operations for six weeks.

By Mr. BURR:

Q. Mr. Hempbill, I believe there was some testimony in the defense that customers would not accept sugar pine at the same prices in lieu of Pinus ponderosa on certain occasions. Has that been your experience that they refused sugar pine in lieu of Pinus ponderosa at the same price?

A. No. We usually get a price premium depending upon the grade. It varies from $2.00 to $20.00.

Q. Do you know of any purposes for which Pinus ponderosa is better adapted than sugar pine so that they would refuse the sugar pine?

A. I do not, unless they want a tough wood. Some of our local customers use it in preference to sugar pine where they want something that will not bruise or wear. They use it for sled runners. I don't know of any other use where it would be superior. It has a tougher fibre.

Q. The testimony was given that sugar pine was apt to tan, I believe that was the expression, when exposed to the sun light. Is that your experience as contrasted with Pinus ponderosa?

A. They both tan, but Pinus ponderosa turns much more reddish in color, particularly the heartwood. I would say that the sugar pine takes on a light brownish color.

Q. It does darken some?

3221 A. Yes, some, but the change in color is not nearly so perceptible in sugar pine as it is in ponderosa pine.

I took particular notice of that last summer when I was up at Klamath Falls. The Pelican Bay Lumber Company's offices finish in Pinus ponderosa a natural wood and the red heart stands out as plainly as any place I have ever seen it.

Q. Stands out in what color?

A. Red; it is contrasted with creamy yellow on the part of the sap.

Q. Of the same species?

A. Yes.

Q. Did you ever make a special investigation as to the tanning of the two woods due to exposure to the light?

A. Yes; I observed it. In shook, or door cuttings, or finished lumber, it is the heartwood that turns more reddish in the Pinus ponderosa than it does in sugar pine.

Q. Does the sugar pine change color more or less in the heart than in the sap, would you say, referring now only to sugar pine?

A. I don't think there is very much difference; I never noted any particular change in the sap. They are both sort of creamy.

Q. Is there a substance which exudes from the sugar pine lumber after it has been thoroughly cured?

A. I have never seen that.

Q. Is there a substance that exudes before or during the curing process?

3222 A. While it is green there is a gummy substance that exudes from all pine, as far as my experience goes, but not particularly from sugar pine.

Q. Well, the evidence shows that there are some small showings in the sugar-pine lumber, of what has been designated by some witnesses as pitch pockets. Will you describe what those are—if you follow me.

A. Well, what we call a pitch pocket is a parting of the grain, a kind of a blister. Some others might have reference to a slight resinous fleck that seems to characterize pine. I don't know just what you mean by pitch pocket.

Q. Referring to these slight resinous appearances?

A. Little flecks.

Q. Isn't that a characteristic quality of sugar pine, that it shows those flecks as distinguished from other pines, both white and belonging to the yellow-pine group?

A. I have looked at a good many samples of pine and it is my impression that they are found to a greater or less degree in all of them. I think possibly they are a little more marked in the sugar pine in some specimens.

Q. Isn't there a characteristic——

Mr. MATTHEW. (Interrupting.) I don't want to seem technical, but couldn't you avoid leading the witness so much? I think you asked two leading questions.

Mr. BURR. Yes.

3223 The WITNESS. The trouble in most of these questions is that a person is uncertain as to just what is being talked about. One might have one idea of what a fleck is and another person might have another idea; one might be talking about resin and still another about pitch, and they would have the same thing in mind. If I had the wood here I could make it plain what I mean.

By Mr. BURR:

Q. Let me start from another angle: Why is the Pinus lambertiana known as sugar pine?

A. Because the wood dries under certain unfavorable conditions there is a saccharine substance that appears on its surface. It is almost as if it had been lightly covered with white flour. You can scrape your finger along and get enough of that so you can taste it. Moreover, if the butt has a fire scar, the sugary substance, that saccharine material, as it is called, forms in little globules which can be picked off about the size of a pea and they are quite sweet to the taste.

Q. Is that in the lumber or is that in the timber?

A. You never find these little globules of sugar anywhere except in the log, the underside of a fire scar is the only place I have ever seen

them, but sometimes it does appear in the form of a light floury substance on the surface of lumber. For what reason I do not know.

Q. There is testimony in the record to the effect that it is desirable to cover over pitch pockets or flecks, and something
3224 of that nature that is peculiar to sugar pine. Can you describe what treatment that is and for what purpose?

A. We have had some complaints from our distributors—a very few I might say—to the effect that when sugar pine is enameled white there is a tendency for these little flecks, as I call them, and they are scattered over the face of the piece, to cause a slight yellowing of the enamel. And the California White and Sugar Pine Manufacturers' Association was responsible for some sort of an investigation being made, and if my memory serves me right, it was found that occurred to a greater or lesser degree in all the white pines, and even in the ponderosa, but sugar pine was a little more marked than in the other pines; and the remedy suggested was that the lumber be first shellaced before being enameled. The shellac seemed to seal up these little flecks, or resin ducts, and keeping this material which caused this slight discoloration, from coming into contact with the enamel itself, in which case the enamel remained perfectly white. That is my memory of it.

It seems to me a great deal more has been made of that——

Examiner DE BRULER (interrupting). Just answer the questions.

A. (Continuing.) Than our experience seems to warrant.

Mr. MATTHEW. I move to strike that out.

Examiner DE BRULER. It may be stricken out.

3225 Mr. BURR. I will concur in that.

Mr. MATTHEW. The witness shouldn't volunteer statements.

By Mr. BURR:

Q. Which is the more resinous type of wood, the Pinus ponderosa or the sugar pine, as an average proposition?

A. I am not sure just what is meant by resinous, but if you mean which has the harder grain, which is the more pitchy——

Q. Which is the more pitchy?

A. I would unhesitatingly say Pinus ponderosa.

Q. How does that resinous characteristic show up in Pinus ponderosa?

A. As I understand the meaning of the term, it shows up more in the grain of the wood than in any other way.

I spoke a while back about the wood being of a tougher fibre. That is what I understand by your question—which is the pitcher.

Q. Is toughness of fibre in the pines related to resinous or pitchy content?

Mr. MATTHEW. If he knows.

A. I am not a wood technologist. That is beyond me, but I will explain it as best I can.

Examiner DE BRULER. You need not answer that.

By Mr. BURR:

Q. Which wood requires more care in dry kilning, Pinus ponderosa or the sugar pine?

3226 Examiner DE BRULER. If you know.

A. Sugar pine.

By Mr. BURR:

Q. Do you have to do with the kilning process for your company?

A. Yes; I do.

Q. Now, why does sugar pine require more care in kiln drying?

A. Because of its tendency to burn.

Q. Why does it have a greater tendency to burn, if you know?

A. Because of the softer fibre, the softer texture, it seems to brown.

Q. Is there any effect upon sugar pine in the cell tissue during the process of drying?

Mr. MATTHEW. You are not calling for a technological answer?

Mr. BURR. No, sir; I am not.

The WITNESS. Read the question.

(Whereupon the question was read by the reporter.)

Mr. MATTHEW. It seems that is a technological question.

Mr. BURR. Let him explain nontechnically.

Q. What takes place in the wood during the process of drying?

Mr. MATTHEW. I think the witness isn't qualified to answer, and I object on the ground he is not qualified.

Mr. BURR. I think he knows as a practical man.

Mr. MATTHEW. You asked about the cell tissue.

Mr. Burr. No, I didn't. You are thinking of the other question.

3227 The WITNESS. Do you want me to tell you about our experience in drying lumber?

By Mr. BURR:

Q. Yes.

A. We have no difficulty at all in kiln drying Pinus ponderosa. It is the most satisfactory way of drying that lumber. We have never made any success at all of kiln drying sugar pine, because it burns and discolors. If we put Pinus ponderosa in open piles to dry——

Mr. MATTHEW (interrupting). I object. That is not responsive. He was not asked about putting it in open piles.

Mr. BURR. I could ask him.

The WITNESS. It shows a marked tendency to split on the ends and check, and at certain seasons of the year to develop a blue stain.

We have no trouble at all in air drying our sugar pine. In fact, that is the only way we are able to dry it. It shows a much less marked tendency to split and check and does not develop stain as Pinus ponderosa does.

That is all I can tell you about drying lumber.

Mr. MATTHEW. I think counsel will admit that the last part of the answer is not responsive.

Mr. BURR. I asked him to tell in his own way what he knew, and I think it is responsive.

Q. How long does it take to dry the Pinus ponderosa?

3228 A. We allow about one day for each quarter of an inch thickness in kiln drying it.

Q. And how long do you allow for the drying by air process of the sugar pine?

A. About one week for each quarter of an inch in thickness; approximately a month for four quarters, during the best drying season.

Q. Is there any effect in the nature of warp that takes place during the air drying of Pinus ponderosa when that is attempted?

Mr. MATTHEW. I suggest that is leading again.

Mr. BURR. I don't think so; I don't know what he is going to say. I am not suggesting any answer.

A. If your stickers catch the end of the board the weight of the pile tends to hold the piece straight. But if you are piling mixed lengths that portion which is not caught by the back sticker shows a marked tendency to twist within the pile and sometimes where both ends of the plank are caught a tendency to twist causes check in the lumber.

Q. How large a percentage of sugar pine is of the shop grades?

A. Do you mean by shop grades the grades used for factory purposes?

Q. Which grades are used for factory purposes?

A. 3 shop to 3 clear.

Q. Including both?

A. Yes.

Q. That is four grades?

3229 A. Four grades.

Q. How large a percentage of the sugar pine, taking it by bulk, is in those four grades?

A. In our section of the country it would be fifty percent or better.

Q. How much belongs in the shop no. 3 and better?

A. Up to what?

Q. All the way up to the best from——

A. (Interrupting.) Sixty-five percent.

Q. You say sixty-five percent, would you?

A. To make it one hundred percent, thirty percent, or thirty-five percent would be box and common.

Q. Testimony has been given in this case on the defense that there is not enough white pine produced suitable for factory use to supply the demand for shop use. Have you any information on that topic?

A. I don't know about that.

Q. Do you sell your product of the factory grades largely to mills, millwork concerns?

A. Yes. I was going to add that we sell it all; we don't cut up any of it at all.

Q. Where are those mills to which you sell your lumber of that type, that grade; where are your customers, mostly for the shop purposes?

A. We sell considerable in Los Angeles and vicinity; the bulk moves east.

3230 Q. How far east?

A. Clear to the Atlantic seaboard. Perhaps I should explain that what we sell east moves largely through wholesalers, although we do make some direct sales to some of the factories.

Q. What percentage of your shop grades go east of Denver, would you say, including no. 3 clear, for the purpose of your answer?

A. I really don't know.

Q. What becomes of the amount of sap that you have in your sugar pine?

A. You are speaking now in sawing the log?

Q. Yes.

A. We try to turn our logs in such a manner as to get as much clear as possible. We don't turn a log until there is two grades in the face of the slab. By the time we have squared it up the sap is pretty much cut away from the log and is principally in the grades of select and better.

Q. What is the bulk of your clear grades—B select and better—what is the bulk of your B select and better, sap or heart?

A. I never collected any figures; I don't know.

Q. I am referring now to sugar pine.

A. Yes; but the sap ring on the more mature timber is relatively thin and I feel that the bulk of it is heart.

Q. What is shake in sugar pine?

A. Sugar pine has very long limbs. I read that in some instances in a flat-topped tree the spread is almost 70 feet. The wind catches those limbs and twists a tree first one way and then
3231 the other, and in some cases causes cracks or checks to develop at the heart; they radiate from the heart outward. They are almost altogether in the common grades because we box that heart and I do not recall ever seeing any shakes in our shop or better lumber.

Q. When you say you box the heart, you are referring to what part of the heart?

A. The center of the log.

Q. That part of the so-called heartwood that is in the center of the tree?

A. Yes; with the original heart right in the center of what they call the cant.

Q. Is the shake a fissure or a cleavage?

A. It is an opening that will extend straight through the center of the heart for a certain distance.

Q. Is it an opening that runs vertical in the tree as it stands?

A. You will see that check or shake running through the center at one angle, at one end of the log, and at somewhat a different angle on the other end of the log, showing that there is a twist in the grain and that is parted in the heart of the tree.

Q. But this cleavage or parting is a parting that runs straight up the tree?

A. Straight up the tree; yes. It is found particularly in butt logs and seldom above.

Q. Is it possible for you to detect shake in the lumber?

A. Yes; it is.

3232 Q. Always, would you say, or is that not always true?

A. After it is dry you can detect it without difficulty.

Q. The shake does not get into the manufactured product, then?

A. Yes; it is found in the commond; it is from the shaky part of the heart that the grades of no. 3 and no. 4 common are made.

Q. The shake is considered in connection with the grading, is it?

A. Yes; it doesn't characterize any of the upper grades in our section.

Q. Is the shake that occurs occasionally in other pine trees, do you know?

A. Yes.

Q. What other pine tree?

A. Pinus ponderosa.

Q. Is Pinus ponderosa less or more liable to shake than sugar pine?

A. Less; it hasn't as heavy a top.

Q. Testimony has been given in the defense that there is more stump rot and ring rot in sugar pine than in Pinus ponderosa. Will you state what your experience is as to what the situation is?

A. I have seen more rot in the sugar pine than I have in the Pinus ponderosa.

Q. Please explain fully.

A. It is my observation that a ponderosa tree is more easily killed by fire than sugar pine, and it is in these fire scars that the rot

3233 develops in the sugar pine. The ponderosa tree is very often killed, usually killed where there is a hot fire, and has no chance to recover. I have never seen a rot in a sugar pine that was not damaged, did not show previous signs of having been damaged.

Q. The presence of rot——

A. (Interrupting.) It is accidental.

Q. The presence of rot is taken care of in the grading of the wood, is it not?

A. It is cut out entirely. It is either sawed out or edged out. You don't find it in the lumber at all.

Examiner De Bruler. You need not make any volunteer statements.

By Mr. BURR:

Q. Have you observed the condition as to rot in any particular section so as to obtain any special information on that subject?

A. I never thought anything about it. I just recall having observed that it is evidence of burn in most logs where you find rot.

Q. Which is heavier as a rule, sugar pine or so-called California white pine?

A. California white pine.

Q. Which is the more likely to sink in the form of logs when floated into a pond?

A. That is hard to answer. When a sugar-pine log is heavy it is very heavy. In our section the ponderosa logs are for the most part just a little bit lighter than the specific gravity of water,
3234 whereas in the mature sugar pines in particular the logs from the second cut bounce around on the water like corks.

Q. How about——

A. (Interrupting.) I would say that on the average the ponderosa is heavier.

Q. How about the butt logs?

A. The sugar pine butt logs are very heavy.

Q. And they frequently are heavier than the weight of water, and do they sink?

A. Yes; the majority of the butts sink.

Q. How about the loss of weight as the result of the drying process; is that greater in sugar pine or in ponderosa, if you know?

A. The shipping weight of sugar pine is lighter than that of ponderosa.

Mr. MATTHEW. I am not so sure that that answers the question.

Examiner DE BRULER. That doesn't seem to be responsive. Read the question.

(Whereupon the question was read by the reporter.)

The WITNESS. The loss of what?

By Mr. BURR:

Q. Weight.

Mr. MATTHEW. In the drying process.

I move that the prior answer be stricken on the ground that it is not responsive.

Examiner DE BRULER. The answer may be stricken; this
3235 will be his answer.

A. That is kind of hard to say. I never weighed any green Pinus ponderosa or any green sugar pine, but I do know——

Mr. MATTHEW (interrupting). I object to the witness speculating about it.

The WITNESS. I am telling you what I know, if that is what you want.

By Mr. BURR:

Q. Can you answer the question from what you know?

A. I would say, from what I know, that sugar pine dries out more than Pinus ponderosa.

Q. I am referring to loss of weight; is that what you mean, dries out more; do you mean loses more poundage?

Mr. MATTHEW. I think the witness has shown he doesn't know, because he hasn't made any tests. He shouldn't be pressed to answer the question.

Mr. BURR. I don't care to press it unless he knows.

The WITNESS. The specific gravity of Pinus ponderosa is greater than that of sugar pine.

By Mr. BURR:

Q. You are now talking about the log?

A. The green lumber. The specific gravity of sugar pine on the average is less than that of Pinus ponderosa.

Q. You are still talking about the log?

A. Lumber. The shipping weight of sugar pine is less than the shipping weight of Pinus ponderosa; but I really don't know how much moisture is given off because I don't know the relative weights.

3236 Mr. MATTHEW. I move to strike out the witness' statement.

Examiner DE BRULER. I think it may stand. He explained it the best he could.

Mr. MATTHEW. It is harmless anyway; I won't press my motion.

The WITNESS. I would like to say that we flume our lumber, and I know which is the heavier green, and when we weigh our lumber I know which is the lighter dry.

Examiner DE BRULER. You have explained that.

By Mr. BURR:

Q. It has been testified that sugar pine stains more than California white pine. What is your experience on that?

A. That is not true in our section.

Q. Which lives longer, the sugar pine or the ponderosa?

Mr. MATTHEW. You are talking about the tree in the forest?

Mr. BURR. Yes.

A. The sugar pine.

Mr. BURR. That is all.

Cross-examination by Mr. MATTHEW:

Q. Mr. Hemphill, do you ever recall seeing any sash and doors which had been manufactured out of sugar pine with the tiny beads or bubbles scattered at irregular intervals over the surface?

A. No, sir, I never; we don't have much connection with the
3237 manufactured article.

Q. You never saw any sugar pine sash in place unpainted?

A. Yes; I have.

Q. And sugar pine sash in place which had been painted as well?

A. I wouldn't know after it had been painted whether it was sugar pine or not.

Q. But you might know sugar pine had been used in making the particular sash which had been painted and placed in a building?

A. I can't say, to my positive knowledge, that I ever observed any sugar pine sash that had been painted. I had no occasion to.

Q. Whether you had occasion to is not what we want—we want the facts. Then we are to understand that you never saw, to your knowledge, any sugar pine sash in place painted with little tiny bubbles or beads, of a yellowish character, scattered irregularly over the surface?

A. I have never seen that in sash or any other lumber. My attention has never been directed to it.

Q. And neither have you seen that particular manifestation in sash or door in the unpainted form?

A. No.

Q. Do you know that Professor Fritz, of the University of California, was employed by the California White and Sugar Pine Manufacturers Association to conduct experiments for the purpose of correcting the tendency of sugar pine lumber to develop these little bubbles or beads of resin, or saccharine matter, whatever they may be, which we have been discussing?

3238 A. I read the bulletins, and it was my impression at the time I testified about this in direct examination that he was employed by the association, but I am not certain; I read the bulletins.

Q. I thought you testified upon your direct examination that it was upon your suggestion, in part at least, that he was requested to make such experiments.

A. No; I didn't.

Q. I doubtless misunderstood you. I thought you referred just casually to some experiments or tests made upon your suggestion.

A. I did, but you asked me the question as to whether or not I was certain that the association employed him. I am not certain. It is my impression, thinking back over the matter, that the association was in part responsible for the publication of these bulletins which I read.

Q. All right. I don't care to ask you for the contents of the bulletins, but don't you know it to be a fact that Professor Fritz at least made some experiments or tests for the purpose of finding a corrective for the tendency of sugar pine to develop these tiny beads or bubbles upon the surface?

A. My recollection of the bulletins is that they dealt not only with sugar pine but with other samples as well.

Q. Then you don't know that the prime purpose at least was to find a corrective for the difficulty as to sugar pine?

A. As to that I am not certain.

Q. You don't know one way or the other?

A. No.

3239 Q. I think you characterized this little exudation upon sugar-pine lumber as being rather floury in character; that is, you could rub it off with your hand?

A. Yes.

Q. Before it reaches that floury state doesn't it go into a state of beads or bubbles? Isn't that the first manifestation of the condition?

A. No, sir. To me it seems as though the moisture in coming to the surface deposits that upon the surface.

Q. Then you are referring to something which is entirely distinct from these beads or bubbles concerning which there has been some testimony in this case?

A. I don't believe there is any sugar in these beads or bubbles.

Q. Well, I don't mean to imply, Mr. Hemphill—let's get this clear—that there may be sugar in the beads or bubbles. Just to make it clear some witnesses have said that they might contain saccharine matter or might contain resin or pitch, or something else. But I am addressing myself to the fact that there are these beads or bubbles. Have you seen those beads or bubbles on the sugar-pine lumber?

A. No, sir.

Q. That is entirely new to you, the suggestion that there are such beads or bubbles on sugar-pine lumber? That is entirely novel to you?

A. Insofar as they relate to sugar.

3240 Q. Mr. Hemphill, I tried to make it clear that I didn't care whether it consisted of sugar, or any other substance. I am asking whether there are beads or bubbles which exude from the lumber and are scattered at irregular intervals over the surface?

A. I have seen what you would call incrustations in our lumber, pine lumber, but I am not willing to state that it was one pine or the other. I think the pine lumber bleeds and becomes incrusted with this substance which is within the wood. In our operation our lumber is floated in water.

Q. You have had quite a bit of experience in the lumber business?

A. Yes, sir.

Q. In your connection with the Madera Sugar Pine Company?

A. Yes. I would say that pine lumber of either species is apt to become incrusted with the substance I have in mind. I don't know——

Q. (interrupting). By incrustation you mean something——

A. (interrupting). Juice that dries on the surface.

Q. All right. May we leave your testimony in this way: That to your knowledge you have never seen any bubbles of some pitchy or resinous, or saccharine, or some other matter, exuding from the surface of sugar-pine lumber and scattered at irregular intervals over that surface?

A. I do not recall having seen that.

Q. And you do not know, as a fact, that sugar-pine lumber is more subject to that particular development than Pinus ponderosa lumber?

3241 A. Not of my own knowledge.

Q. All right. Do you know that some of the manufacturers and distributors of sugar-pine lumber get out instructions to their customers to the effect that the sugar-pine lumber should be shellaced, or otherwise protected, before paint or enamel is placed upon it in order to avoid yellowish or pitchy bubbles coming upon the surface?

A. Not about the pitchy bubbles; I do know that it is recommended that before enameling white sugar pine it be shellaced so that the little flecks or resin ducts may not color the enamel, but I also distinctly recall Professor Fritz having stated in his bulletins that it is relative in all pines.

Mr. MATTHEW. May I ask that the latter part of the witness' answer, about Professor Fritz's recommendations in his bulletin be stricken out as not responsive.

Examiner DE BRULER. Just answer the question. The rest may be stricken. Confine your answers to the question.

By Mr. MATTHEW:

Q. Does your company issue any such instructions or recommendations?

A. On a few occasions when our distributors have written us relative to this matter we have sent them copies of Fritz's bulletin.

Q. And these——

A. (Interrupting.) Without recommendations or admissions.

Q. These inquiries, I think you said upon your direct testi-
3242 mony, had come in with respect to sugar pine?

A. Yes.

Q. Now, Mr. Hemphill, you said that sugar pine has a greater tendency than the California white pine to burn when subjected to the kiln-drying process?

A. Yes.

Q. And by burning, I think you explained you mean that it discolors more in the kiln-drying process, or do I so understand—I was in doubt—what did you mean by burning?

A. It turns sort of a brownish color just like scorched wood.

Q. In the kiln-drying process?

A. Yes.

Q. Then it is more susceptible than the California white pine to turning that brownish color in the kiln-drying process?

A. Yes, sir; under certain temperatures, under high temperatures.

Q. I don't recall that you made that qualification?

A. I didn't say anything about temperatures, but under the same conditions, under the same kiln-drying schedule, that will occur. It will occur in sugar pine, whereas it don't occur in ponderosa.

Q. I so understood you.

A. Even the ponderosa will brown stain if the temperature is high, too high, or the humidity too low. You can burn any pine that is—but sugar pine burns on the lower temperature.

Examiner DE BRULER. Please confine your answers to the questions. I suppose you could burn any pine.

3243 By Mr. MATTHEW:

Q. Under equal and similar conditions the sugar pine burns more in the kiln drying process, does it, than the California white pine?

A. Yes, sir.

Q. Let's come to the treatment of the lumber in the piles. You have explained that if the California white pine lumber is not properly caught by the stickers, as I think you termed them, it is likely to twist?

A. Yes, sir; that is my experience.

Q. If the stickers are properly placed, and the lumber is carefully piled, I assume that twist can be avoided?

A. Yes; although——

Q. (Interrupting.) Let me ask——

Mr. BURR (interrupting). Let him finish his answer.

A. (Continuing.) If the grain is poor and there is a very marked tendency in the piece to twist, it will check instead of warping; the weight of the pile holds it straight.

Mr. MATTHEW. I didn't ask the witness anything about checking.

Mr. BURR. I think he has a right——

Examiner DE BRULER (interrupting). Just answer the questions. Confine your answers to the questions.

Mr. BURR. Let us hear the question. I think he is answering the question.

(Whereupon the question was read by the reporter.)

3244 Mr. MATTHEW. I am talking about twists.

Examiner DE BRULER. Answer the question.

Mr. BURR. Warp is part of the twist.

Mr. MATTHEW. Let's have the answer.

(Whereupon the answer referred to was read by the reporter.)

Examiner DE BRULER. That answer may stand.

(Here followed remarks off the record.)

Examiner DE BRULER. Proceed with the examination. Just answer the questions asked.

By Mr. MATTHEW:

Q. Mr. Hemphill, is the sugar pine which is subjected to the air-drying process ordinarily of greater thickness than your California white pine that is subjected to the air-drying process?

A. I would say yes, for the reason that there is a great deal more Pinus ponderosa cut into six quarter than any other thickness; whereas sugar pine is used eight quarter and thicker in considerable quantities for specialty uses of one kind and another, patterns in particular.

Q. The thicker the lumber the less the tendency to warp and twist in a pile, isn't that true?

A. No.

Q. You see no difference in this respect?

A. No; it is the texture of the wood.

Q. Isn't it a fact that the Madera sugar pine is recognized as being substantially above the average sugar pine produced in
3245 the West in quality?

A. We try to create that impression for sales reasons.

Q. Apart from that, isn't it true that your operations are in a particularly choice part of the sugar-pine range?

A. I personally consider the Pickering and the Yosemite Lumber Company and the Sugar Pine Lumber Company have just as good timber as we have, although I have heard it said that in certain counties in that immediate vicinity they do produce exceptionally good sugar pine.

Q. There are some sections where the sugar pine is inferior to that produced in other sections; that is true?

A. We feel that sugar pine north of Sacramento is not as good as that further south.

Q. Do you know whether the sugar pine north of Sacramento runs sixty-five percent no. 3 shop and better?

A. I have never seen any figures on that.

Q. The figures that you have given are confined to your operations?

A. That is all I know anything about.

Q. Is any of the sap lumber produced in your milling operations thrown away, apart from that, of course, which simply results from the facing of the log, and the cutting of the edges?

A. No, sir; we try to save all the wood we can. A good deal of that which is closest to the bark is ripped into moulding strips and used for moulding purposes.

Q. That is mostly sapwood?

A. Yes.

3246 Q. And does some of that sap lumber go into the higher grades of clears?

A. Yes, sir; it does.

Q. From what part of the sugar-pine tree do you obtain the bulk of the common?

A. The heart itself the center of the tree.

Q. Then, the bulk of the sap lumber must find its way into the selects?

A. Select and better.

Q. Select and better?

A. Yes.

Q. Did I correctly understand you to say that the shake, which appears in the sugar pine, is more commonly found in the sap or in the heart; which?

A. In the very center of the tree.

Q. Then, that would be in the commons?

A. In the commons; yes.

Q. You have never known of any shake being in the higher grades?

A. It is a very rare occurrence.

Q. You have known it to be in the higher grades in some instances?

A. Yes; where a tree had gone back a great deal. That is——

Q. (Interrupting.) I am not asking the reason why. But you have known it to appear in the higher grades?

A. Yes; in rare instances, I have.

3247 Q. Have you ever had a complaint about shake in lumber which had been supplied from your mills?

A. No, sir.

Q. Never knew of any complaints about shake?

A. No, sir.

Q. I think you said there is not very much shake in the Madera section of the country?

A. In the center of the tree, in the center of a very old tree, with a heavy top you will find it.

Q. Yes, I think you misunderstood the question.

A. In our section, or any other section, I believe.

Q. I got the impression from your testimony that shake is rarer in the Madera section than in some other parts of the sugar pine range. Did I misunderstand you?

A. Of my own knowledge I do not know. I can say, however, it is the general belief that the sugar pine of southern Oregon has more shake, is more shaky. I don't know whether I ought to try to answer that. Shake in sugar pine outside of common grades is relatively rare, as far as my knowledge goes.

Examiner DE BRULER. I think he has answered that sufficiently.

Mr. MATTHEW. I think I have no further questions.

Redirect examination by Mr. BURR:

Q. In the piling of lumber are the widths all kept in the same pile, the same widths always in the same pile, or varying widths

3248 in that same pile?

A. In common lumber we separate the material as to widths and lengths; in the shop and better we pile our lumber up to 14 inches in one pile, and over 14 inches in another pile. Our reason is we want to maintain the air chimneys up and down through the pile and hit-and-miss piling don't make that possible. At operations which are neighbors to us it is the practice to put all widths in the same pile in the shop and better lumber. There is a segregation, however, as to grades.

Q. Where you have varying widths in the same pile, what is the effect as regards the warping of the Pinus ponderosa and the sugar pine?

A. The widths have nothing to do with the warping.

Q. How about the piling in various widths, does that have anything to do with it?

A. The widths, insofar as the piling is concerned, has nothing to do with warping, but it does smother the lumber and has a tendency to create strain.

Examiner DE BRULER. You need not go into that any further.

By Mr. BURR:

Q. You say there is shake in the higher grades of lumber, as I understand you, on occasions, is that true?

A. I have seen it on rare occasions.

Q. Well, if there is shake in that lumber, does it go into the higher grades?

3249 A. We edge it out. I had in my mind, as you slab through the log, you do find shake beyond the center of the log. It sometimes extends beyond the center within that portion which would be included in common grades, but in going through the edger it is our manufacturing process to rip that out. You don't find it in our shop or better grades, in their finished form. I was thinking of saw milling rather than the finished lumber.

Re-cross examination by Mr. MATTHEW:

Q. Is shake a defect in your grading rules?

A. No; not in the shop. Even though there was a shake in the planing, if you could get the required number of door cuttings in the piece it would be included in the grade.

Q. That is true of all the grades, is it?

A. No. The clears and better must be free of shake and the sound common must be free of shake. It is only the cut up material.

Mr. BURR. You say it must be free as a matter of grading rules?

The WITNESS. Yes.

Mr. BURR. That is all.

Mr. MATTHEW. That is all.

(Witness excused.)

3250 (Here followed remarks off the record.)

Examiner DE BRULER. It being agreeable to all parties concerned, the hearing in the above-entitled matter is now completed at San Francisco and we will reconvene for taking testimony at Flagstaff, Arizona, at 10:00 o'clock a.m., February 7, 1930.

All parties to this record will please take notice of this adjournment.

(Whereupon, at 3:05 o'clock p.m. an adjournment was taken to February 7, 1930, at 10:00 o'clock a.m., Flagstaff, Arizona.)

3251 Docket Nos. 1620–1669, inc.

FLAGSTAFF, ARIZONA, *Feb. 7, 1930.*

Met pursuant to adjournment, 10:00 o'clock a.m.

Before Ellis De Bruler, examiner.

Appearances:

Mr. Burr for the Commission.

Chandler M. Wood, Albuquerque, N.M., appearing for respondents Cady Lumber Corporation, George E. Breece Lumber Company, and the White Pine Lumber Company.

T. J. Byrne, Prescott, Arizona, appearing for respondents Saginaw & Manistee Lumber Company, of Williams, Arizona; and the Arizona Lumber & Timber Company, of Flagstaff, Arizona.

Mr. BURR. Will you be sworn, Mr. Nickerson?

R. A. NICKERSON was thereupon called as a witness and, having been duly sworn, testified as follows:

Direct examination by Mr. BURR:

Q. Your name, please?

A. R. A. Nickerson.

Q. Mr. Nickerson, you are the manager of the Saginaw & Manistee Lumber Company, are you?

A. Yes, sir.

3252 Q. How long have you held that position?

A. From July 1st, 1915, until and including December 31, 1920; then from September 1924 until the present time.

Q. And prior to 1915 were you in the lumber business?

A. Yes, sir.

Q. Where was that?

A. Manistee, Michigan.

Q. For the same company?

A. No, sir; for the R. G. Peters Salt and Lumber Company.

Q. Now, you appear here this morning in response to a subpena calling for the production of certain papers and one thing and another, do you not?

A. Yes, sir.

Q. Does that call for copies of advertising material used by your company, including circulars, booklets, and advertisements issued in newspapers, magazines, and trade journals, so far as available, from June 1, 1924, to the present time?

A. Yes, sir.

Q. Does that also call for copies of letterheads, price lists, invoices used during the same period?

A. Yes, sir.

Q. Now; have you brought papers in response to that demand upon the Government's part?

A. To the very best of our ability to do so. I think you

3253 want several copies of each?

Q. Will you be kind enough to produce them?

A. There is a copy of statement which has been in use continuously—all the time I have been manager of the Saginaw and Manistee Lumber Company, and according to the records in the intervening period, which is fifteen years.

Q. That is in the nature of a form of bill rendered?

A. Yes, sir; statements of accounts.

Q. Now, on that heading there your product is designated as Arizona soft pine, is it not?

A. Yes, sir.

Q. And you have also produced here a form for invoice purposes, have you?

A. Yes, sir.

Q. And you' product is designated in the same manner on that form, is it?

A. Yes, sir.

Q. Now, how long has that been the case, Mr. Nickerson, with regard to the bill and the invoice forms?

A. The invoice form is approximately nine years.

Q. Nine years?

A. Yes, sir; that particular form.

Q. How about the billheads?

A. Here is some more you want [indicating].

Q. And you have produced also an acknowledgement of
3254 order form of the Saginaw and Manistee Lumber Company, have you?

A. Yes, sir.

Q. And that designates the product in the same fashion decis'ely, does it?

A. Yes, sir.

Q. And your letterhead, the same is true of that, is it?

A. Yes, sir.

Q. Now, with regard to advertising, did you make as thorough a search as you possibly could?

A. Yes, sir.

Q. Was that done by you or under your instruction?

A. Under my instruction.

Q. How many years back did you carry?

A. We went back for about nine years.

Q. And brought it right down to the present time?

A. Yes, sir.

Q. I see an advertisement in the 1928 yearbook of the Santa Fe system?

A. Yes, sir.

Q. Of your company?

A. Yes, sir.

Q. And how is the product designated there?

A. Arizona soft pine.

Q. The material you have produced here is the same that you submitted for my inspection at the hotel, is it?

3255 A. Yes, sir.

Q. There are no additions, are there?

A. No, sir.

Q. This is the complete file, is it?

A. No, sir.

Mr. BURR. Now, I will stipulate that I have examined your advertising and I find that the product has been designated, in so far as these matters have been brought to my attention, as Arizona soft pine under the heading of this company, with the exception of a complimentary write-up, apparently, in the Williams News, as to which I will ask.

Q. The Williams News of December 2d, 1927, gives a write-up which was paid for by you, does it?

A. No, sir; that write-up was not paid for, but there was an ad carried in the same paper at the same time, which was paid for.

Q. That carried the write-up?

A. Yes, sir.

Q. Now, in that how do you designate you product, in that write-up?

A. Western yellow pine.

Q. And the ad, how does that designate your product, if at all?

A. Arizona soft pine.

3256 Mr. BURR. Will you please read me that stipulation I just dictated, please, Mr. Reporter?

(Thereupon the stipulation of Mr. Burr, as above shown, was read aloud by the reporter.)

Mr. BURR. You may cross-examine.

Cross-examination by Mr. BYRNE:

Q. With reference to this designation of your product as western yellow pine in the news article last spoken of, the composition of that article was not at your direction or that of the company?

A. Not particularly.

Q. It was written by some disinterested outside party or someone in your office?

A. It was written up by a man in our office.

Q. What I am getting at, Mr. Nickerson, western yellow pine is not the designation under which you commonly sell the product?

A. No.

Q. Your designation is Arizona soft pine?

A. Yes, sir.

Mr. BYRNE. That is all.

Redirect examination by Mr. BURR:

3257 Q. Is that the way in which you have sold that orally as well as by written advertising?

A. Yes, sir.

Q. During the entire last five years?

A. Yes, sir.

Q. Why do you designate it as Arizona soft pine instead of Arizona white pine?

A. Why?

Q. Yes, sir.

A. Because the resemblance of the pine itself is far removed from the yellow pine of the Southern States which has been called yellow

pine, to my personal knowledge, for thirty-five years. It in no way resembles that yellow pine except upon inquiry it has never been referred to as I know of as yellow pine. The Forest Service frequently, I believe, designate it as western yellow pine, but it has a texture and resembles more nearly a white pine than it does the yellow pine of the South which has used that trade-name for so many years, but that is what it is known by in the trade.

Q. Your answer states why you do not call it yellow pine, does it not?

A. Yes, sir.

Q. Now, what I tried to ask you a moment ago is, Why you do not call it Arizona white pine?

A. There is no particular reason for doing so. It is not
3258 apparently a white pine, although it does resemble it very closely in a great many respects.

Q. Do you regard it as quite as soft as the genuine white pines?

Mr. BYRNE. Wait a moment. He has not stated he is acquainted with the genuine white pines.

Mr. BURR. Well, we will ask him that very thing:

Q. Are you acquainted with the northern white pine or the Lake States white pine?

A. I lived, thirty-five years ago, in Michigan, and became quite thoroughly familiar with white pine. Afterwards, in the sawmill we cut a small quantity of white pine with adjoining mills that were cutting nothing but white pine, with which I was quite familiar.

By Mr. BYRNE:

Q. You are referring to the Michigan pine?

A. I am referring to the Michigan pine in manufacturing.

By Mr. BURR:

Q. Now, do you regard Arizona white pine has quite as soft a texture as Michigan white pine?

A. Practically so.

Q. Practically so?

A. The sapwoods are very different, to distinguish one from the other.

Q. By sight, you mean?

3259 A. Yes; in the timber.

Q. But the texture of the northern white pine is a little softer on the average than the ponderosa, is it not?

A. It may be discovered to be a little softer through an actual technical test, but for merchandising purposes and for use it is very difficult to tell one from the other.

Q. Yes?

A. Particularly in the sapwoods.

Q. In the sapwoods?

A. Yes, sir.

Q. Hardwood ponderosa is a little harder than the northern white pine, is it?

A. It is, generally speaking, a little different. I don't know as I would say it is harder.

Q. How would you express it?

A. It is different in appearance, usually.

Q. I wish you would describe that a little wherein it differs in appearance.

A. Well, placing it on the basis of its being soft or not soft, I would hardly know how to define the difference. If you will permit me to use an illustration, the heartwood of this Arizona timber is sufficiently soft that it can be cut in very thin layers for shook purposes. It holds a nail, I would say, equally well with the genuine white pine. Therefore, my conclusion would be for all prac-
3260 tical uses it would be of equal softness as you call it.

What do you mean by "soft"?

Q. Well, I mean softness of texture.

A. You mean soft as to pressure? That it would stand less or greater weight or what would your definition of softness be?

Q. The softness is the ease of working and the freedom from harder substances that sometimes are to be found in pines. I imagine the softness would be practically the antithesis of the pitchy contents. The more pitch there is in the pine, I take it, the less the softness. I don't know. I am not an expert upon that, but that would be my way in which I would guide your request as to what I mean by "softness."

A. I would not feel badly about that, because I don't know of anyone that is an expert so far as the so-called "softness of wood" is concerned.

If you mean "feel" of the wood—say, the pine has a satiny feel—close your eyes and feel of it as to the surface—I doubt if you could tell any difference in the softness. For all practical purposes the heartwood of the two species of equal grade, I doubt if there is very much difference.

Q. Now, you don't call it white pine?

A. No.

3261 Q. You have not called it white pine?

A. No, sir.

Q. Now, why haven't you?

A. There is no occasion to do so. The mill in Flagstaff has been here a great many years. I think that the Saginaw mill in Williams was the second mill built in this particular territory. About thirty-six years ago the Saginaw mill was built, and the market conditions were different. The white pine of Michigan was disappearing, as it was in Wisconsin and to a lesser degree in Minnesota, and it took the place, to some extent, of those woods—it was sufficiently soft to do so. I rather assume the designation of "soft pine" was intended to describe it as nearly as possible for merchandising purposes——

Examiner DE BRULER. Let me ask you this:

Q. Which wood splits more easily?—in driving nails through it—the genuine pine or the pine that you sell?

A. Genuine white pine?
Q. The genuine pine or the pine that you sell?
Mr. Wood. You mean the Michigan pine?
Examiner De Bruler. Yes. Which splits easier?
The Witness. Grade for grade and grain for grain I doubt if anyone could tell the difference.
Q. That is a good test as to the softness of wood, whether it would split in driving a nail in it?
3262 A. In driving a nail in it?
Q. Yes, sir.
A. It is for practical purposes; yes, sir.

By Mr. Burr:

Q. Well, now, do you regard your wood as entitled to the name "white"?
A. If you were describing it as to color——
Q. (Interrupting.) No; I am not describing it in any way——
A. (Interposing.) We have never been interested.
Q. You have never been interested in whether it was called white or not?
A. No, sir.
Mr. Burr. That is all.

Recross-examination by Mr. Wood:

Q. Mr. Nickerson, how many kinds of pine are produced in Arizona?
A. Only one that I know of.
Q. And that is the Pinus ponderosa?
A. So I am informed; yes, sir.
Q. How many mills are there in Arizona producing and manufacturing this pine—of any size or substance?
A. Well, there are—up until recently, I think there were only four operating in the northern part of Arizona. There
3263 may be plenty of other small mills in the southern part of the State.
Q. No mills of size?
A. No.
Q. Those mills are the Saginaw and Manistee——
A. (Interposing.) Yes, sir.
Q. And the A.L. & T.?
A. Yes, sir.
Q. What are the others?
A. The Standard Lumber Company and the Cady Lumber Corporation, I believe, is the correct designation, at McNary.
Q. And do these mills outside of your mill and that of the A.L. & T. mill market their product as Arizona white pine?
A. Why, I am not particularly familiar with the designation of the product. I have seen their literature.

Q. And you have seen it designated as——

A. (Interposing.) I have seen it designated as "white pine" with "Pinus ponderosa" in parenthesis.

Q. Arizona white pine?

A. I am not sure, but I believe it was Arizona white pine.

Q. But you have seen the designations "Pinus ponderosa" below it in brackets?

A. Yes, sir.

Q. Do you sell much of your lumber in the State of Arizona?

A. Markets, of course change. I would say approximately
3264 fifty percent at this time.

Q. And you sell it to wholesalers and retailers?

A. Retailers only.

Q. Retailers in Arizona?

A. In Arizona.

Q. And do you sell to the same customers that the Cady Lumber Corporation and the Standard Lumber mill sell?

A. Probably. I am not familiar with their specific sales, but they have—the Cady Corporation have a salesman in Phoenix and, I believe, he sells for the Cady Corporation and the Standard, both—he covers the same territory. It is reasonable to presume that he sells the same customers.

Q. You have known of cases where customers have bought from both you and the Cady Lumber Corporation?

A. Certainly.

Q. Have you noticed any confusion among customers by reason of the fact—as to the species of timber they were getting—by reason of the fact that the Cady Lumber Corporation designated their pine as "white pine" and you designated yours as "soft pine"?

A. No.

Q. Have you ever had any complaints from them that different names had been used to designate the product?

A. No.

3265 Q. Have you any objection to the Cady Lumber Corporation designating their product as "Arizona white pine"?

A. None whatever.

Q. Do you know what the man on the street, the public generally, calls this Arizona ponderosa pine?

A. I think not.

Q. You don't know what the public uses to express it?

A. No. In a great many instances the user of lumber—yes, I have.

Q. What do they call it?

A. Sometimes "native pine"; sometimes "Arizona pine." I don't recall of ever hearing a user of wood—of this pine manufactured in Arizona, putting in the word "soft" or "white."

Q. Or "yellow"?

A. Or "yellow" or any other color or any other designation other than native pine or Arizona pine.

Q. Or sometimes just "pine"?

A. Yes; just pine.

Q. Have you had an opportunity to acquaint yourself with the California white pine, the Pinus ponderosa that is designated as California white pine?

A. To some extent. More in southeastern Oregon east of the Cascades than in California. However, in California to some extent.

3266 Q. Do you know the difference in texture and general characteristics between the California white pine and your pine?

A. Generally, yes.

Q. What would you say they were?

A. The so-called California white pine which has come under my observation, as I stated to a greater extent in southeastern Oregon than in the State of California, the trees grow on an average much taller. They have more water, greater average rainfall, and I would say better soil conditions. The timber averages a great deal greater per thousand feet per acre than it does in Arizona, undoubtedly due to the more favorable growing conditions. As a consequence, the ring growths—I presume you know exactly what I mean—are farther apart, since in Arizona a stand of five thousand acres is a fairly good average, more noticeable in the sapwood, the ring growths in Arizona are much closer together and, consequently, board for board, the texture is finer—that is, the ring growths are closer together than they are in the general run in the California white pine, so-called.

Q. Is Mr. Louis Wuichett your sales representative in Chicago?

A. He is, and has been for over thirty years.

Q. Has he been the sales representative of your mill since it was established here in Arizona?

A. Since the mill was established?

Q. Yes.

3267 A. No. The mill was established a few years before that time, but Mr. Wuichett came out to Arizona in the fall of 1899 to examine this wood, and shortly after that time he began selling it in the Middle West territory contiguous to Chicago.

Q. Well, is he your sales representative for all the territory outside of Arizona?

A. Yes; with the possible exception of Gallup, New Mexico, which is just over the line from Arizona; and Needles, California, which is across the river in California on the west, from Arizona.

Q. Is he also the sales representative of many of the California white-pine companies?

A. Yes; several. How many, I am not acquainted with, but several.

Q. Is it not a fact that he wished to distinguish between the product of the California white-pine companies and that of the Arizona companies in selling his product—in selling the product,

and that he so distinguished it by using the term "California white pine product" for the California companies and "Arizona soft pine" for the Arizona companies we represent?

A. That is true. His designation of Arizona soft pine for a great many years included a mill that was actually in New Mexico.

3268 Q. That was the White Pine Company or the Breece?

A. The A. B. McGaffey Company. I think the firm name was McGaffey Lumber Company. I am not quite sure.

Q. How did he designate their product, if you know?

A. That was included under the designation of Arizona soft pine.

Q. Is any Michigan or northern pine brought into this market for sale, into the State of Arizona for sale?

A. I have never heard of it being brought in here.

Q. So that you do not meet with any competition here in Arizona with Michigan pines?

A. I doubt it very much.

Q. And the same is true with the Idaho pine?

Mr. BURR. Idaho white pine?

Mr. WOOD. Idaho white pine.

The WITNESS. So far as I know; I have never heard of it being sold in Arizona.

Q. Is sugar pine sold here at all?

A. Some sugar pine; yes, sir.

Q. And where is it sold; what part of the State?

A. Usually, I think, in the middle and southern parts of the State.

Q. But for what purposes is it sold, primarily, in the southern parts of the State?

A. Mostly for sash and doors.

3269 Q. Is it sold much for structural purposes?

A. I have never known of its being used to any extent whatever for construction purposes.

Q. You say that practically the only sale here for it is for sash and doors?

A. That is the only sale I have ever known of.

Q. I believe that—for what purpose is the Pinus ponderosa used to any extent throughout Arizona—for exterior purposes in houses and buildings?

A. Yes; railroad ties—very much out doors.

Q. The Sante Fe Railroad uses ponderosa ties exclusively throughout the State?

A. I think they do. They do to a large extent, at least.

Q. Have you had an opportunity to observe how the Pinus ponderosa has stood up for outside construction purposes in the State of Arizona?

A. Yes, sir.

Q. What is your opinion of the same?

A. It will stand——

By Examiner DE BRULER:

Q. What is your observation?

Mr. WOOD: Yes.

Q. What is your observation?

A. My personal observation has been to the effect with equal care I doubt if there is any difference in the value for the
3270 purpose for which it is used or in its life. I doubt if anyone could truthfully state that the ponderosa pine was poorer than any other wood for structural purposes here—deteriorating through rotting.

Q. Is it used extensively throughout northern Arizona for building purposes?

A. Yes, sir.

Q. Both dimension and boards?

A. Yes, sir.

Q. Do you know of any buildings in this vicinity built of Pinus ponderosa of many years' standing?

A. Yes, sir.

Q. Have you any particular one in mind as you make that answer—any specific buildings?

A. I am living in a house——

Mr. BURR. I think counsel has gone far beyond the scope of my direct examination. I think it should appear he has made him his own witness for all his purposes.

Mr. WOOD. Yes; I am perfectly willing.

Q. Will you continue with your answer?

A. I am living in a house built about twenty-two years ago of Arizona pine. It shows no indication of rot whatever any place.

Q. Built throughout of Arizona pine?

A. Everything except the hardwood floors, which are oak.

3271 Q. It gets pretty cold here, doesn't it?

A. Usually, in the winter.

Q. What is the snowfall in northern Arizona, if you know?

A. It varies considerably. The average moisture, I am informed by the Forest Service, is twenty-three inches. In 1928 the local supervisor in Williams advised me the moisture fall, snow and rain, was fifteen for the year.

By Mr. BURR:

Q. Where was that?

A. In Williams, Arizona.

By Mr. WOOD:

Q. And what is the distance from Williams to Flagstaff, about?

A. About thirty-four to thirty-six miles.

Q. Do you know the altitude of Flagstaff?

A. Approximately.

Q. What is it?

A. Between 6,900 and 7,000 feet.

Q. And what is the altitude of Williams?

A. Just a little under 6,800 feet.

Q. Have you any other buildings in [redacted] that have built for some years?

A. A great many of them.

Q. Have you any in mind that have been built for more than twenty years?

A. Yes, sir.

3272 Q. Thirty years?

A. Not quite.

Q. Between twenty and thirty years?

A. About twenty-seven years.

Q. Are they used—is Pinus ponderosa used for office buildings at all throughout this part of the country?

A. I don't recall any particular office buildings now in existence, since certain fire restrictions have removed all wooden structures within certain fire limits.

Q. You have fire limits that prevent that building?

A. Yes; they are allowed to use a certain amount of pine inside; floor joists, which are still in existence, of many years standing.

Q. Did you ever hear the native pine referred to as pondosa pine in the State of Arizona?

A. Not in Arizona. I don't recall that name as ever being applied to it other than to describe it or to cover its botanical name.

Q. I will ask you if you have encountered any sales resistance by reason of the fact that certain mills in Arizona and New Mexico have used the term "white pine" in designating their product?

A. I have not.

Mr. Wood. I think that is all.

Mr. Byrne. Just one question:

3273 Q. Mr. Wuichett handles lumber shipped to him by your company in what capacity?—as a commission merchant or is he an agent working directly for your company and under your company's instructions?

A. He is a purchaser of lumber from us. All our invoices go to him. He has always paid us for every foot of lumber.

Q. It is an out and out sale between your company and Mr. Wuichett?

A. It is.

Q. You don't know to whom he sells?

A. Not ordinarily. We are permitted to know if we wish, but that is entirely his business.

Q. You don't know what description he uses for your product after he purchases it from you?

A. Just in a general way.

Mr. Wood. Are you through?

Mr. Byrne. Yes.

By Mr. WOOD:

Q. Have you ever had any complaints from any customers of Mr. Wuichett who were delivered the Arizona pine that they thought they were buying a different species of pine from that which they received?

A. No.

Mr. WOOD. That is all.

3274 Redirect examination by Mr. BURR:

Q. Do you come in contact with purchasers who buy from Mr. Wuichett?

A. Occasionally.

Q. What part of the country are they located in?

A. In 1928 we shipped lumber upon his orders to sixteen States, and it covers a very large part of the northern part of the Middle West.

Q. Does he occasionally have customers in the East?

A. Yes, sir.

Q. I mean in the Atlantic Coast States?

A. Vermont.

Q. And your lumber has gone as far back as that, has it?

A. Yes, sir.

Q. Now, you say you do not know of the product of your company being known as "pondosa"?—did I understand you correctly?

A. We have never so designated it, and I have never known of any one calling it that.

Q. Some of the Arizona ponderosa pine is known as "pondosa", isn't it?

A. Not to my knowledge.

Q. Don't you know one of the Arizona concerns referring to it as the "pick of the pondosas"?

3275 A. Yes; I have seen that.

Q. Which concern is that?

A. The Cady Lumber Corporation.

Q. And they cut in Arizona, do they?

A. Yes, sir.

Q. That is quite a slogan of theirs, is it not—"The pick of the pondosas"?

A. They use it. Beyond that I don't know how it is considered.

Q. Now, is there any Jeffry pine in this State?

A. Not that I know of.

Q. You know that species of pine, do you?

A. I am not familiar with it.

Q. Now, Mr. Wuichett's customers are wholesale dealers, are they—or jobbers or how?

A. Some are jobbers, perhaps. I doubt if any are jobbers—let me correct that. So far as our lumber is concerned, I would say the

sales are largely to industrial plants and remanufacturing plants putting the lumber into specific products.

Q. Mr. Wuichett does not sell to retailers very often?

A. Very seldom. Occasionally.

Q. Now, did I understand you that your Arizona soft pine has, in your judgment, a greater softness and ease of working than the California ponderosa in the sections you mentioned?

3276 A. Working in what manner?

Q. Ease of working.

A. That covers a wide territory, Mr. Burr.

Q. Suppose you answer to the best of your ability. I do not claim to be an expert at all upon that subject. You were contrasting Pinus ponderosa lumber produced by your company?

A. Yes, sir.

Q. With the ponderosa produced in various sections of California, and I think you said their trees grew faster and the annual rings were wider, I figure?

A. Yes, sir.

Q. What effect does that have upon the ease of working the product, if any?

A. Very little, if any.

Q. What was the point of that distinction you made?

A. If you mean by "working" the working that is done at the mills—that is, the manufacturing, putting it through a planing mill?

Q. What is the difference there?

A. Practically no difference.

Q. The texture of your wood is about the same as the other, would you say—what is the difference in the slowness of growth?

A. The ring growth, the closer together it is, the slower it grows.

3277 Q. I see.

A. That is largely a matter of appearance.

Q. Well, what is the difference in appearance?

A. One shows a wider ring growth than the other.

Q. Wider?

A. Yes, sir.

Q. Now, there has been some testimony in this case that there is a difference in the texture in the Pinus ponderosa in California between the spring and summer wood, the light and the darker growth, not the annual ringage.

A. Yes.

Q. Now, is there a difference, in your judgment, of the same character in the slower growing Arizona ponderosa that you have described?

A. You say as between the summer and winter growths?

Q. Spring and summer growths. The testimony is that the spring growth in the ponderosa in California is rather a softer wood than the summer growth of each annual ring. In other words, there

is a little difference in the ease of working on account of the difference between the texture and softness of the two parts of the annual ring. Now, do you find any difference in Arizona as regards that feature in the wood, or have you observed that?

A. It is almost too highly technical for me. The darker
3278 layers, the thinner streak in your lumber, is what you are talking about?

Q. Yes.

A. It indicates the restful period of the tree, doesn't it, in the winter time when the sap goes down? From then on to the next dark is that soft growth which it makes during that particular year? It may be wider for a narrow—or wider upon one side of the tree that upon another part, to distinguish between the inner part of this lighter spacing which undoubtedly is the spring growth as it grows out, not in. In my opinion this does not amount to anything in the practical use of the wood. A carpenter with a piece of one wood and a piece of another upon his bench is not interested, does not care, and the chances are he does not know the degree of ease with which he works either of them, pure white pine or this Arizona pine of approximately equal grade or quality. I doubt if he knows.

Q. It might be there and he not know it?

A. Exactly, but in the practical working of it it amounts to nothing.

Q. Is there any difference in the Arizona soft pine and the California white pine, in your opinion?

A. If there is any difference?

Q. Yes; if there is any difference in the Arizona soft pine and the California white pine, from the practical character and quality of the wood?

3279 A. Practically none.

Q. You think yours is just as soft and just as easy to work as the California variety, do you?

A. Yes, sir.

Q. Now, do you find there is very much difference in different parts of the stand in this State? Is there much difference in the ponderosa pine and the ponderosa in other sections of the stand?

A. Yes, sir; there are differences.

Q. I think you said Louis Wuichett was desirous of distinguishing between the Arizona and the California varieties of the ponderosa lumber?

A. I beg pardon—I didn't intend to express any statement as to his desires.

Q. That was the question. I noticed the very word "desire" in the question.

A. The actual card that he has in the American Lumber Man, the business card that he uses, distinguishes between the two woods—that is, the California and the Arizona. One is called, "California white pine", as it is designated in California, and the

other is designated as "Arizona soft pine." What his desires are in selling the lumber, I could not, of course, state. He is the man to answer that question.

Q. I thought you stated he was desirous of making a distinction there?

3280 A. I have no intention of stating his mental attitude upon that question.

Q. Now, this is a semiarid, or arid district of the country, is it not?

A. Very much so at times.

Q. And the farmers here need irrigation waters in order to raise crops in this locality?

A. I know of no irrigation here.

Q. Do you know of farming here?

A. Yes; to a limited extent.

Q. There is some dry farming here, is there?

A. Yes, sir.

Q. I think you spoke of twenty-three inches of moisture. That includes the depth of snow, does it?

A. Converted to water, as I understand it.

Q. You would say the precipitation here is twenty-three inches?

A. That is the more correct designation.

Q. Have you seen the official figures as to that?

A. I have not.

Q. It is merely hearsay to you as to the amount of precipitation?

A. It is. Mr. Kimball, the local supervisor at Williams, informed me of that upon my inquiry.

Q. Now, the high altitude and the freedom from humidity

3281 in this climate is quite marked, isn't it?

A. It is nearly seven thousand feet high, and we have fairly light precipitation.

Q. And that has a tendency to make all varieties of wood more durable when exposed to the weather, does it not?

A. You mean lumber in construction?

Q. Yes; even where exposed to the weather, it is more durable?

A. Not necessarily.

Q. You think a high degree of humidity and great precipitation is not a factor in producing decay?

A. Not necessarily; no.

Q. Is that so?

A. It depends entirely upon how it is used.

Q. I am talking about precisely the same degree of care or same degree of neglect; that you consider the same degree in this climate and under another lower, isn't the climate here less drying?

A. How much precipitation?

Q. Suppose it is twice as much as it is here?

A. There would be no material difference in that event.

Q. You mean a precipitation of forty-five inches, such as on the Atlantic co'st?

A. No, sir.

Q. Now, do you mean to say that the resistance to decay is
3282 no greater in a high altitude than at sea level or virtually so?

A. I am not qualified as an expert. I have looked at thousands of buildings, and a great deal of lumber used in construction work; and you put timber in a wet place or where it has water continuously, regardless of whether there is anything coming out of the clouds or not, and it will react to those conditions approximately the same as it would anywhere else. If you put pine on the outside of your building and you paint it and take care of it properly, in a very high precipitation, certainly it will require more care to get the same results.

Q. Than in an arid climate?

A. Yes; but with no care at all, standing outside, a piece of pine that has lain in the water—logs lying in the water, to my personal knowledge for forty-two years, were scarcely discolored.

Mr. BURR. That is all.

Mr. WOOD. Just one question.

Re-cross-examination by Mr. WOOD:

Q. I believe you testified that you had seen advertisements of the Cady Lumber Corporation, that they sold the pick of the pondosa. Do you know whether the Cady Lumber Corporation sells direct or through some sales organization?

Mr. BURR. I object to that.

3283 Examiner DE BRULER. Objection sustained.

Mr. BURR. We are going to have them on the stand, are we not?

Mr. WOOD. I was going to lead up to whether he has not in mind that the sales organization has used that expression rather than the Cady itself.

Q. Upon reflection, do you know whether the term, "pick of the ponderosa" has been used by the Cady Lumber Corporation or the Southwest Lumber Sales Corporation?

A. The place I recall seeing it now was on a price list of the Southwest Sales Corporation which I believe is the correct company name.

Mr. WOOD. That is all.

Redirect examination by Mr. BURR:

Q. Selling for several Arizona companies?

A. I don't know how many they were selling for.

Mr. BURR. That is all.

Examiner DE BRULER. You are excused.

(Witness excused.)

Mr. BURR. Call Mr. Riordan.

M. J. RIORDAN was thereupon called as a witness and, having been duly sworn, testified as follows:

3284 Redirect examination by Examiner DE BRULER:

Q. Let's see, your name is M. J. Riordan?

A. Yes, sir.

By Mr. BURR:

Q. Mr. Riordan, you are connected with the Arizona Lumber and Timber Company?

A. Yes, sir.

Q. With headquarters here in general?

A. Yes, sir.

Q. How long have you been with them?

A. Forty-four years.

Q. You are now secretary?

A. Yes, sir.

Q. And for how long a period have you been?

A. Practically forty-four years.

Q. Now, as secretary, are you one of the executives of the company?

A. Actually, I am; but really I am not. I don't practice it. I am not a practicing executive.

Q. You do the work without the title?

A. No; I have the title and I have the power over the other fellow. We have executives who do the work.

Q. Now, you appear here under the Government's subpena, do you?

A. Yes, sir.

3285 Q. And I wish you would state whether that calls for the following copies of advertising material used by your company, including circulars, booklets, and advertisements in papers and magazines, newspapers, and trade journals, so far as available, from June 1, 1924, to the present time; also one copy each of letterheads, price lists, and so forth, used during that period. Have you brought some papers in compliance with that requirement?

A. Yes, sir.

Q. Let me ask you whether what you have brought is all that could be found in your files in compliance with the subpena?

A. I don't know. I got the subpena at dinner last night, and this morning at half-past nine I went to the office and got what had already been prepared. I didn't look them over at all.

Mr. BURR. I am surprised the subpena did not reach you earlier.

Mr. BYRNE. Perhaps Mr. Koch is a little bit better qualified to testify.

Mr. BURR. Is Mr. Koch here?

Mr. BYRNE. Yes; this gentleman here [indicating].

By Mr. BURR:

Q. Now, you gave instructions this morning, did you, for the search, or when?

A. No; I didn't give any instructions at all. I got what
3286 was already there. I didn't have any time for instructions without getting up too early.

Q. Now, how is your product designated to the trade?

A. Pine.

Q. You don't call it "white pine"?

A. We don't call it anything—just pine.

Q. How long has that been the case?

A. Forty-four years.

Q. You do not call it "Arizona pine" here, do you?

A. Sometimes we call it native pine, bull pine, jack pine.

Q. Now, you testify positively, do you, that your company has not either orally or in writing sold or offered to sell its product as a variety with the trade-name of "white" in connection with it?

A. Not to my knowledge.

Q. Not to your knowledge?

A. No, sir.

Mr. BURR. Off the record.

(Discussion off the record.)

By Mr. BURR:

Q. Now, Mr. Riordan, who are Johnson and Koch?

A. Johnson and Koch, they were a firm handling——

Q. (Interrupting.) I beg pardon?

A. Johnson and Koch were a firm handling lumber in Phoenix. They are out of existence now, I think.

3287 Q. Were they agents of yours or did you sell to them outright or how?

A. I don't know. Mr. Koch can tell you.

Mr. KOCH. They were our agents.

Mr. BURR. How?

Mr. KOCH. They were our agents.

Q. (By Mr. BURR.) Now, the papers that you have produced here, do they comprise all the forms that you have used for the last five years?

Mr. KOCH. Yes, sir.

Mr. BURR. Perhaps I had better call Mr. Koch right now. If there is no cross-examination of this witness, I will put Mr. Koch on.

Mr. WOOD. No cross-examination.

Mr. BYRNE. No cross-examination.

(Witness excused.)

Mr. BURR. Mr. Koch, will you be kind enough to take the stand and be sworn?

I. B. KOCH was thereupon called as a witness and, having been duly sworn, testified as follows:

Direct examination by Mr. BURR:

Q. Will you state your name for the record?

A. I. B. Koch.

3288 Q. Referring to the various forms of stationery produced by Mr. Riordan a moment ago, will you state whether these have been changed in the last five years?

A. No, sir.

Q. They have been used continuously during that period?

A. Yes, sir.

Q. I wish you would tell me who Messrs. Johnson and Koch are?

A. Mr. Johnson is here at this time.

Q. Well, what is his relation to your company?

A. He represents us in Phoenix.

Q. Do you sell to that firm outright or are they agents of yours?

A. They are agents.

Q. And are they advertising your Arizona ponderosa pine?

A. No, sir.

Q. Are they selling your Arizona ponderosa pine?

A. Yes, sir.

Q. And I hand you here a paper or, rather, three papers, which I wish you would describe for the record—state what they are.

A. Those are our price lists which we furnish to our agents.

Q. You furnished those to Johnson and Koch, did you?

A. To Johnson only. Mr. Koch is no longer there.

3289 Q. That is yourself?

A. That is another Mr. Koch.

Q. That is another Mr. Koch?

A. Yes, sir.

Q. He is no longer with Mr. Johnson?

A. No, sir.

Q. That designates some product as "Arizona white pine" on the back of each of those three papers, does it?

A. Evidently; yes, sir.

Q. Now, are those your products that are priced in that fashion?

A. Yes, sir.

Q. Where do those price lists go, if you know?

A. Just to the customers in Phoenix.

Q. They don't go east?

A. They don't go outside of the State at all.

Mr. Burr. Off the record.

(Discussion off the record.)

Mr. Burr. In order to save encumbering the record, if the examiner please, I will state that I have examined the envelopes, both stamped and unstamped, the bill heads, invoices, and letter heads, and the order blanks of this company——

Examiner De Bruler. What company is that, now?

The Witness. The Arizona Lumber & Timber Co.

3290 Q. What is your position?

A. Vice president and manager.

Examiner De Bruler. I see.

Mr. BURR. Together with the advertising in a certain school year book and in a certain school paper——

The WITNESS. Yes.

Mr. BURR. Also in daily papers at Phoenix and Flagstaff, and I find that none of these advertisements just described, and none of the forms that I have just described contain the trade term—any trade term, including the word "white."

I offer them as Commission's exhibit number——

Examiner DE BRULER. Fifty-one.

Mr. BURR. I offer them as Commission's exhibit number fifty-one for the record, the three sheets which the witness has described as price lists, issued in the name of the former partnership of Johnson and Koch, and I ask that they be received in evidence.

Mr. BYRNE. May I ask one question on voir dire?

Mr. BURR. Certainly.

Voir dire examination by Mr. BYRNE:

Q. This price list that Mr. Burr has referred to, Mr. Koch, does that go to anyone else outside of an agent?

A. No, sir. We furnished it to Johnson. He is our agent.

3291 Q. Just to him?

A. Yes, sir.

Q. It does not go to the trade or to the general public?

A. Unless delivered by him. We do not send it direct to anybody.

Q. (By Mr. BURR.) Well, it is for the purpose of his use, is it not, in securing business?

A. Yes; I suppose so.

By Mr. BYRNE:

Q. How long a period of time has this price list been in use, Mr. Koch?

A. I suppose about four or five years.

Q. And it is still in use at the present time?

A. Yes, sir.

Q. However, any lumber sales made by your agent, Mr. Johnson, are exclusively within the State of Arizona; is that not true.

A. Yes, I think so; nothing sold outside of this list does not go outside of the State.

Mr. BYRNE. We, therefore, object to the reception of the exhibits of the price lists in evidence for the reason that they do not go outside of the State of Arizona, and could only possibly refer to sales within the State.

3292 Examiner DE BRULER. It may be received in connection with his testimony.

(Thereupon, the documents so tendered were received in evidence and duly marked as "Commission's Exhibit Number 51, Witness Koch", and the same are forwarded herewith.)

Direct examination (cont'd) by Mr. BURR:

Q. Now, Mr. Koch, has your company in any other respect, aside from the issuance of these price lists, at any time during the last five years that you know of referred to your product with the trade name "white" in connection with it?

A. No, sir.

Q. How do you sell your product outside of the State?

A. Through Mr. Wuichett.

Q. Do you know how he designates it?

A. Judging from his letter heads, "Arizona soft pine."

Mr. BURR. I think that is all.

Cross-examination by Mr. BYRNE:

Q. In connection with Mr. Wuichett, Mr. Koch, your company ships your product to him as an out-and-out sale, does it not?

3293 A. Yes.

Q. You retain no direction over the manner he shall sell or to whom shall sell?

A. No.

Q. Or over the designation which he may use in describing the product?

A. No, sir.

Q. Your company retains no control over the prices at which Mr. Wuichett sells your product?

A. No, sir.

Mr. BYRNE. That is all.

Examiner DE BRULER. That is all.

Mr. WOOD. I would like to ask a question.

Examiner DE BRULER. Oh, excuse me. Go ahead.

Cross-examination by Mr. WOOD:

Q. Have you met any sales resistance——

Mr. BURR. I object to that as improper cross-examination.

Examiner DE BRULER. Unless you make him your witness.

Mr. WOOD. I will make him my witness.

Q. Mr. Koch, do you know whether any other lumber companies in Arizona are designating their product as "Arizona white pine"?

A. No, sir.

3294 Q. You do not know, then, whether the Cady so designate their lumber or not?

A. No, sir, except on the advertisements.

Q. (By Mr. BURR.) Except what?

A. From the advertisements I have seen.

By Mr. WOOD:

Q. From the advertisements you would judge that they were advertising and holding it out as "Arizona white pine"?—is that correct?

A. As "pondosa", I believe.

Q. As "pondosa" or "Arizona white"?

A. "Pondosa", as I remember it.
Q. Have you seen any recently?
A. No, sir.
Q. Have you at any time received any complaints from customers, either from Arizona or elsewhere, that—or any inquiries as to whether the Cady Lumber Corporation was using a different name in designating its product than you are?
A. No, sir.
Q. Have you any objection to the Cady Lumber Corporation or other lumber corporations using the term "white pine" in designating their product, when they are selling Pinus ponderosa?
3295 A. None whatever; no, sir.
Q. Were you at any time in the lumber business in New Mexico?
A. Yes, sir.
Mr. BURR. If the examiner please, I think I shall object to this line of questions, because there is nothing in the complaint that the Government has the opinion that people who sell under the designation "soft pine" are injured.
Examiner DE BRULER. It is really outside of the complaint, Mr. Wood.
Mr. WOOD. I am finished with that line of questioning.
Mr. BURR. All right. I will withdraw the objection for the time being.

By Mr. WOOD:

Q. Were you in the lumber business in New Mexico?
A. Yes, sir.
Q. What company?
A. American Lumber Company.
Q. How long were you with them?
A. Six years.
Q. During what years?
A. I believe 1906 to '12.
Q. What was your official position with the company?
A. As manager.
Q. What kind of lumber did your organization manufacture?
3296 A. The American Lumber Company manufactured New Mexico white pine.
Mr. BURR. If the examiner please, this is not a respondent here. Is this material?
Mr. WOOD. I think it is material on the question as to the times that the words "New Mexico white pine" has been used in designating the New Mexico product.
Examiner DE BRULER. You may ask him about how long it has been used as that.
Mr. WOOD. Will you read the question to the witness, please, Mr. Reporter?
(Thereupon the last question as above shown was read aloud by the reporter.)

The WITNESS. As we knew it.

By Mr. WOOD:

Q. And of what species was the New Mexico white pine?—ponderosa?—Pinus ponderosa?

A. We didn't know it at that time as ponderosa.

Q. You didn't know its botanical name?

A. No, sir; we paid no attention to it.

Q. Do you know how long your company used the term "New Mexico white pine"?

A. No, sir.

Q. It had been used before you came there?

A. Yes, sir.

3297 Q. Did you at any time have any complaints from any customers in selling them your timber and lumber as New Mexico white pine they were receiving a different kind of lumber than they expected?

A. No, sir.

Mr. WOOD. That is all.

Examiner DE BRULER. That is all.

Redirect examination by Mr. BURR:

Q. When you sold for the company, what sort of customers did you do business with?

A. Retail yards.

Q. Whereabouts?

A. Through the Middle West.

Q. And did you sell any to planing mills?

A. Some were.

Q. Did you sell any to wholesalers?

A. Yes, sir.

Q. Now, how much of a percentage did you sell to wholesalers; were you connected with the sales end of it?

A. Not materially; no, sir.

Q. You would not be able to testify as to the relative proportion?

A. No, sir.

3298 Q. Even roughly?

A. I would rather not.

Q. The bulk was to wholesalers and planing mills, was it?

A. Yes, sir.

Mr. BURR. That is all.

Examiner DE BRULER. That is all.

(Witness excused.)

Mr. BURR. Now, I think as far as the hearing in this town is concerned, the Government is prepared to rest.

Mr. BYRNE. If that is the case, Mr. Burr, we would like the record to show a motion on behalf of both of the respondents for an order directing the dismissal of the complaint as to both respondents, on the grounds that no competent proof has been introduced in support of the allegations of paragraph three of the complaint.

Mr. BURR. I will say that nobody here has the power to act upon that motion, as I understand it; but I will say this: that I anticipate that if the chief counsel is agreeable I shall move to dismiss both of these respondents.

While there is a little showing that the word "white" has been used, I assume it will not be used if an order was so issued, and it has not been in interstate commerce and I don't think it is very material or important.

Would you be willing to stipulate you would stop using the word "white" in case an order was issued and sustained
3299 against other parties?

Mr. BYRNE. No, Mr. Burr. The whole desire of these two companies, and the only reason why they defended this matter at all is that they have been accused of unfair practices. Otherwise, we would have ignored the whole proceeding and consented to an order.

Mr. BURR. In case of dismissal you would stop using the word "white"?

Mr. BYRNE. We do not admit we have used it.

Mr. BURR. I refer to Commission's exhibit number 51, was it not?

Mr. BYRNE. That took me entirely by surprise. I didn't know that had been used. I would not care to make that stipulation at the present time.

Mr. BURR. I may not move with regard to the Arizona Lumber & Timber Company, with this limited use, but I may in connection with that; but I certainly shall with regard to the Saginaw & Manistee Lumber Company. It seems to me with the very slight use in this matter—I thought you would be willing to stipulate and there would be a certainty of dismissal. Would you be willing to take it under advisement and write me later?

Mr. BYRNE. Yes; I will do that.

Examiner DE BRULER. Now, have the respondents any witnesses to offer?

Mr. WOOD. Yes. I think we will put one witness on the
3300 stand. I asked him to come here at two o'clock.

Mr. BURR. Well, that is agreeable. Have you any evidence, Mr. Byrne?

Mr. BYRNE. No. We do not care to offer any proof at all.

(Thereupon a short recess was taken.)

AFTER RECESS

*Stipulation re order to dismiss as to Arizona Lumber & Timber Co.*

Mr. BURR. After further considerations, it is stipulated that in event an order to dismiss is made in favor of the Arizona Lumber & Timber Company, and in the further event that an order to cease and desist is issued against the manufacturers of the so-called "California white pine", and such order is either acquiesced in by respondents named therein or is affirmed by the Federal courts in case

the proceeding is carried to the courts by petition for review or petition for enforcement, the Arizona Lumber & Timber Company will acquiesce and will discontinue the very limited use of the word "white", as connected with its product.

Is that agreeable?

Mr. BYRNE. Yes; on behalf of the Arizona Lumber & Timber Company it is so stipulated.

Examiner DE BRULER. Very well. We will take an adjournment until 2:00 o'clock this afternoon.

(Thereupon, at 11:50 o'clock a.m. an adjournment was taken until this afternoon.)

3301 AFTER RECESS

2:00 O'CLOCK P.M.

Examiner DE BRULER. Are you ready, gentlemen?

Mr. WOOD. Yes, sir. Will you be sworn, Professor Douglass?

Prof. A. E. DOUGLASS was thereupon called as a witness and, having been duly sworn, testified as follows:

Direct Examination by Mr. WOOD:

Q. You may state your name for the record.

A. A. E. Douglass.

Q. What is your occupation, Professor Douglass?

A. I am a professor in the University of Arizona.

Q. In what department?

A. Astronomy.

Q. How long have you been at the University of Arizona?

A. Since 1906.

Q. Well, will you briefly tell the court what you did prior to your association with the University of Arizona?

A. I came out here as one of the men—the chief assistant in connection with the Lowell Observatory up here on the hill [indicating] in 1894, and I stayed here until 1906, when I went down to Tucson.

Q. Have you had an opportunity to acquaint yourself with the species of lumber known as Pinus ponderosa?

3302 A. Yes.

Q. What has been that opportunity?

A. Well, about that time when I was going to Tucson I became very much interested in the feasibility of telling the climatic conditions by means of the rings on the trees. I tried different trees which were the ponderosa around here, and I watched them a great deal, studied them over here at the mill; studied the sections and had sections brought in. I made thousands of borings in trees and I estimate I have in the neighborhood of five thousand specimens that I have worked on. This came out of it: I could use the ponderosa with ease and advantage where practically every other species was excluded and just using a little pinon, a kind of species around here, of course.

Q. Why is it that you can use the ponderosa with advantage?

A. It is because the rings are very distinctive and the trees rarely omit rings—that is, there are a very few trees that do not have a full cut of rings, one for every year. The thing I did definitely was to work out one ring a year.

Q. You found the Pinus ponderosa preferable for that purpose?

A. Yes.

Q. Throughout what territory?

A. Primarily, of course, here in this, for the purpose of dating——

Q. (Interrupting.) By this you mean Arizona and New Mexico?

3303 A. Yes. That is the reason, but, of course, I have also looked at some of the ponderosas from California. I have seen specimens of the same species to my best knowledge all the way up California as far as the Columbia River.

Q. I believe you stated you could tell the age of trees by specimens?

A. Yes.

Q. Taken from them?

A. Yes.

Q. How do you do that?

A. Now, perhaps there would be two answers to that question—that is, the age of an individual tree would mean the actual counting of the rings in that tree, but the age at which a tree or log was a living tree would be a very much more difficult problem. Each age involves a counting of the rings with accuracy and precision which is done by comparing a great many trees together so as to eliminate error; picking out the characteristics in the center of the live tree you can pass over to a dead log, then the continuity is preserved until we have built up here a sequence of over twelve hundred years.

Q. Now, in that connection, I understand that you have collected specimens of timber and logs?

Q. (By Examiner BRULER.) Now, what kind of timber?

3302 By Mr. WOOD:

Q. Of the species of the Pinus ponderosa?

A. Yes.

Q. Will you state briefly where you obtained—strike that out.

Q. Will you state briefly the places that you have visited for the purpose of obtaining specimens of Pinus ponderosa; where you found them located; the condition of the ponderosa, and the age, as you determined it by the rings?

A. I have visited especially the Hopi Indian villages one hundred miles northeast of here, speaking of Arabi particularly, and there have worked over a large number of specimens of ponderosa that were used as ceiling beams, both in the buildings still inhabited and those abandoned about the year 1906. Of course, beams of the latter we could get at more easily.

Q. Will you at that point state the age of the various timbers you found, where they were located, and their condition?

A. Those timbers were all sorts of ages. The oldest of them were probably cut in the neighborhood 1770 in that particular village, and the earlier ones were cut, probably about 1370 A.D. I have down at Tucson a six-foot timber that was cut not far from 1370 A.D., that is still good and solid. It has lost a part of the sap-
3305 wood at this time but the heartwood is sound and the timber is soft. One would trust his weight upon it.

Q. Was this Pinus ponderosa?

A. Yes, sir.

By Mr. BURR:

Q. What did you say that date was?

A. Approximately 1370.

By Mr. WOOD:

Q. Where was it located in the building where you found it?

A. It probably had been in use continuously, but it was actually in use as a vertical support in one of the rooms still available in one of the houses in Arabi, in this old Indian village.

Q. What do you mean by "still available"?

A. I mean the house had virtually gone to ruin, but there were several rooms in use there.

Q. Now, are there any other timbers you care to refer to in connection with the Hopi villages, or specimens that you obtained?

A. Well, I might say this: That there were a large number—that in making our search for these particular timbers our method of getting them was to pick out the projecting beam ends that were obviously cut by a stone-ax cutting. That was presumably before the Spanish conquest, in the early 1600's. So these projecting
3306 beams would show whether they had been cut by a stone ax or not. Of course, that gave us means of judging of the beams to make borings in for samples.

Q. And these beams were exposed to the weather, you say?

A. Yes; those ends were projecting ends.

Q. Now, then, will you name briefly some other places where you got specimens?

Q. (By Mr. BURR.) Where are those?

A. All in the Hopi village.

By Mr. WOOD:

Q. Do you know what the altitude of the Hopi village is?

A. It is over 6,000 feet, I think.

Q. How far is it from Flagstaff?

A. One hundred miles northeast.

Q. Now will you name some other villages and the results you obtained therefrom?

A. I have three specimens here from the Pueblo Bonita.

Q. Where is that located?

A. That is in Chaco Canyon in northwestern New Mexico. It is sixty-five miles north of Thoreau.

Q. Did you take specimens from that pueblo for the purpose of determining their ages—the age of the timber?

A. Yes; the age of the ruin—that is, these timbers were
3307 mostly sent to me. I have some I took myself, but these particular specimens were sent to me by Mr. Judd, of the National Geographic Society. His purpose was in determining the age of these timbers.

Q. What did you determine to be the age of the timbers you took for specimens?

A. These pieces I have here were cut approximately in the year 1103. That would make them about eight hundred and a quarter years old.

Q. What did you find their condition to be as to rot and decay?

A. Perfectly sound timber.

Q. Were they used for beam purposes?

A. Yes, as ceiling beams.

Q. Have you made the same investigations in various parts of Arizona and New Mexico?

A. Well, in this northern region. I have not—there is not the same material available in the way of logs in southern Arizona. It is very difficult to get ruins near enough to pine trees down there to get beams that have lasted for some time.

Q. Of what age?

A. You mean of those I have not been able to use?

Q. Yes.

A. They are very likely of the same age. The different
3308 kinds of wood, juniper—that I can not use.

Q. You have collected specimens from various pueblos?

A. Yes, sir.

Q. And ancient dwellings throughout New Mexico and Arizona—is that true?

A. Yes, sir.

Q. Have you found a number of beams throughout Arizona and New Mexico, and rafters, that are several hundred years old?

A. Well, I should suppose so. Of course, I have not been looking at it from the point of view of what exposure has done to them. We judged a great many of those beams by stone-ax cutting evidence. That is the part that has been exposed to the weather.

Q. What has been your experience as to the condition of the beams and rafters and other specimens you have taken of Pinus ponderosa from the standpoint of rot and decay?

A. Where they were exposed to constant moisture they have rotted. Of course, there was no protection on the outside. There were some rare places where they were plastered inside of the building.

A log left down on the ground, subject to moisture, has decayed. The ends up in the air that could dry readily have lasted a long time—that is, otherwise, we would not be able to see those stone-ax cuts, which are perfectly plain.

3309 Mr. Wood. I think that is all I care to ask him.

Cross-examination by Mr. Burr:

Q. Do you find that the rings of the Pinus ponderosa that you said made good specimens for you, do you find they are better marked than other trees?

A. They are not so permanent as the douglass fir, but they are more reliable in the sense I say that there was just one ring to a year, and it was easy to trace in case of individual error.

Q. Have you had experience in observing rings of Pinus ponderosa in other sections?

A. I understand—yes; I have used it in California; several different localities, San Diego up as far as the Columbia River.

Q. That is known as California white pine?

A. I don't know. I never had that name given to me for it.

Q. You are not sure whether it is Pinus ponderosa?

A. I am practically sure it is Pinus ponderosa. The Forest Service has sent me some of these specimens.

Q. You are not an expert forestry man, are you?

A. No; but in the identification of trees within the limits I have done a great deal of it for this purpose.

3310 Q. This Hopi village district is an irrigated section, is it?

A. No; it is up on top of a mesa, about 600 feet below the valley bottom. That valley bottom used to be farmed——

Q. (Interrupting.) That was irrigated when they farmed it, wasn't it?

A. I don't think so. I think there was a meandering stream that gave some irrigation.

Q. A good many of those southwestern Indians irrigated?

A. They did in southern Arizona a great deal. I don't say they did not do a little bit.

Q. Are you familiar with the percipitation in the Hopi village district?

A. I should say—I don't know whether it has been measured. I think it has at Keams Canyon, over beyond there.

Q. You don't know what it is?

A. As a guess I should say it is in the neighborhood of twenty inches.

Q. What is the altitude there?

A. Over 6,000 feet. I don't remember the exact altitude.

Mr. Burr. I think that is all.

Examiner De Bruler. That is all, Professor.

(Witness excused.)

Examiner DE BRULER. The taking of testimony in these
3311 cases is now adjourned until 10:00 o'clock a.m., February the tenth, 1930, at Albuquerque, New Mexico.

(Thereupon, the further hearing in this matter was continued until February 10, 1930.)

3312 Before the Federal Trade Commission

In the matter of White Pine cases

Docket No. 1620–1669, inc.

ALBUQUERQUE, NEW MEXICO, *February 10, 1930.*

Met pursuant to notice 10:00 o'clock a.m.

Before Ellis De Bruler, Examiner.

Appearances:

Eugene W. Burr (Washington, D.C.) for the Federal Trade Commission.

Chandler M. Wood, attorney for the respondents, The George E. Breece Lumber Company, The White Pine Lumber Company, and The Cady Lumber Company; R. R. Ryan and Edmund W. Hohnhaus, of counsel.

3313 PROCEEDINGS

W. G. RAMSHAW was called as a witness for the Commission and, having been duly sworn, testified as follows:

Direct examination by Mr. BURR:

Examiner BRULER. Your name, please.

A. W. G. Ramshaw.

Examiner BRULER. And your residence?

A. 601 Luna Boulevard, Albuquerque.

Mr. BURR. Your business is what?

A. Lumber.

Q. What company?

A. At present with the White Pine Lumber Company, Bernalillo, New Mexico.

Q. Are you also with the Southwest Lumber Sales Corporation?

A. I was up to January 1st, 1930.

Q. What capacity did you occupy with the Southwest Lumber Sales Corporation?

A. My last position was president of the Southwest Sales.

Q. How long did you hold that position?

A. A year and a half.

Q. How long had you been with the Southwest Lumber Sales Corporation when you resigned?

A. Two years.

Q. Now, at that time the Southwest Lumber Sales Corporation was representing what lumber and manufacturing concerns?

3314 A. The Cady Corporation, the Standard Lumber Mills, Incorporated, the White Pine Lumber Company.

Q. Were you handling all of the products of those three concerns?

A. Yes, sir.

Q. Did your company ever handle the product of the Saginaw-Manistee Lumber Company?

A. No, sir.

Q. Did you ever have the Southwest Lumber Sales Corporation handle the product of the Arizona Lumber & Timber Company?

A. No, sir.

Q. Now, from your knowledge of the business of the Southwest Lumber Sales Corporation, can you state whether or not that company has at any time during the past five years handled the business of the Saginaw-Manistee Lumber Company or the Arizona Lumber & Timber Company?

A. I think not.

Q. Now, you say you think not; how sure are you?

A. I am pretty positive of that, during my administration.

Q. During the past five or six years?

A. I couldn't state as to that.

Q. Who in your company could tell us that?

Mr. Wood. What company are you referring to now?

Mr. Burr. The Southwest Lumber Sales Corporation.

A. We have only been in existence since I have been with them, and I think that they never handled it during the life of

3315 the Southwest Lumber Sales Corporation.

Q. Has your company ever handled the product of the George E. Breece Lumber Company?

A. No, sir.

Cross-examination by Mr. Wood:

Q. When was the Southwest Lumber Sales Corporation organized?

A. 1928.

Q. Did you go with them at the beginning?

A. Yes, sir.

Q. What position did you first hold?

A. Vice president.

Q. You spoke of the Standard Lumber Mills; where is their mill located?

A. Standard, Arizona.

Q. Is that a subsidiary of the Cady Lumber Corporation?

A. Yes, sir.

Q. Where are the mills of the Cady Lumber Company located?

A. McNary, Standard, and Flagstaff.

Q. The Standard being a subsidiary corporation?

A. Yes, sir.

Q. And the mills they own directly, where are they located?
A. McNary and Flagstaff.
Q. What State?
A. Arizona.

3316 Q. Now, then, Mr. Ramshaw, have you had experience in forestry matters?

A. Yes, sir.
Q. In the manufacture of lumber?
A. Yes, sir.
Q. Where was that experience?
A. Spokane district.
Q. Will you tell the examiner what experience you have had in forestry matters and what company you were with?
A. I was Northwest representative of Porter Kennedy Company of Omaha, at which time I had entire charge of their timber holdings, manufacturing, buying and selling of lumber, including all the inland empire woods.
Q. How long a period did you do that?
A. Fifteen years.
Q. What kind of lumber did you manufacture—for them?
A. The so-called "pondosa", Idaho white pine, Angleman spruce, white fir, red fir.
Q. During what years did you hold that position?
A. I came here in December 1925. About 1910.
Mr. BURR. Terminating at that time?
A. Terminating in 1925.
Mr. WOOD. How did you market and sell your pondosa when you were with that company?
A. As western white pine and later as pondosa.

Q. Did they market is as ponderosa pine?

3317 A. No; there were several names used at that time—they were using de Schutz white pine——

Q. Koble white pine?
A. Yes; we sold for a while under the name of Knoble white pine.
Q. Did you sell any of the white pine under the name pondosa?
A. Yes.
Q. At what time; when?
A. The last couple years.
Q. Prior to that time?
A. Western white pine.
Q. Why were the names Koble——
Mr. BURR. May the record show this witness has now become a defense witness?
Examiner BRULER. Yes; the witness now is the witness of the respondent.
Q. Why were the terms "de Shutz white pine" and "Koble white pine" used?
A. Merely for sales purposes; to get a little better price.

Q. Were these names the names of the sections, the district?
A. The districts.
Q. In which the lumber was produced?
A. Yes, sir.
Q. During any of the time that you sold this lumber in the Northwest as western white pine or the white pine designated by the
3318 district in which it was produced, did you ever have any complaints on the part of your customers that they were receiving Pinus ponderosa and they had expected to receive some other kind of a pine?
A. No, sir.
Q. Where did you sell this pine?
A. All through the East.
Q. To whom did you sell it?
A. Consumers; that is, retail yards, wholesalers, commission men, industrials, and manufacturers.
Q. How did you market your Idaho white pine, so called?
A. As Idaho white pine or monticola.
Q. While connected with the Southwest Lumber Sales Corporation under what trade name did they designate and market and sell Pinus ponderosa?
A. As white pine.
Q. Do you know when the Cady Lumber Corporation was organized?
A. June 1925.
Q. Do you know how they marketed and sold their product all the time they sold it to the Southwest Lumber Sales Corporation?
A. Yes; as Arizona white pine.
Q. Have you had opportunity to observe California white pine?
A. Yes, sir.
Q. What opportunities have you had to observe it?
A. In contacting the trade, looking over the stocks in the
3319 various yards.
Q. How would you say that the Arizona and New Mexico white pine compares in characteristics and texture and purposes of use with the California white pine?
A. I would say that the Arizona and New Mexico as compared to the California is a little softer in texture and whiter in color. The Arizona and New Mexico white pine has a pinkish cast as compared with the yellow cast of the California.
Mr. BURR. Are you referring to the tree or the lumber?
A. The lumber.
Mr. WOOD. How would you say that it compared in purposes of use with the California white pine?
A. Similar; about the same.
Q. You mean they are used practically for the same purposes?
A. Yes, sir.
Q. How would you say it compared in general characteristics and texture with the so-called pondosa pine?

A. I think it is softer in texture and whiter in color.
Q. Do you know the reason for that?
A. Higher altitude.
Q. What is the timber line in New Mexico and Arizona?
A. Seven thousand feet; that is, the starting of the timber, about seven thousand.
Q. Do you know where the timber starts in California?
3320. A. I am not familiar enough with that to state anything definite.
Q. Do you know whether it starts lower than seven thousand feet?
A. Yes, sir.
Q. Do you know where the timber line starts in the Northwest where pendosa, so-called pendosa pine, is produced?
A. I think it is around twenty-five hundred to three thousand feet.
Q. Does the altitude at which the timber grows affect in any way its durability?
Mr. BURR. I wish you would qualify him as to what he knows about that first.
Mr. WOOD. All right, sir.
Q. Do you know whether the altitude at which lumber timber grows in any way affects its structural strength or durability?
A. I can't answer that side of it.
Q. Can you answer it from the standpoint of your observation?
A. Altitude has a tendency to make the timber soft in quality, due to soil and moistural conditions; the tree is larger, therefore it is softer quality.
Q. From the standpoint of your observation, what effect would that have on durability?
A. That would be pretty hard to answer.
Q. What is the comparitive speed of growth of a tree grown
3321 in the lower or higher altitudes?
A. I couldn't answer that.
Q. What class of customers do you sell the Arizona and New Mexico white pines to?
A. Including all the consumers, such as the retail yards, industrials, manufacturers of all kinds.
Q. What proportion of your product is marketed locally?
A. I would assume—local depends upon how far you go.
Q. I mean within the States of Arizona and New Mexico.
A. Very small, I should say not over ten percent.
Q. In New Mexico?
A. Yes, sir.
Q. What about Arizona?
A. Arizona would go, from the Arizona mills, about twenty-five percent.
Q. Do you sell any lumber to the Santa Fe Railroad?

A. Yes, sir.

Q. For what purposes?

A. For ties and general construction work.

Q. Do you know what proportion of the Santa Fe Railroad uses Pinus penderosa for ties, what parts of the railroad uses it, in what States the railroad uses it?

A. Practically everything in Arizona, New Mexico, Texas, and Kansas.

Q. What is the production of the Cady Lumber Corporation?

A. The McNary mill is one hundred and ten million and
3322 the Standard about fifty million.

Q. What is the capacity of the Flagstaff mill?

A. About fifty thousand feet a day on single shop.

Q. How much a year?

A. That would run up into thirty-five or forty million.

Q. So the capacity of the Cady Lumber Corporation is close to two hundred million feet?

A. Yes, sir.

Q. Do you know the capacity of the Arizona Lumber and Timber Company?

A. The actual capacity or the amount they cut?

Q. The amount they cut?

A. They have been cutting an average of about thirty to thirty-five million; that is merely hearsay; I don't know that to be definite.

Q. You know it is somewhere in that neighborhood?

A. Yes, sir.

Q. What is the capacity of the Saginaw-Manistee?

A. Equally as much, if not more; I think fifty to fifty-five million.

Q. Annual cut?

A. Yes; that is merely hearsay.

Q. That is what you understand?

A. Yes; I don't know definitely.

Q. Are there any other lumber mills in Arizona of any
3323 size and importance outside of the Cady mills and Saginaw-Manistee Lumber Company and the Arizona Lumber & Timber Company?

A. No, sir; not of any importance.

Mr. BURR. How about the Breece Lumber Company?

A. They are in New Mexico.

Mr. WOOD. So the Cady Lumber Corporation produces more lumber and sells more lumber than all the lumber companies combined in Arizona; is that true?

A. Yes, sir.

Q. What is the capacity of the White Pine Lumber Company?

A. The capacity is between ninety and one hundred million.

Q. Is the White Pine Lumber Company operating at the present time?

A. No, sir; only in the logging.

Q. That is, you are in preparations for operation?
A. Yes, sir.
Q. How long was the period of cessation of operation of the White Pine Lumber Company?
A. Approximately eighteen months.
Q. So how long then did the Southwest Lumber Sales Corporation actually sell any lumber for the White Pine Lumber Company?
A. About the first six months, six to eight months.
Q. About the first six months of 1928?
A. Yes; that is, if the life of the Southwest Sales.
Q. That was organized in 1928?
3324 A. 1928.
Q. In selling lumber for the Cady Lumber Corporation did the Southwest Lumber Sales Corporation bill lumber direct or how was it billed?
A. The Cady Corporation billed their lumber direct, and the Standard the same way, and the White Pine the same way.
Q. Then you simply acted as a selling agent?
A. Yes, sir.
Q. And placed orders with the various mills?
A. Yes, sir.
Q. Solely?
A. Yes, sir.
Q. For what purpose is the Pinus ponderosa of Arizona and New Mexico marketed?
A. All purposes of building construction, including sash and doors and material finish, railroad materials.
Q. What lumber is principally used, if you know, for constructual purposes throughout the Southwest, what pine is principally used?
A. Arizona white pine and California pine.
Q. Is it used for constructual purposes at all in Kansas?
A. Well, there is a distinction there between the constructual and general uses, the white pines don't go to the constructual materials, it is more for sheeting material, finish, more of a light construction.
Q. It is used for exterior purposes?
3325 A. Yes, sir.
Q. It is used in New Mexico for building purposes, is it not, outside construction?
A. It is used all over the country for structural work, for building purposes.
Q. I don't know as I quite understand your first answer. I asked you if it was used for building purposes, outside construction, in Kansas?
A. Yes, sir.
Q. And in Colorado is it used?
A. Yes, sir.
Q. And what other States?

A. All States east of California with the exception of the Western Central States, which would take in Minnesota and the States west on account of the freight rates, and it goes as far east as Maine.

Q. Have you had opportunity to observe its durability and structural strength of ponderosa pine?

A. Yes, sir.

Mr. BURR. I wish you would develop what opportunity he has had to observe it.

A. Just in a general way of observing the buildings all over the country; my observation of their life and so forth.

Mr. WOOD. What would you say as to the durability and structural strength of ponderosa pine?

A. You mean as compared to others?

3326 Q. No; as to its general suitability for those purposes?

A. It is absolutely practical.

Q. And satisfactory?

A. Absolutely satisfactory.

Q. Is there any Idaho pine or Pinus strobus sold throughout Kansas, Texas, New Mexico, Arizona, or any of the s'-called Southwestern States?

A. In Kansas I would say in very limited quantities; the other States I have never run across it.

Q. Is any sugar pine sold throughout this territory?

A. Yes, sir.

Q. Where is that sold?

A. Generally through the sash and door concerns, I might add foundry work and for pattern work.

Q. Is it sold for any other purposes you know of?

A. Sugar pine?

Q. Yes.

A. Well, it could be but I don't know in particular.

Q. Would you say there is a bunch of it sold throughout this territory?

A. I would say quite a quantity; yes.

Q. In New Mexico?

A. Yes.

Q. It is sold primarily for pattern work and for sash and door work, is it not?

A. Generally, and special door, what you call a French door.

3327 Q. Is it sold for the ordinary sash and door in New Mexico?

A. Yes; but the comparison is that it is more expensive than the California white pine and Arizona white pine and it is only used in particular places on account of the price.

Q. What particular places is it used?

A. Making a French door, pattern work, things of that kind. It answers the purpose much better and they pay a better price for it.

Q. How does it answer the purpose better?

A. Well, I think it is easier worked and there is more of the thick lumber in the sugar pine than there is in the pondosa, California or Arizona, and it works out easier and better for a French door or for pattern work, it works softer.

Q. What is a French door?

A. That is a door that has four stiles, the center part is generally always windows, that is the opening, and the stiles aren't very well supported.

Q. What lumber is used here for the panel door?

A. California white pine, Arizona white, or the pondosa.

Q. Is yellow pine sold in this territory to any extent?

A. Yes, sir.

Q. For what purposes is it sold?

A. General building purposes.

Q. Interior work at all?

A. Yes, sir.

3228 Q. For what interior work?

A. Interior trim.

Q. And by yellow pine, what species of pine have you in mind, the southern yellow pine, the shortleaf and longleaf?

A. The shortleaf and longleaf, both; yes.

Q. Is it sold in competition with the Pinus ponderosa at all?

A. Yes and no; in certain districts they prefer yellow pine and they haven't come to the white pine yet, and the thing is reversed in other districts, they prefer the white pine to the yellow pine.

Q. For the same purposes?

A. For the same purposes.

Q. Have you ever had any complaints from your customers in selling them ponderosa pine as named white pine or Arizona white pine, that they thought they were getting another species of lumber?

A. No, sir.

Q. Have you ever known or heard of any jobbers, retailers, or wholesalers, or any other person during your lumber experience when buying Pinus ponderosa under the designation of New Mexico white pine, Arizona white pine, California white pine, or western white pine, who at any time said they believed they were receiving sugar pine, Idaho white pine, or Pinus strobus?

A. No, sir.

Q. Have you ever known or heard——

3329 Mr. BURR. I wish counsel would be a little careful on the leading business. I think that is rather an extremely suggestive question, or, rather, four or five questions in one.

Q. Have you ever known or heard of any wholesalers who bought Pinus ponderosa under the designation of New Mexico white pine, Arizona white pine, California white pine, or western white pine who said that he had purchased the same for purposes for which it was ill adapted and that he believed when he so purchased it that he was buying some other kind of so-called genuine white pine?

A. No, sir.

Q. Have you ever heard of any jobber that so stated?

A. No, sir.

Q. Have you ever heard of any retailer that so stated?

A. No, sir.

Q. Have you ever heard of any other person that so stated?

A. No, sir.

Q. Did you ever know or hear of any builders who at any time said they were misled as to the advoccay, recommendation, adoption, or use of Pinus ponderosa because it was called white pine with or without the designation of New Mexico, Arizona, western, or California?

Mr. BURR. I object to that on the ground it calls for hearsay testimony solely.

Examiner BRULER. It really means has he ever heard any
3330 reports of that kind. I think it is proper.

Mr. BURR. Ask him if any person of that type, any builder, has ever complained to him, rather than such a broad question, whether he has ever heard of any such complaint having been made to anyone.

Examiner BRULER. I think he can answer the question, if you ask him whether he has heard such complaint made to him; I think it is a good question. It is a little broad, but he can answer.

Mr. BURR. Take an exception.

Examiner BRULER. Exception allowed. Go on and answer.

A. No, sir.

Q. Did you ever hear of any architect who said that he was thus misled?

Examiner BRULER. I think you had better put that, Have you heard any architect make the statement.

Q. Have you ever heard any architect make the statement that he was thus misled?

A. No, sir.

Q. Did you ever hear any of your consumers make such a statement?

A. No, sir.

Q. Or any consumers?

A. No, sir.

Q. Did you ever hear that any jobber misrepresented Pinus
3331 ponderosa as some other kind of white pine in selling the same?

A. No, sir.

Examiner BRULER. I think you are getting a little broad there.

Mr. BURR. I object to that; it calls for a conclusion.

Examiner BRULER. Yes; the questions are not properly framed. There you are asking if he has ever heard in a general way; that is too broad. Ask him his knowledge in regard to the matter.

Q. Do you know of any case——

Examiner BRULER. That is right now. That is different.

Q. Do you know of any case where a wholesaler, retailer, or jobber at any time sold Pinus ponderosa to his customers representing the same to be Idaho white pine, sugar pine of Pinus strobus?

Mr. BURR. That should be confined to his own personal knowledge.

Examiner BRULER. As to his personal knowledge; that is correct.

A. No, sir.

Q. Did you ever know at any time of any wholesaler, retailer, jobber or any other person delivering Pinus ponderosa upon an order of purchase calling for Idaho white pine, sugar pine, or Pinus strobus?

Mr. BURR. I think these questions are all highly leading.

Examiner BRULER. They are a little leading, but he may answer. He is an intelligent witness; he is not going to answer anything he doesn't know. You may answer.

3332 A. No, sir.

Q. At any time that you have been in the lumber business, has any manufacturer or dealer in Pinus strobus, sugar pine, or Idaho white pine made any complaint to the Cady Lumber Corporation, the Standard Lumber Mills, the White Pine Lumber Company, or the Southwest Lumber Sales Corporation because of the use by them of the terms Arizona white pine or New Mexico white pine?

Mr. BURR. I think that should be confined to the complaint made to him.

Examiner BRULER. You must only answer those things which you know of your own personal knowledge.

A. Not to my personal knowledge.

Q. Has it at any time been brought to your attention that such complaint or objection was made to the Cady Lumber Corporation?

A. No, sir.

Q. To the Standard Lumber Mills?

A. No, sir.

Q. To the White Pine Lumber Company?

A. No, sir.

Q. To the Southwest Lumber Sales Corporation?

A. No, sir.

Q. Has at any time any manufacturer or dealer in Pinus strobus, sugar pine, or Idaho white pine requested you to

3333 desist from the use of the term Arizona white pine or New Mexico white pine?

Mr. BURR. If the examiner please, these are the most leading questions I have encountered in quite a number of my travels. I think these are all objectionable. As I have suggested, there is a suggestion made there that he answer no to a combination of four or five questions, and it seems to me that counsel is doing practically all the testifying; it doesn't take anything but merely an automatic thought to supply the answer.

Examiner BRULER. There is a lot of truth in what Mr. Burr has said. This is an intelligent witness; he is only going to state what he knows; he isn't going to state hearsay.

Mr. BURR. The rule is all the stricter in regard to hearsay testimony in regard to intelligent witnesses.

Examiner BRULER. I understood your objection was directed to whether it was leading or not.

Mr. BURR. Absolutely. That is the fundamental reason for the rule against leading questions.

Mr. WOOD. These allegations were made specifically in the complaint. I am sim'ly asking him if they are true or not.

Mr. BURR. I now object upon the further ground which counsel has suggested, namely, this is the sum total virtually of the thing the Commission itself has based this complaint upon and which the Commission itself has to pass upon; he is asking for conclu-

3334 sions which it is the duty of the Commission to pass upon.

Mr. WOOD. I am asking him if at any time any manufacturer or dealer has asked him to desist from the use of the term.

Examiner BRULER. Let's go back to the question, please.

Q. Has at any time any manufacturer or dealer in Pinus strobus, sugar pine, or Idaho white pine requested you to desist from the use of the term Arizona white pine or New Mexico white pine?

Examiner BRULER. You may answer that yes or no.

A. No.

Q. Or requested the Southwest Lumber Sales Corporation to desist from such use?

A. No.

Examiner BRULER. If you know.

Q. So far as you know, has any such request been made to the Southwest Lumber Sales Corporation?

A. No.

Q. Has at any time any manufacturer or dealer designating their product as Pinus pondosa made any complaint or objected to you because of the use by the Southwest Lumber Sales Corporation of the terms New Mexico or Arizona white pine?

A. No.

Mr. BURR. Strike the word Pinus and let it go pondosa.

Q. Yes; pondosa.

Mr. BURR. Strike the word Pinus out of that question, please.

3355 Q. Have at any time any manufacturers or dealers in lumber in Pinus ponderosa designating their product as pondosa requested the Southwest Lumber Sales Corporation or yourself to desist from the use of said designation?

Mr. BURR. That should be confined to your own knowledge.

Examiner BRULER. Yes; of your own knowledge.

Mr. BURR. And I object again on the ground it is leading, and take an exception to the examiner's ruling.

Examiner BRULER. Exception allowed.

A. No.

Q. How do your customers order Pinus ponderosa? What terms do they use in ordering it?

A. Principally Arizona white pine.

Q. That is the way they ask you for it?

A. Yes.

Q. Do they ask for it as yellow pine?

A. No.

Q. Or as western yellow pine?

A. No.

Q. Have you any objection to the use of the term pondosa pine?

A. Yes.

Q. What is your objection?

A. Because the general trade use is Arizona white pine; they are more familiar with it.

Q. Have you any objection to the use of the term yellow
3336 pine or western yellow pine?

A. Yes.

Q. Why?

A. Confusing the Southern yellow pine with it.

Q. Have you any objection to the use of the term soft pine?

A. Yes.

Q. Why?

A. Because it is better known as Arizona white pine.

Cross-examination by Mr. BURR:

Q. Now, the manufacturers of ponderosa pine in Arizona, some of them do use the term soft pine or Arizona soft pine, do they not?

A. Yes.

Q. And are making sales under that nomenclature?

A. Sure.

Q. In your advertising for the Southwest Lumber Sales Corporation you have used the word pondosa yourself largely?

A. The Pinus ponderosa under the name of the Arizona white pine.

Q. You have used the word pondosa in connection with it?

A. Also used the word pondosa in connection with it.

Q. Does your trade sometimes ask you for pondosa?

A. No; mostly for Arizona white pine.

Q. They do occasionally ask for it under the name pondosa?

A. No, sir.

3337 Q. The Southwest Lumber Sales Corporation used the slogan "The pick of the pondosas", did they not?

A. Yes.

Q. That was advertised quite widely and published in your circular material, was it not?

A. Yes.

Q. So you don't object to the use of the word pondosa entirely?

A. Yes.

Q. You think it was a mistake to call it "The pick of the pondosas"?

A. Yes; I can explain that to you. During the first six months of the Southwest Lumber Sales Corporation, it was handled by Mr. Hobbs, it is really his idea, since I took over the sales we discontinued the use of the word pondosa entirely and use Arizona white pine only.

Q. Was Mr. Hobbs still with the company?

A. He was the first six months with the corporation.

Q. He was president while you were vice president?

A. Yes; when I became president we discontinued the use of "The pick of the pondosas."

Q. Have you discontinued the use of the word pondosa entirely from your advertising?

A. Practically; yes.

Q. What do you mean, "practically"?

A. I would say entirely.

3338 Q. Why did you say practically first, then? I didn't quite understand you.

A. I will modify that and say entirely.

Mr. BURR. I think, if the examiner please, I will ask the witness if these are advertisements and price lists gotten out by the Southwest Lumber Sales Corporation during the time that he was connected with the organization.

A. This is during Mr. Hobbs' time.

Q. You were at that time vice president, however?

A. Yes.

Examiner BRULER. You had knowledge of the fact they were gotten out then?

A. Yes.

Mr. BURR. I now ask that the papers which the Commission has identified, consisting of six pages, be received and marked as Commission's exhibit for the record, number 52.

(Marked "Commission's Exhibit No. 52.")

Q. Does the ponderosa pine differ considerably in different parts of its range?

A. Yes.

Q. Does it differ in this Arizona and New Mexico range according to altitude and other features?

A. Altitude principally.

Q. Now, did you regard your "The pick of the pondosas" as erroneous advertising?

3339 A. That was Mr. Hobbs' idea and not mine.

Q. Was it erroneous in point of fact—do you regard yours as better than California?

A. In some respects; yes.

Q. Now, in what respects would you regard it as superior to the California ponderosa?

A. The texture of our ponderosa is softer than the California.

Q. Now, is the percentage of heart and sap a matter that you have noticed in connection with your experience?

A. Pertaining to what?

Q. Pertaining to ponderosa tree. First, referring to Arizona, have you noticed how much a portion of the lumber is heart and how much is sap?

A. That varies, so it would be hard to answer that question.

Q. Do you mean it varies in Arizona widely?

A. It varies over the entire ponderosa district.

Q. In each section or forest, so you couldn't give an estimate?

A. I haven't figured out the percentage.

Q. It varies in different trees of the same stand, you mean?

A. That would also follow.

Q. Now, at the time of your experience up until 1925 in the so-called inland empire, was there a great variety of different names used for ponderosa?

A. Yes.

Q. The word pondosa was not used until you were about
3340 leaving there; is that true?

A. I can't refer to the date—I do know, too—but it was a movement by the Western Pine Manufacturers' Association mills to get away from the confusion of the Idaho white pine.

Q. Do you happen to know whether or not it was brought about in part from the proceeding or several proceedings brought by the Federal Trade Commission at that time?

A. I don't recall that.

Q. Now, your present product from Arizona and New Mexico points, you say that goes clear to Maine, if I understood you correctly?

A. Yes.

Q. How long has that been true?

A. During my experience with the Southwest Lumber Sales Corporation and previous to that, and with the White Pine Lumber Company.

Q. What percentage of your sales would you say is made to retailers? First, let's take the industrials; how large a percentage to the industrials?

A. I would say twenty-five percent to the industrials.

Q. That includes the sash and door?

A. No; the industrials would include the low-grade lumber. The sash and door isn't included in the industrials.

Q. Take the mill manufacturers?

3341 A. The sash and door?

Q. Yes.

A. Not over—what we call shop lumber wouldn't go over ten percent.

Q. You are including in that all the finishing?

A. Finishing, sash and door, interior finishing, and things like that.

Q. You also sell to jobbers?

A. Wholesalers and commission men.

Q. What percentage to wholesalers and commission men?

A. Now, of course, I am including the sales direct to the trade through the wholesalers or commission men; all our business is handled through wholesalers and commission men.

Q. Most of the rest, that would go about sixty-five percent, then?

A. I am estimating the amount of lumber would be consumed by the sash and doors, all the amount of that particular grade is purchased, of our particular timber.

Q. The wholesale and commission men sell to finishers?

A. Yes.

Q. And industrials also?

A. Yes.

Q. Practically your whole distribution is through wholesalers and commission men?

A. Yes.

Q. And they in turn sell to retailers, industrials, and mills?

3342 A. Yes.

Q. I think you testified the Santa Fe Railroad used ponderosa for ties?

A. Yes.

Q. They treat those before use?

A. Yes; they use some of them without being treated.

Q. Creosote, is it, they treat them with?

A. Yes.

Q. The great majority of them are creosoted or otherwise treated?

A. Practically all. They use some for just temporary work, is what I had reference to.

Q. Did you testify any other railroad uses them?

A. The Santa Fe is all we can reach through here.

Q. You would testify positively, would you, that Arizona and New Mexico white pine averages softer and whiter than the California white pine?

A. I should say so; yes.

Q. Does it average softer and whiter than the California white pine from certain selected districts, such as Klamath Falls and Modoc County?

A. I should say so, because our stuff runs to a pinkish color rather than yellow.

Q. Does it discolor and turn darker with exposure to light?

A. Yes; that is characteristic of all pines.

Q. It is characteristic more of ponderosa than strobus, is it not?

3343 A. Yes.

Q. It is more characteristic of strobus than lambertina?

A. Yes.

Q. And the same would be true in contrast with the monticola?
A. Yes.
Q. I think you said the bulk of timber in which the ponderosa is found in this general latitude begins about *about* seven thousand feet elevation?
A. Yes.
Q. How high up does it go?
A. Nine to eleven thousand is where the timber comes from; we start at about seven and from there *ot* goes as high as nine to eleven thousand feet.
Q. It runs from seven to eleven thousand?
A. Yes.
Q. But the best is from nine to eleven thousand?
A. Yes.
Q. How is the timber on the average from seven up to nine, how does it vary from that up to eleven?
A. I would say around seven to nine is more exposed and nine to eleven more dense, which has a tendency to improve the quality.
Q. You mean higher up?
A. Yes.
Q. How does it differ in lumber texture from seven to nine?
3344 A. Because of the moisture and soil and production. It may be in a draw. Seven thousand might be as good as eleven.
Q. But on the average you think the higher up is better?
A. By all means.
Q. What is the difference in the texture of the lower elevation where it grows and the lower elevation where the ponderosa grows?
A. Timber that is exposed is inclined to run more to a pithy type than timber that is dense, due to elements, exposure, and so forth.
Q. Does it run heavier or lighter in size or timber?
A. Not much difference.
Q. That from seven to nine, you don't mean it is timber you don't sell?
A. O, no.
Q. You use it all?
A. Yes; because timber always varies from poor to the best in every locality.
Q. And Arizona white pine now is your universal trade name for the goods since you were connected with it?
A. Yes.
Q. Did I understand you that the trees in the Southwest here are larger than those farther north?
A. No, sir.
Q. They are smaller on an average, are they not?
3345 A. The timber in this district comprises the same as the Bend and Spokane district in size, averages about five, five and a half to a thousand feet, figuring on sixteen-foot logs.
Q. How does it run to the grade?
A. Runs about the same as the Northwest.

Examiner BRULER. What would be the size of an average log in timber?

A. One hundred and fifty feet in footage, an average of about sixteen inches.

Examiner BRULER. About sixteen inches?

A. Yes; that runs, of course, from twelve to thirty-six.

Mr. BURR. In your observation of the durability of Arizona white pine, have you been able to watch specific buildings over a period of years so as to be able to tell what the durability where exposed to the weather was?

A. The best illustration I have of that is in visiting the old pueblos through this district. One Indian mission at Jemez Springs destroyed in 1680, I think the date is, there is wood sills still exposed that are still intact. I mean wood sills still intact.

Q. Built in 1680?

A. Destroyed in 1680. Those are the things of my personal observation of the age of this particular wood in this district.

3346 Q. Did you check up whether it was ponderosa or not?

A. Yes.

Q. It naturally would be in this locality?

A. Yes.

Q. Does any sugar pine grow over here?

A. No.

Q. Any jeffrey pine here?

A. No.

Q. Where was that observation of the building that was destroyed in 1680, where was that mission?

A. Forty-five miles north and west of Bernalillo, or about seventy miles northwest from Albuquerque.

Q. Do you know about what altitude that is?

A. I should judge about seven thousand feet.

Q. Humidity is rather lacking there?

A. Yes.

Q. That has a tendency to preserve wood, does it not?

A. Yes.

Q. Do you know what the rainfall is over there?

A. I haven't the least idea.

Q. Now, when you refer to the yellow pine and the confusion that would result if this wood were called by some trade term of pine including the word yellow, you refer more to the longleaf than you do to the shortleaf; do you not?

A. No, sir.

3347 Q. The shortleaf really is a lighter, softer wood than the longleaf?

A. Yes.

Q. Does the shortleaf compete for sash and door business with the Pinus ponderosa?

A. Yes, sir.

Q. It competes a good deal more than the longleaf; does it not?

A. Yes, sir.
Q. Do you yourself travel in the eastern territory?
A. Last year I put in sixty percent of my time East.
Q. And whom did you call upon in that connection?
A. The wholesalers, commission men, industrial, sash and door, retail yards.
Q. What part of the country did you travel in?
A. As far north as Milwaukee and as far east as Boston.

Redirect examination by Mr. Wood:

Mr. Wood. There are two things I would like to ask about that I didn't think to ask on direct.

Examiner Bruler. All right, go ahead.

Q. Is there any Pinus ponderosa brought in from the Republic of Mexico and sold in the Southwest?
A. Yes, sir.
Q. What is it called?
A. We call it the Madera pine and the Mexican pine.

3348 Q. Do they use the word white in connection with it?
A. Yes; Madera white pine.
Q. They call it Madera white pine?
A. And Mexican white pine.
Q. And is it sold in competition with the Arizona and New Mexico white pine?
A. Yes.
Q. Do you know how much is brought into this country?
A. I couldn't say off hand; the mill produces between twenty-five and thirty million a year and most of it goes into El Paso.
Q. Do you know where that maill is located?
A. I think they call it Madero, Old Mexico.
Q. Do you know the name of the company?
A. That is the old Pierson interests, that is the Pierson interests own that.
Q. The Pierson Lumber Company?
A. No; the Pierson interests own that; I think it goes under the name of Madera White Pine Lumber Company of El Paso.
Q. Is the Arizona white pine and New Mexico white pine sold for box purposes here in the Southwest?
A. Yes, sir.
Q. For what purposes?
A. Vegetable crates of all kinds, crating of all kinds.
Q. Was at any time the yellow white pine sold to the Southwest for that purpose.

3349 A. In the lower Rio Grande country, yes.
Q. Do you know if it is still used for that purpose?
A. Practically, no.
Q. What do they use now where they used to use yellow?
A. California and Arizona white pine.
Q. Do you know why the change was made?

A. On account of the whiteness of the lumber made a better looking package for sale.

Q. Is that the only reason?

A. It is lighter for shipment; easier to nail on the end without splitting.

Q. Than the yellow pine?

A. Yes.

Q. What is the altitude of the timber of the Cady Lumber Company?

A. From seven to eleven thousand feet.

Q. Do you know the altitude at which they have been cutting since you have been with the organization?

A. Recently around nine thousand.

Q. Have they been cutting around that for some time?

A. Yes.

Q. What is the altitude of the timber of the White Pine Lumber Company?

A. Between seven and eleven thousand feet.

Q. What is the altitude where they are now logging?

A. About eight thousand feet.

3350 Q. Is the term pica pondosa used at all at the present time?

A. No, sir.

Q. Is this a form of price-list quotation gotten out by the Southwest Lumber Sales Corporation?

A. Yes; it was discontinued since I took charge.

Q. I refer now to the price list and ask you if these are the price lists now used?

A. No, sir; not now.

Q. These are not the forms?

A. No.

Q. That is an old form. This is the form that is now used?

A. None of these forms have been in use for a year and a half.

Q. Are these the same things I gave you?

A. Practically the same.

Q. Then I guess I haven't any present forms?

A. We haven't any present forms in this bunch; I discontinued all that when Hobb went out.

Q. And you simply now advertise your product as Arizona white pine?

A. Arizona white pine.

Q. And invoice it as such?

A. Yes.

Re-cross-examination by Mr. BURR:

3351 Q. Now, this Madera white pine comes from what State down there, if you know?

A. I think the State of Chihuahua.

Q. That is a still higher elevation than yours?

A. About the same, Mr. Burr. I can't talk as intelligently about that as I can locally; I haven't been down there.

Q. Where is this with reference to the New Mexico white pine?

A. The same stand, virtually.

Q. Is that a fairly soft textured material?

A. Yes.

Q. About the same quality of yours?

A. About the same quality; it runs more to the brownish in color.

Q. These people that sell that, is that American capital?

A. Yes.

Q. They sell from El Paso?

A. Yes.

Q. Sell all through the State and ship from El Paso?

A. Yes; their trade, however, is confined principally to the local situation rather than the eastern markets.

Q. Are the people that sell it at El Paso the same concern that manufacture it, if you know?

A. Yes.

(Witness excused.)

3352 PABLO ABEYTA was called as a witness for the respondent and, having been first duly sworn, testified as follows:

Direct examination by Mr. RYAN:

Q. Your name is Pablo Abeyta?

A. Yes.

Q. How old are you?

A. I will be sixty years come February.

Q. Where were you born?

A. In the Pueblo of Isleta.

Q. What tribe of Indians do you belong to?

A. Generally, the white people call us Pueblo Tribe, although that is no tribe whatever; it is just simply a name of the white people, I suppose, because pueblo is a Spanish word for town, and, I suppose, the first missionary that came into this part of the country found my ancestors living in fixed homes, the same as they do today; they probably said, "Here is a pueblo and these are pueblo Indians"; so the Indians did not care, and they do not care today; so we remain as Pueblo Tribe.

Q. You live in the Pueblo of Isleta?

A. Yes.

Q. Where is Isleta from Albuquerque?

A. Thirteen miles south of Albuquerque.

3353 Q. How far is it from the Rio Grande?

A. It is on the western bank of the Rio Grande; originally, the river was on the west side.

Q. The Rio Grande runs along the side of the town, almost through the town?

A. Yes; it runs now on the east side of the pueblo; about one hundred and fifty years ago it was on the west side.

Q. It is on the bank of the Rio Grande?

A. Yes.

Q. Where were you educated, Pablo?

A. I started to school here in Albuquerque in the county school conducted by the Jesuits, then went to Santa Fe to Saint Michael's College.

Q. Have you ever held any official position in your pueblo, in the political government of the pueblo?

A. Yes, sir; I have been a member of what they call the principalus for forty years now, and I have held all the local offices that the pueblo has a good many times.

Q. You have been governor of the pueblo, too?

A. Yes.

Q. That is a position recognized by the Federal Government, is it not?

A. Yes.

Q. Have you made any special study of the history and traditions of your people?

3354 A. Well, I am one of the members who—I don't know what you would call it, we are learned in tradition and history. When I was only a young boy there was five pupils, we were taught the tradition and history by five masters and my master was number 1. When I thought I had it complete then I had to go and recite it to master number 2, then again to master number 3, 4, and 5, and back again to my own master to see if there was any word that was left out.

Q. In that manner you kept alive the traditions of your people at Isleta?

A. Yes.

Q. Have you written any book on the history or tradition of the Isleta pueblo?

A. I have been writing a book for the last 30 years now, but I haven't finished and I don't expect to finish it or publish it as long as I live.

Q. You expect it to be published after your death?

A. If my will is followed out it will probably be published in about fifty or seventy-five years.

Q. How old is the pueblo of Isleta?

A. Traditional history in part recites this of the pueblo, that twenty-three generations of pueblo Indians life had already existed in it when the news was brought in telling of the arrival of strange people in big boats with houses built on them with wings white as snow, that came into this country, we had already been there
3355 twenty-three generations. We figure twenty-two years to a generation.

Q. When did the tradition show the strangers arrived in the vicinity of Isleta, what was your calculation?

A. That would be close to five hundred years ago. Tradition doesn't state they came close to Isleta; it states they came into this country of ours.

Q. Whose expidition was that? As a matter of history, wasn't it Coronado's?

A. We call that the coming of Columbus, because the messenger brought in the news after many weeks of travel from the South and East. He said big boats with houses built on them and these boats had wings; I suppose they meant the sails.

Q. That is referring to the original landing of Columbus?

A. Yes.

Q. There is a church at Isleta, is there not?

A. Yes.

Q. How old is that church?

A. Traditional history also recites that the church was under construction twenty-two years and was already what the Indians term two men's head high, that is, one man on top of another man, it was already that high when orders came from Santa Fe to let this go and start the one that they call the San Miguel, which they claim to be the second oldest church in the United States; ours was started twenty-two years before San Miguel, although ours was
3356 finished after San Miguel.

Q. The San Miguel Church in Santa Fe?

A. Yes.

Q. Are you acquainyed with the trees that grow in this vicinity, the pine trees and the fir and other trees?

A. Some of them.

Q. You know the pine tree?

A. Yes.

Q. And know the names they are called?

A. Yes.

Q. You know the fir, spruce, pine, and timbers from them?

A. Yes.

Q. What do the Indians call the pine that grows in this country?

A. We have an Indian name, of course, for most all of the trees grown; we call in the Indian language wee-patu, that is the white pine.

Examiner BRULER. How do you spell that?

A. W-e-e patu, I don't know how to spell that.

Mr. BURR. We will stipulate the spelling is wee-patu.

Q. What did the Spaniards call the white pine?

A. Pinavete.

Q. Are there beams used as vigas or beams in the structure of the church at Isleta?

A. We have this white pine.

3357 Q. You have vigas or timbers on the roof for support?

A. Yes.

Q. What tree is that timber from?

A. Those in the church, the big ones are this white pine.

Q. They are the white pine vigas?

A. Yes.

Q. Do you know how long those vigas have been in that church?

A. According to the Indian tradition that church has been roofed three times and the last time it was roofed was somewhere around 1844 and it was claimed by the old people that when this third roof was put on they used about three or four of the former vigas that they had on the second roof, and they claimed these to have been more than fifty years old.

Examiner BRULEY. Where they boards or shingles?

Mr. RYAN. The cross beams they put across the roof of the house they call vigas.

Examiner BRULEY. I thought you were talking about the roofing.

A. We build our four walls and put the vigas across.

Q. And the vigas which were put in that church in 1844, you say they are still there in that church?

A. Yes.

Q. Have you examined their condition as to whether they are well preserved or in decay, recently or at any time?

A. In 1914 we put this new cone-shaped roof for protection
3358 because it used to leak and we uncovered most all of those vigas and they are in a pretty well preserved condition.

Q. Did you notice any evidence of decay on any of the vigas?

A. Very little, except what there was outside of the walls sticking out where it rained on it, it showed a little decay, not much.

Q. What material are the walls of that made of?

A. Mud.

Q. That is, adobe?

A. Adobe.

Q. And the ends of some of these vigas were embedded in the adobe?

A. When they are about ready to put the vigas or the roof on they generally lay another viga along the length of the wall and then put those crosspieces, vigas, on top of it, and of course that only holds about so much of that viga on the top of the other viga and the rest of it lays on the mud.

Q. You say the only evidence of decay observable in the vigas was that place where the viga rested in the adobe or mud?

A. Yes.

Q. And the rest of those vigas, what was their condition?

A. They are pretty good.

Q. Well preserved?

A. Well preserved.

Q. How about the homes and houses of your people in Isleta, what construction are they?

3359 A. They are the same; the houses are built of the same material, this adobe, excepting the very old houses, they are built with this sort of thing we call caliche, it is lava formation of malpai rock.

Q. What sort of timber do they have in them?
A. The same kind as on the church.
Q. White-pine timbers?
A. Yes.
Q. Are they used as vigas?
A. Yes.
Q. Do you know of any old vigas in any of the homes in Isleta at this time?
A. The house where I live, my father used to tell me that he didn't know whether his grandfather or great-grandfather built the house, and it is still in good condition.
Q. How old, then, would you say your house is, as far as you know?
A. Over one hundred and fifty years old.
Q. And there are vigas used in the construction of that house?
A. Yes.
Q. Were those vigas ever changed?
A. No, sir.
Q. Of what timber are they?
A. White pine.
Q. What is the condition of the vigas as to preservation?
A. They don't show any decay at all.
3360 Q. No signs of decay?
A. No signs of decay—that is, where it is outside—it might be those that are covered with mud, it might be a little decay, but they have a lot of weight on top of the vigas; if the vigas were decayed it would cave in.
Q. Those vigas are cross beams put from one wall to the other?
A. Yes.
Q. And they support the roof?
A. Yes.
Q. What is the construction of the roofs of the homes in Isleta, how are they built?
A. The roofs, you mean?
Q. Yes.
A. The very old houses, after the walls were built and the cross pieces, the vigas, laid across, then they put some of this cottonwood tree about the size of an inch and a half pipe, and they covered that, almost covered that roof with those small pieces of wood, and then put some hay on top of that, then covered that all with dirt.
Q. That is, adobe?
A. Yes.
Q. The point I am getting at, are the roofs of heavy construction?
A. Yes; in some places about eight or ten inches of adobe on top.
3361 Q. And the vigas support the roof?
A. Yes.
Q. Now, you mentioned your home. Are there other homes that you know of in Isleta of like age?

A. Practically, I suppose, all of them are that same build.

Q. Do they use the viga, too, as a cross beam to support the roof?

A. Yes.

Q. And from what lumber are those vigas made?

A. White pine.

Q. White pine, then, is generally used in the construction of the homes in Isleta?

A. Yes.

Q. Are they old timbers or are they of recent construction?

A. Well, if a house for some reason falls down the vigas are never damaged, they build the walls again, and use the old vigas over again.

Q. And what is their condition as to being in a state of good preservation or state of decay?

A. There is no rot at all.

Examiner BRULER. How long have they been there?

A. Well, those I have seen there ever since I can remember.

Mr. RYAN. What is the altitude of Isleta compared with the altitude of Albuquerque?

A. It might be one hundred or two hundred feet difference.

3362 Q. Practically the same altitude?

A. Yes.

Examiner BRULER. What is Albuquerque?

Mr. RYAN. A little less than five thousand, a few feet less, by the Geological Survey, practically five thousand.

Q. Now, Isleta is built along the banks of the Rio Grande?

A. Yes; well, it is built on a mesa all around, the river run at one time on the west side.

Q. The Rio Grande has changed its course?

A. Yes; and the Indians broke that bank on the east side because the Indians always used to go to the river in the morning to what they call wash their faults away and pray to the rising sun. Well, they didn't like to do that, wash their faults away, with the sun on their back, so they broke the east bank according to the Indian tradition and let the water through, but the water stayed all around, even after the missionaries came, and I just suppose that when the missionaries came, I suppose they saw the village standing on an island surrounded by water and they called it Isleta, that is the Spanish name for little island.

Q. How do you people live, agriculture?

A. Yes.

Q. And you farm all around Isleta?

A. Yes.

Q. And is the rainfall sufficient for your farming or do you use water for irrigation?

3363 A. We use water for irrigation.

Q. Is that particular locality a dry or humid one?

A. It is dry at certain times of the years, not very dry the other times.

Q. You are surrounded by the river and by the irrigation canals and acequias?

A. Yes; there is no more water on the west side; the Government built a drainage canal two years ago and drained the water.

Q. And it now goes to the east of Isleta?

A. Yes.

Q. Is the term white pine used generally by your people, by the Indian people in this locality?

A. I don't know what you would call it, but in some sort of ceremonies, if a party went into another person's house for certain ceremonial doings, he would refer to the four walls, we call it in the Indian way the four walls of his house, and they would refer to two, three, four, and five vigas; they call it the white pines; they ask for forgiveness for having intruded into this home of this man for certain ceremonies, and refer to these vigas and to the walls.

Q. What is the tradition of the name of this particular tree
3664 which you gave the Indian name for, the English equivalent of white pine; how long has that term been used as applied to the tree?

A. That would be very hard to tell; there would have to be a lot of Indian tradition, it dates back, a long ways back, before the coming of these strange people.

Cross-examination by Mr. BURR:

Q. Does the Indian word for this pine include the idea, white? Does it include a word meaning white?

A. Patu means white.

Q. Now, these vigas, as I understand it, the end is covered with adobe, is that right; the house is all covered on the outside with adobe?

A. Yes.

Q. Including the end of the viga, is that right?

A. Yes.

Q. The outside where the viga comes will be up and down wall of adobe?

A. Yes.

Q. Straight up and down?

A. Yes.

Q. These cottonwood roofs are covered with adobe on the outside, are they?

A. Just the ceiling of it. You see, they are covered first with
3365 hay, a certain grass that grows up high, and they cover that up tight, then put dirt on top. Put a piece of cottonwood tree under the ground and in three months it is rotten.

Q. How long do these cottonwood pieces last; you have to replace them every little while?

A. As long as it doesn't touch the clay or dirt it doesn't rot.

Q. They will last indefinitely?

A. Yes.

Q. All the time?

A. Yes.

Redirect examination by Mr. RYAN:

Q. This adobe roof you use, it is put on the cottonwood branches or poles which are then covered with hay, much as you lay cement, isn't it?

A. They way they do that, of course first they put the vigas, then put the cottonwood like my finger this way, then cover that up with this grass and hay, cover it such a thickness [indicating] and then put this common clay.

Q. Now, you live on the roofs of your homes a great deal, walk upon the, don't you?

A. O, yes.

Q. So that the roof is really used from the top as a floor?

A. Yes.

(Witness excused.)

3366 (At this time an adjournment was taken until 2 p.m.)

CHARLES H. LEMBKE was called as a witness for the respondents and, having been first duly sworn, testified as follows:

Direct examination by Mr. WOOD:

Q. What is your name?

A. Charles H. Lembke.

Q. Where do you live?

A. 1418 West Roma, Albuquerque.

Q. What is your business, Mr. Lembke?

A. General contractor.

Q. Where is your business situated?

A. In Albuquerque, New Mexico.

Q. How long have you been in the general contracting business?

A. About ten years.

Q. What was your business prior to that?

A. Masonry contracting.

Q. What is your age?

A. Forty.

Q. During the ten-year period that you have been engaged in the general contracting business in Albuquerque, have you used Pinus ponderosa at all for building purposes?

A. Almost entirely.

3367 Q. For exterior and interior construction?

A. All purposes.

Q. Will you name some of the purposes you have used it for?

A. All purposes that lumber would be used for in building construction; for all purposes for which lumber would be used for construction.

Q. For outside purposes?

A. All purposes, outside and inside, exterior and interior.

Q. Is any other kind of lumber used in New Mexico so far as you know for construction purposes, buildings, other than Pinus ponderosa?

A. What we know as building—Oregon pine, Douglas fir; also southern yellow pine.

Q. For what purposes is southern yellow pine used?

A. We have had it used in sash and door only.

Q. Do you use it at all now for sash and door purposes?

A. Not in the last three years I haven't used southern yellow pine.

Q. Then you use Pinus ponderosa exclusively for sash and door?

A. Yes.

Q. Have you found Pinus ponderosa suitable or unsuitable for building purposes?

A. Very suitable.

Q. Have you ever had any complaints from your customers
3368 regarding the grade of the Pinus ponderosa for building purposes?

A. No, sir.

Q. How long have you lived in New Mexico?

A. Forty years.

Q. Do you know what the public generally call Pinus ponderosa in speaking of it?

A. Native lumber.

Q. Do they ever call it white pine?

A. I would say that it would be known as white pine or native pine.

Q. Whom do you buy your lumber from?

A. The local dealers, local yards.

Q. Do you buy it at all from manufacturers?

A. No, sir.

Q. In ordering it, how do you specify?

A. Native pine.

Q. Do you ever specify white pine?

A. I would say that we did not specify white pine.

Q. Have you ever used the term yellow pine in ordering the native pine?

A. No; we haven't used the term yellow pine; we couldn't get native pine for yellow pine.

Q. Have you ever used the term pondosa pine?

A. No, sir.

Q. Or soft pine?

3369 A. No, sir.

Q. Are you at present building a courthouse, have a contract for building the courthouse at Fort Sumner?

A. We have a contract; it isn't under construction, at Fort Sumner.

Q. What kind of construction is that going to be?

A. That will be a brick building; it will be of wood frame and joist, studding, roof joists.

Q. What kind of lumber will you use for that?

A. Native pine.

Q. Have you just built a high school at Fort Sumner?
A. Yes; it has the southern yellow pine for sash.
Q. And what is the balance of the lumber used?
A. Native pine.
Q. What is it used for?
A. For joists, ceiling joists, studding.
Q. Are you acquainted with any old buildings around here in Albuquerque that are built of Pinus ponderosa?
A. We have dismantled several, wrecked them, I should say. Recently wrecked a brick building with native joists, studding, ceiling joists, roof joist, and my father estimated to his knowledge the building was forty-five years old. It was in very good shape.
Q. What did you do——
A. We used all the lumber in it in new construction.
3370 Q. What was its condition as to rot and decay?
A. None; it was in good shape.
Q. Do you know a residence here called the Frank Mindlin residence?
A. Yes.
Q. Did you ever examine the lumber in that residence?
A. The lumber in that residence is native pine, and it is in good shape.
Q. Do you know how long that residence has been built?
A. Better than forty-five years.
Q. Do you know whether the original joists and studding and sash and doors are still in it?
A. They appear to be the original joists and studding.
Q. That were there when the building was built?
A. They were the original joists and frame in that building.
Examiner BRULER. Does that include the weatherboarding on the outside?
A. Yes.
Mr. WOOD. What kind of weatherboarding is it?
A. That is native pine, joists, studding, ceiling joist, roof rafters; they have never been replaced; that building is about thirty-five or six years old.
Q. How is it made on the outside?
A. It is a brick residence.
Q. Do you know to what extent other contractors throughout
3371 New Mexico use native pine for exterior and interior construction?
A. Yes; that is the local lumber; that is the only lumber that we use.
Q. Do you use any Idaho pine?
A. No, sir.
Q. Or Pinus strobus?
A. Not to my knowledge.
Q. Do you use any sugar pine?
A. No.

Q. Do you know of any other contractors that use those kind of pines?

A. No.

Cross-examination by Mr. BURR:

Q. Now, you say the custom is to build with Pinus ponderosa, as I understand you, in this locality?

A. The native pine; yes.

Q. As a matter of fact, most of the buildings are not built on the outside with lumber at all; isn't that true?

A. It might be classified as a brick town, if that is known that way; we have frame buildings here; all frame buildings are native pine.

Q. Do you happen to know what the rainfall here is?

A. No, sir.

3372 Q. It is quite light, isn't it?

A. Yes; it is an arid State.

Q. And this is an arid part of the State, the same as the rest of it?

A. Yes.

Q. Do you know what the elevation is here, about five thousand feet?

A. Approximately.

Q. That is just about right?

A. Forty-nine hundred and something.

Q. And the humidity is very light, isn't it, very small humidity?

A. Yes.

Q. Those questions of rainfall and humidity have quite an effect upon the lasting quality of wood in any climate, do they not?

A. Yes.

Q. And the less humidity and less rainfall the better chance wood has to endure where exposed to the weather; isn't that true?

A. Yes.

Q. Now, Frank Mindlin's house, how about those sash and door; have you ever examined them to find out whether they are native pine?

A. They are native pine.

Q. You know that to be the case, do you?

3373 A. Yes.

Q. Do you happen to know whether they have ever been replaced or not?

A. They have not.

Q. You know that personally, do you not?

A. Yes.

Q. Did you have anything to do with the construction of that house?

A. I did not have. We altered the house and we took some of the frames out of it. I know they haven't been made in the last twenty-five years.

Q. What did you take them out for?

A. We altered the house, changed the shape of the back end of the house; the frame couldn't be used now; they are odd size.

Q. They were in good condition when you took them out?

A. Yes.

Q. Do you happen to know where they were made?

A. No.

Q. Bought right here in Arizona, were they?

A. They were made right here in New Mexico?

Q. They were New Mexico construction?

A. Yes.

Q. Do you happen to know whether the precipitation here is about eight inches in Albuquerque?

3374 A. No, sir.

Q. You don't know whether that is about right or not?

A. No, sir.

Q. And the weatherboarding outside in Mr. Mindlin's house, that, you say, was Pinus ponderosa, native pine?

A. Native pine.

Q. You are sure of that?

A. Yes.

Q. From examination of your own?

A. Yes.

Q. Do I understand you that you use native pine for strength purposes, for beams and studding?

A. Yes.

Q. And joist and all that kind of thing?

A. Yes.

Q. Do you regard that as strong as the yellow pine of the South, approximately?

A. The price governs this a little more than strength, I believe, we can use a little more of it if we have to.

Q. A little heavier beam and still pay less?

A. Yes.

Q. Do you get any particular kind of native pine, do you make any special specifications as to native pine or just take the ordinary run for strength purposes?

A. Yes; there is no grading on it.

3375 Q. No grade as to density, hardness, or weight?

A. No, sir.

Q. Do you find that the characteristics and quality of it vary from time to time, of the native pine?

A. I say there is no grading—we get a first and second grade of pine; all mills grade their lumber and there is a difference in that; what is given to us as number one common lumber usually runs the same grade.

Q. Do you construct largely for resale purposes?

A. No, sir.

Q. Or are you called upon as a contractor by some man who is putting up his own house?

A. That is the way; we don't build anything for sale purposes.

Redirect examination by Mr. Wood:

Q. What would you say as to whether brick buildings or wooden buildings are more commonly used in Albuquerque?

A. Brick.

Q. For residences?

A. Yes.

Q. That is the last few years?

A. I wouldn't say brick, I would say frame.

Q. What else is used?

A. Hollow tile and adobe.

3376 Q. But frame buildings were formerly used to a great extent?

A. Yes; we have a good many buildings that are stucco buildings, more lumber in them than the average.

Q. Are there many office buildings that are of wood construction?

A. Outside?

Q. Yes.

A. No.

Q. There are some, aren't there?

A. I don't know of any outside timber construction.

Q. Do you know anything about flood conditions here in Albuquerque?

A. Whether we have floods?

Q. Yes.

A. Well, I am not familiar—that is, I have kept no check on it, but we are not subject to floods.

Q. Do you remember a flood here during the course of the last year, an overflow of the Rio Grande?

A. Last year?

Q. Yes; in September and October.

A. Well, very slight, from the overflow of the Rio Grande.

Q. Wasn't there quite a lot of flood water came down from the Sandia Mountains?

A. Yes; but that didn't cover much territory.

Q. It covered parts of the town, did it not?

A. Not in the city limits; it was outside the city limits.

3377 Q. North of town?

A. North of town, yes; it covered quite a bit north of town.

Examiner Bruler. Unless that was shown to be frequent, I don't see what it could have to do with the issues in this case.

Mr. Ryan. Would the court permit me to ask a few questions?

Examiner Bruler. Sure, if you wish.

Q. The country along the Rio Grande Valley, say, from a point at Domingo, near Domingo, to the Elephant Butte Dam, differs greatly from the rest of the State, does it not?

Mr. BURR. I object to that as wholly immaterial.

Mr. RYAN. The question was asked about humidity; I am trying to bring out the point about humidity and its effect on timber.

Examiner BRULER. Go ahead.

A. It is low land, and the subsurface water is very close to the ground.

Q. The water table is very close to the surface?

A. Yes.

Mr. BURR. Whereabouts is this, counsel?

Mr. RYAN. Speaking of the area within the Middle Rio Grande project, which is a project of flood control and drainage, our great problem here is drainage, not humidity.

Q. And the water table is very close to the surface?

A. Yes.

3378 Q. And on account of that water table being so close to the surface, much of the land here is overloaded with water, is it not?

Mr. BURR. I object to the leading of the witness.

Examiner BRULER. It is rather leading, Judge.

Mr. RYAN. To save time; he knows all about it himself.

Examiner BRULER. If he does know about it, he should testify about it.

A. It is all low ground, anybody can see it; the water table is very near the surface, it covers a large area adjoining the river.

Examiner BRULER. Is that country built up of the houses of the wood in question here?

A. Yes; it is all native-pine construction in that area.

Examiner BRULER. Does the water come high enough to reach the wood?

A. Yes; the water is right up above the ground.

Examiner BRULER. Does it reach the wood?

A. Yes.

Examiner BRULER. How often?

A. Well, annually.

Mr. RYAN. This area of land which I have mentioned, would you in brief say the limits of it is covered by the Middle Rio Grande Conservancy District?

A. Yes.

3379 Q. What is the primary purpose of the project?

A. Drainage.

Q. And flood control?

A. And flood control.

Q. So that in this area there is a problem of drainage and flood control?

A. Yes; surface water.

Re-cross-examination by Mr. BURR:

Q. How often do these floods occur?

A. The water table rises annually as the river rises.

Q. What time of year is that?

A. After April each year, the snows come down and the river raises, and the water table raises, of course, all through the valley, and there are some parts of the areas in this Middle Rio Grande Conservancy District that the water rises above the surface and stays there several months.

A. And then recedes and is gone until the following spring?

A. Yes.

Q. The water stands there about the same level, does it?

A. Yes. The flood that we had here, the flood that you speak of, was principally caused from water from the flood waters from the higher land coming down into the lowland territory.

Q. From the mountains?

A. Yes.

3380 (Witness excused.)

Brother AUGUST, called as a witness for the respondents, having been first duly sworn, testified as follows:

Direct examination by Mr. WOOD:

Q. You may state your name.

A. Brother August.

Q. And your residence.

A. Santa Fe.

Q. Are you a member of some order of the Roman Catholic Church?

A. Yes; we call them the Brothers of the Christian Schools.

Q. Are you president of Saint Michael's College?

A. Yes.

Q. At Santa Fe?

A. Santa Fe, New Mexico.

Q. How long have you been president of it?

A. I am now in my sixteenth year as president.

Q. How long have you lived in Santa Fe?

A. It makes now fifteen years.

Q. Were you born in this country?

A. I am a Frenchman by birth, but I am an American citizen since sixteen years.

Q. Do you know the San Miguel Church in Santa Fe?

A. I know it very well.

Q. Do you know when that church was built?

3381 A. We have no written record of it; some says in 1540 or 1541 and other ones say in 1606, when Santa Fe was chosen as the capital of the Territory.

Q. Has that church at any time been remodeled?

A. Yes; twice, at least.

Q. When were the two times?

A. It was destroyed by the Indians in 1618, and De Vargas ordered to rebuilt the roof, I think, in 1692, but the work was completed

only in 1710—we have the date on one beam—and after in 1872 a big storm destroyed the steeple and they rebuilt as it is at present; only part of the steeple was rebuilt.

Q. And then when was it subsequently remodeled twice?

A. In 1680 they put a new roof with a kind of square beams, but I am sure in 1830 this roof was remod'led by the other one, kind of round beam going from wall to wall.

Q. Have you had an opportunity to observe the native white pine; the native pine that is grown throughout New Mexico?

A. I am very much acquainted with the pine; I know generally everybody calls it white pine.

Q. Do you know whether any of that pine was used in the original construction of that church?

A. What I know of this church, practically all the wood used is white pine, taken from Santa Fe Canyon.

Q. Is it a wooden building?

3382 A. It is an adobe building but we have as wood the roof and all the gallery from 1710.

Q. There is a gallery built in the church in 1710?

A. Yes.

Q. Which is still in place?

A. It is just the same now.

Q. Is it built of native pine?

A. Yes; built from native pine, what they call white pine, ponderosa pine.

Q. Now, have you had occasion to examine the rafters and beams of the church?

A. The other day I called a man from the Forest Service to examine the beams and he opened a kind of hole in the center and I have here a specimen if the wood, taken from the beam.

Q. Are these specimens taken from the beams?

A. They are taken from the roof, the beams of the roof.

Mr. Wood. I would like to offer these in evidence.

Mr. Burr. We haven't even got the hearsay evidence as to whether they are Pinus ponderosa.

Q. Are these the native pine?

A. Native pine.

Mr. Burr. That is what the gentleman told you?

A. Yes; Mr. Rock, from the Forest Service.

(Marked "Respondent's Exhibit 44.")

Mr. Wood. I offer in evidence respondent's exhibit 44,

3383 specimens of Pinus ponderosa taken from the roof of San Miguel Church in Santa Fe, New Mexico.

Q. Do you know how long the beams from which these samples were taken have been in place in use in the same church?

A. These have been in San Miguel Church since 1830.

Q. Did you recently in the last year or so remodel the church at Santa Fe or put on a new roof?

A. Two years ago I put a protective small roof above those beams, 1928.

Q. Did you examine the beams at that time?

A. I told the contractor at Santa Fe to examine the ends of those beams and he told me they were in very good condition.

Mr. BURR. I object to hearsay and move to strike it.

Examiner BRULER. Yes.

Q. Did you examine it yourself?

A. I went on the roof, I examined two or three and they were in good condition.

Q. Did you remove any of the roof beams at that time?

A. I didn't remove any of them. I replaced the flooring and below the flooring I found used as rafters some of the beams, I think the ones put in in 1692, and they were still in pretty good condition.

Q. Is there any wood in the church that has been in place since 1692?

A. Since 1692, we replaced the roof in 1913.

3384 Q. Are there any timbers still used in the church——

A. Not anyone except the smaller roof I put to protect the other one.

Q. I don't think you understand me. Are there any timbers in the church today in use, native pine, which have been in use since 1692?

A. Only those rafters I saw; I found some rafters and I saw them native wood from Taos.

Q. When did you sell those?

A. I think in 1928.

Q. What was their condition?

A. Their condition was pretty good; they were rotten at the end but in the middle the condition was pretty good.

Q. Those rafters had been in there since 1692?

A. I suppose they were since that time; I don't know for what purpose they put those rafters.

Q. Those beams you refer to as having been in the church since 1830, what record have you to show they have been there since that time?

A. We have the book. [Witness produces book.]

Q. What book is that?

A. Written by L. Bradford Prince, who has been for a long time the president of the Historical Society of New Mexico; I think on page 30.

3385 Q. The book to which you refer is "Spanish Mission Churches of New Mexico"?

A. Yes.

Q. Who is L. Bradford Prince?

A. I think he used to be Governor in New Mexico years ago; I heard his name several times, but I have never been acquainted personally with him.

Q. Do you know whether he was at one time Chief Justice of the Supreme Court of New Mexico?

A. Yes; I heard that.

Mr. WOOD. I would like to read into the record, if I may——

Mr. BURR. I don't think that is appropriate.

Examiner BRULER. I think his testimony is sufficient.

Q. Have you talked with other members of your order about the name commonly given to Pinus ponderosa in New Mexico?

A. Yes; when I came in 1916 in Santa Fe, they were very old members who have been here in the country for over forty years, residents of Saint Michael's, and all of them called this pine white pine.

Cross-examination by Mr. BURR:

Q. Brother August, you testified as to the roof beam from which respondent's exhibit 44 was taken; where is that, across the inside of the church?

A. That was inside the church; they go from wall to wall.

3386 Q. And the outside part of the church is what?

A. The outside part of the church is adobe; and now we covered that with cement.

Q. The beam which you testified to, from which Respondent's Exhibit 44 was taken, that was covered over at the end with adobe, was it?

A. Yes.

Q. How thick was that adobe covering, do you think?

A. Some of the beams go all around the adobe wall, and those round beams, they rest on those beams and between the two beams they put adobe.

Q. The adobe covers outside?

A. It covers outside; maybe we have one or two just outside; I think one or two of those beams, very long beams, they go a little outside of the other beams, one or two beams.

Q. But they are covered outside with the adobe, too?

A. Yes.

(Witness excused.)

KENNETH J. BALDRIDGE, called as a witness for the respondents, having been first duly sworn, testified as follows:

Direct examination by Mr. WOOD:

Examiner BRULER. State your name, please?

A. K. J. Baldridge.

3387 Examiner BRULER. And your residence?

A. Albuquerque.

Mr. WOOD. What is your business, Mr. Baldridge?

A. Retail lumber and building materials; a small percentage wholesale.

Q. What is the name of your firm?

A. J. C. Baldridge Lumber Company.

Q. And your business is in Albuquerque?

A. Yes.

Q. How long has the J. C. Baldridge Lumber Company been in existence?

A. Since 1881.

Q. You have been associated with it how long?

A. Nineteen years.

Q. Have you been in business anywhere else except in Albuquerque?

A. A short while in El Paso.

Q. How long were you in El Paso?

A. Six months.

Q. What were you doing there?

A. Manufacturer's agent.

Q. What kinds of pine do you sell in your yards?

A. Native New Mexico white pine.

Q. Do you sell any Idaho and Michigan pine?

A. No. sir.

Q. Do you sell yellow pine?

3388 A. No. sir.

Q. Either longleaf or shortleaf?

A. No, sir.

Q. Have you at any time sold southern pine?

A. Prior to 1917.

Q. And then what did you sell it for?

A. Long dimension and uppers.

Q. Why have you discontinued selling yellow pine?

A. Principally on account of market conditions, prices, and fir in long lengths answers the purpose of yellow pine in long lengths and can be had for less money.

Q. Do you know if any of the other dealers in Albuquerque sell any pine except the white pine, native pine?

A. I don't believe they do.

Q. Do you know the term generally used by the public in describing Pinus ponderosa?

A. Both native and white pine used.

Q. Do some people use the term white and some native or are they used interchangeably by the same people?

A. I believe they are used both ways, the same man will use white and native; other people will use native entirely and others will use white entirely.

Q. Is the term yellow pine or western pine ever used to specify this native pine?

A. No, sir; not to my knowledge.

3389 Q. Have you ever heard it called ponderosa pine?

A. No; not locally; I have seen advertisements of that is all.

Q. But it is not called that locally?

A. No, sir.

Q. By your customers?

A. No, sir.

Q. What term do your customers use in specifying the pine they buy?

A. Native and white both, and some just pine.

Q. Who do you sell to?

A. We sell to the general public; a large percentage of our business is to general contractors; we sell the Government; we sell the State and its subdivisions.

Q. Do you sell the United States Government?

A. We do.

Q. Do you ever hear this pine called soft pine?

A. Occasionally; yes.

Q. To what extent?

A. Very little.

Q. What is the native or white pine used for here?

A. We sell it to the State for substructure on some bridge work having that type of construction; to contractors and owners; to the general contractor; it is used in house building and other building; for stringers, joists, studding, rafters, siding occasionally; it
3390 used to be used a good deal more for siding of course than it is now.

Q. Have you had an opportunity to determine upon its suitability or unsuitability for outside construction?

A. Yes; from observation I believe I have.

Q. What has been your observation as to that?

A. For use outside such as siding it has given very good service here in New Mexico; that is what you mean by outside, siding, outside frame, and so forth.

Q. And for frame construction?

A. For frame construction it has given very good service; yes.

Q. You consider it satisfactory?

A. Yes.

Q. I believe you said that you sold lumber or pine, Pinus ponderosa, to the State of New Mexico?

A. Yes.

Q. How do they specify in their orders, what kind of pine?

A. The State usually specifies native pine.

Q. Do they ever specify white pine?

A. I don't believe the State do; the Government, however, does.

Q. I am coming to that later. How about the city of Albuquerque?

A. The city, I believe we have received orders from them both ways.

Q. Both white and native pine?

A. Yes.

Q. What branch of the United States Government do you sell to?

3391 A. Most of our business with the Government has been the United States Indian school here.

Q. That is the Department of the Interior?

A. Yes.

Q. How do they specify pine bought by them?

A. White pine, they specify that when they want the native pine, the abbreviate it, capital W, capital P. They don't write the words out.

Q. Have you had opportunity to observe the results of the use of the native pine in bridge construction in New Mexico?

A. Not to such an extent that I could testify as an expert witness.

Q. But you know it is used?

A. Yes; sell lots of it.

Q. For what purpose is it used in connection with bridge construction?

A. For stringer, beams, and flooring.

Q. For buttricks?

A. Yes; and abutments.

Q. So that it is used for parts of the bridge construction that extend into water?

A. Frequently; yes, frequently sell it for piling.

Q. Is there much rise and fall during the year in the Rio Grande River?

A. Yes.

3392 Q. Do you know what it is?

A. No.

Q. But you know there is a great deal of it?

A. Yes.

Q. And is there much rise and fall in the other streams in New Mexico?

A. Yes, sir.

Q. Do you know how long manufacturers in New Mexico have called their product white pine?

A. From my own personal knowledge, I would date the length of time I have been in the lumber business; my father tells me it was called white pine when he entered the lumber business in New Mexico in 1881.

Q. What was the house in which you were born built of?

A. Practically all native pine, some redwood.

Q. But the frame construction was native pine?

A. Yes.

Q. When was that house built?

A. I couldn't give you the exact year, however, prior to 1890.

Q. Do you know its present condition?

A. Yes.

Q. What is it?

A. Very good.

Q. Do you know its condition from the standpoint of rot and decay?

3393 A. I haven't made a close physical examination of it; I have been through it; just from a superficial examination of it I would say it is good.

Q. Do you handle sash and door?

A. Yes.
Q. From what wood are the sashes and doors made?
A. The majority of them are made of native or white pine.
Q. Do you handle any sash and doors made of other pine?
A. No, sir; I do not.
Q. Then all you handle is made of the native pine?
A. The reason I say practically all is because the supply of our native white pine and Arizona white pine sometimes makes it necessary for the mills from whom we buy to go to California for their shop lumber, if the supply here isn't sufficient to take care of it.
Q. Then in that case they are made of California white pine?
A. And we occasionally get some sugar pine.
Q. For what kind of doors?
A. That is very seldom, however.
Q. For what kind of doors?
A. Wood doors. The type door, you mean?
Q. Yes.
A. They use that for rails and stiles in five cross and panel cross, French doors, front doors, store doors.
Q. Are they used very frequently here of sugar pine?
A. Sugar pine; no, sir.
3394 Q. Do you know to what extent sugar pine is sold in New Mexico?
A. No; I don't. You mean by dealers?
Q. Yes.
A. By local dealers?
Q. Yes.
A. I don't believe it is carried in stock by any of them.
Q. How do you sell your lumber and specify it in selling it to your customers?
A. We, as a rule in billing it out, don't put any designation at all of the kind of lumber; that is, providing it is our native or white pine, we generally designate that just by grade.
Q. Number one common, number two common?
A. If, however, fir or oak or any other grade than the native or white pine, then naturally we put the designation on it as to the type which it is.
Q. Did you ever receive an order for Pinus strobus?
A. No, sir.
Q. Or for Idaho pine?
A. No, sir.

Cross-examination by Mr. BURR:

Q. Now, the sugar pine is much higher than the native pine here, isn't it?
3395 A. I don't know; I don't have a recent quotation on sugar pine.
Q. Do you know whether sugar pine is higher than California white pine in the California markets, do you have a contact with that, as to how it is quoted?

A. No, sir.

Q. Do you see quotations at all for California white pine?

A. Very, very seldom. I saw one probably sixty days ago, I couldn't tell you what the prices were though.

Q. Well, the native pine practically commands the pine market, does it, entirely, here?

A. Now, are you speaking as in competition with fir?

Q. In competition with pine?

A. Yes; it does, it controls.

Q. There is nothing over here except the native pine?

A. That is all I know of.

Q. Except these occasional shipments of sugar pine for special purposes?

A. Yes.

Q. Are you familiar with the price of the shop lumber of sugar pine?

A. No, sir; we don't handle any shop lumber ourselves.

Q. I thought you spoke of selling to manufacturers these various inside trim, various varieties of lumber trim?

A. No, sir; we don't sell to the factory.

Q. Who are your customers in the main besides those you
3396 have mentioned?

A. I mentioned about all of them.

Q. You sell retailers, do you?

A. Yes.

Q. How large a percentage goes to retailers, would you think?

A. You mean to the other dealer, the other merchant?

Q. Yes.

A. I don't have that exact figure in my head.

Q. Your wholesale business, however, is small?

A. Yes; I wouldn't say to exceed ten percent of the total.

Q. Now, this house where you were born, is that a frame building?

A. Yes.

Q. That is a frame building throughout?

A. Yes.

Q. Now, you seemed to be rather inclined to qualify it when you stated that was in good condition; what do you mean, what sort of condition is it in?

A. I didn't want to go on record as saying I had made a thorough physical examination of the house; I was up there last week and went through it. I did, however, examine the outside of the house closely and found that in good condition, the siding, and so forth.

Q. Is it showing some signs of decay?

A. No; the paint looks worse than the wood itself.

3397 Q. As a matter of fact, paint is the thing that is most apt to be neglected?

A. Yes.

Q. People don't paint their buildings until they positively have to; isn't that true?

A. Yes.

(Witness excused.)

JAMES N. GLADDING, called as a witness in behalf of the respondents, having been first duly sworn, testified as follows:

Direct examination by Mr. WOOD:

Examiner BEULER. Please state your name and residence.

A. James N. Gladding; Albuquerque.

Mr. WOOD. Where do you live?

A. 643 North Cedar.

Q. What is your business, Mr. Gladding?

A. Structural engineer and architect.

Q. What is the name of your firm?

A. Gaastra & Gladding.

Q. Were you at one time city engineer of the city of Albuquerque?

A. Yes.

Q. And city manager?

A. Yes.

3398 Q. How long were you city manager?

A. Two years.

Q. How long were you city engineer?

A. I don't remember exactly, about eight—I should say ten years, city engineer.

Q. Were you at any time connected with the city of El Paso?

A. City engineer in El Paso.

Q. How long were you city engineer in El Paso?

A. Two years.

Q. How long have you been in the business of architect and engineer in Albuquerque?

A. About seven years.

Q. What kind of buildings do you design and make specifications for?

A. All kinds.

Q. Specify what kind.

A. We have done courthouses, warehouses, schools, residences.

Q. Office buildings?

A. No; we haven't had any office buildings.

Q. Do you use Pinus ponderosa at all in the construction of those buildings?

A. To a large extent.

Q. What do you use it for?

A. Interior trim and exterior woodwork in houses.

Q. Do you use it at all in warehouses?

3399 A. Very seldom, except for floor joist and subflooring.

Q. What other kind of wood do you use in warehouses?

A. We have used yellow pine.

Q. Outside of yellow pine, what kind?

A. Oregon fir.

Q. Do you ever use Pinus strobus or Idaho pine?

A. We never have used Idaho pine.

Q. What pine do you use for your sash and doors and interior trim?

A. White pine, native pine.

Q. Do you use yellow pine?

A. No; I don't remember of ever using any yellow pine.

Q. Do you ever use sugar pine?

A. No.

Q. In specifying the native pine, how do you designate it?

A. Usually as white pine or native pine.

Q. Do you ever specify it as yellow pine?

A. No.

Q. Is there any preference in your use for building purposes and structural purposes in case it has to be pine, as between the yellow pine and the white pine?

A. Not in structural purposes, we do as interior trim.

Q. What is your preference?

A. We like the native pine.

Q. Better than the yellow?

3400 A. Yes; the yellow pine is a little more pithy, unless in particular cases where we want the grain effect, when we stain the woodwork, we use the white pine.

Q. What is the tendency of the yellow pine, comparative tendency of the yellow pine and white pine when nailed at the end as to its splitting?

A. It is more inclined to split and splinter.

Q. Which one?

A. The yellow pine.

Q. What percentage of the timber used for building purposes for interior and exterior in New Mexico would you say was native pine?

A. In this section of the country it is mainly white pine.

Q. Practically all?

A. Yes.

Mr. BURR. Did you say interior and exterior both?

A. Yes.

Mr. WOOD. Do you know what the people of New Mexico, the public, the man on the street, generally calls the Pinus ponderosa in designating it?

A. White pine.

Q. Have you ever heard it called yellow pine?

A. No.

Q. Pondosa pine?

A. No.

3401 Q. Soft pine?

A. No.

Q. Have you had opportunity to observe the various structures built of the native pine as to the suitability of that wood for exterior purposes?

A. Yes, sir.

Q. What has been that opportunity, other than the erection of buildings?

A. Well, I have been very much interested in the building game since 1906, which I first came to New Mexico.

Q. And what would you say as to its suitability for building purposes in this State?

A. I should say it was very suitable.

Q. And has it proved satisfactory?

A. Yes, sir.

Q. Do you know to what extent other architects use Pinus ponderosa?

A. I think it is just about the same.

Q. Use it for exterior and interior purposes?

A. Yes.

Q. How long did you say you had been in New Mexico?

A. Since 1906.

Q. Is there any part of that time where Pinus ponderosa was designated by any other term than white pine, as you have previously testified to?

A. No.

3402 Q. It is always called that?

A. Yes.

Q. Have you done any bridge construction?

A. Some.

Q. Where have you done some bridge construction?

A. I built four bridges on the Rio Pecos.

Q. And where is the Pecos River?

A. It is up north of Santa Fe, in the Santa Fe Forest.

Q. How far from Santa Fe or from Albuquerque?

A. It is about a hundred and twenty-five or thirty miles from here.

Q. Do you know the altitude there?

A. Not exactly; I should imagine it was sixty-five hundred or seven thousand.

Q. When did you build those four bridges?

A. In 1919.

Q. Who did you build them for?

A. The Bureau of Public Roads.

Q. Of the State of New Mexico?

A. No; the Federal Government.

Q. What kind of lumber did you use in those bridges?

A. Native pine.

Q. Were they entirely constructed of native pine?

A. Entirely.

Q. Did parts of the bridges extend into the water?

3403 A. No.

Q. Not when the rivers were high?

A. No; it wasn't intended to be.

Q. Do you know whether or not the native pine is used much for bridge construction in New Mexico?

A. Yes; it is used quite a little.

Q. Do you know whether it has been found to be satisfactory?

Mr. BURR. I think he is asking for a mere conclusion; he is asking for hearsay.

Examiner BRULER. Just what you know about it from your personal knowledge.

A. I know it has been used a great deal in New Mexico.

Q. Do you know whether it has been found to be satisfactory or unsatisfactory?

Mr. BURR. That is asking for a conclusion, the same objection as to the question before.

Examiner BRULER. Have you ever heard any complaints of its use as to its age or lasting qualities?

A. No; I haven't. In particular cases where we need a little increased strength we specify yellow pine.

Mr. WOOD. For what purposes is that?

A. When the size of the native pine becomes too cumbersome and we think we could get the same result by using a little smaller timber, we use the yellow pine.

Q. Is adobe construction used much in New Mexico?

3404 A. It is a very popular form of construction.

Q. Do you know how long it has been used for construction purposes?

A. I guess since we had any inhabitants in New Mexico.

Q. Do you know whether it was used by the Indians?

A. Yes; it is.

Q. And it was used by the Mexicans following the Indians?

A. Yes.

Q. Do you know why it is a popular form of construction?

A. It was the cheapest material they had and they were accustomed to handling it or became accustomed to handling it.

Q. It was a form of architecture in use by the Indians?

A. Yes.

Cross-examination by Mr. BURR:

Q. Adobe cannot be used where the rainfall is rather heavy, can it?

A. No.

Q. How much larger do you require your native pine stringers of heavy material to be in order to get the same strength that you expect to get if you order yellow pine instead?

A. The strength of yellow pine is fifty percent higher than the native pine.

Q. Size for size?

3405 A. Yes; size for size.

Q. Now, as a matter of fact, when people talk about this pine that you have in these forests here, don't they call it pine more often than they call it white pine?

A. Probably do.

Q. And don't they call it native pine more often than they call it white pine?

A. No; I would think that would be about fifty-fifty.

Q. The native pine here commands the market so far as pine is concerned, does it not?

A. I didn't get that question.

Q. The native pine here commands the market so far as pine is concerned; it practically bars all other pines, does it not?

A. Unless it is specially specified.

Q. Have you had occasion to know at what price you can get the sugar pine?

A. No.

Q. You haven't studied the price of it at all that you could get sugar pine at?

A. No.

Q. And the same, I presume, is true of the northern white pine and Idaho white pine; you haven't given that any attention?

A. No.

(Witness excused.)

3406 (At this time a short recess was taken.)

A. J. SINE, called as a witness in behalf of the respondents, having been first duly sworn, testified as follows:

Direct examination by Mr. WOOD:

Examiner BRULER. Please state your name and residence.

A. A. J. Sine; Albuquerque.

Mr. WOOD. What is your business, Mr. Sine?

A. Wholesale lumber selling.

Q. What kind of lumber do you sell?

A. Pine lumber and fir lumber.

Q. Your office is in Albuquerque?

A. Yes.

Q. How long have you been in Albuquerque?

A. Three years.

Q. Were you in the lumber business prior to that time?

A. Yes; in Chicago.

Q. What kind of lumber business were you in there?

A. Wholesale and commission lumber.

Q. In the retail business?

A. I was interested with my brother in a retail yard.

Q. So you were in the wholesale and retail business in Chicago?

A. Yes.

3407 Q. For how many years?

A. Since 1908.

Q. From that time until when?

A. In Chicago from that time until—well, I have retained my interest in Chicago although I have been out here, but I haven't been active in Chicago for three years.

Q. What kind of lumber did you handle in Chicago?

A. North coast, douglas fir, and pine, and pine from the inland empire.

Q. Did you handle Pinus ponderosa?

A. We handled western pine and Idaho white pine and some California white pine.

Q. That is, of those species, Pinus ponderosa?

A. Yes.

Q. In purchasing from the manufacturers of Pinus ponderosa, what term did you use in specifying the kind of lumber you wanted?

A. Western white pine.

Q. To what class of customers did you sell?

A. To retail yards, sash and door factories, other interior finish factories, and industries, as we call them.

Q. In selling them, how did you invoice and sell Pinus ponderosa?

A. Western white pine.

Q. To what extent did you handle Idaho white pine?

3408 A. I should say it wasn't over ten percent of the sales, a limited amount.

Q. In ordering that, how did you order it?

A. Idaho white pine.

Q. In selling that, how did you sell it?

A. Idaho white pine.

Q. In delivering your customers lumber upon the specification for western white pine and where you delivered them Pinus ponderosa, did you ever have any complaint from your customers as to the character of the species of the lumber which was delivered them?

A. Yes; I have.

Q. On what occasion?

A. They complained it was harder than white pine, than the true white pine. May I explain it?

Q. Yes.

A. At the time I started to sell it, western white pine was not a familiar product in the Mississippi Valley; as a matter of fact, I introduced it in a good many places, induced men to try it, and at times they would state that they had had other western white pine that was sof'er than this white pine that I had delivered them; I would then ask them to see what they had, because I wanted to identify it as Idaho white pine if it was softer than the pine I was selling.

3409 Q. And then you would see what they had and explain to them the difference?

A. Yes.

Q. But those complaints grew less and less?

A. Yes, sir; they grew less.

Q. Did you have any complaints along the last time you were in Chicago?

A. No. Those complaints were introductory complaints.

Q. Much earlier?

A. Much earlier.
Q. Now, what kind of pine do you sell in New Mexico?
A. New Mexico white pine.
Q. Do you sell any Arizona white pine?
A. Very limited amount.
Q. But you sell some?
A. I have sold some.
Q. Where did you purchase that?
A. I have had some from the Cady Corporation.
Q. To whom do you sell?
A. To the retail yards and sash-and-door factories.
Q. Where are your customers located?
A. In Raton, Gallup, Las Vegas, Hot Springs.
Q. Mostly local; do you sell?
A. Yes.
Q. You don't sell in the East at all?
3410 A. Yes; I handle through my Chicago firm in the East; they sell it and I simply buy it here for them.
Q. Prior to going to Albuquerque, did you ever sell New Mexico white pine?
A. Yes.
Q. In Chicago?
A. Yes.
Q. For how long a period?
A. Probably five years before I came out here.
Q. Since you have been in New Mexico have you had any complaint in furnishing ponderosa pine upon an order for New Mexico white pine, that they are getting a different species of pine than they expected to receive?
A. No, sir.
Q. Do you sell it as New Mexico white pine?
A. Yes.
Q. Under what name do you buy it from the manufacturers?
A. New Mexico white pine.
Q. Do you know what is the common name for the designation of the native pine among people of New Mexico?
A. White pine.
Q. How do your customers usually order it?
A. White pine.
Q. Your customers outside of the State?
A. Yes.
Q. Do they order as white pine or New Mexico white pine?
3411 A. New Mexico white pine.
Q. Are you acquainted at all with yellow pine?
A. Yes.
Q. Have you handled it at all?
A. A very limited extent. In the East; not here.
Q. Do you know the differences in the general characteristics and texture between the yellow pine and white pine?

A. Yes.
Q. I mean, and the native white pine?
A. Yes.
Q. Do you know the differences in the character and texture between the Idaho white pine and the native pine?
A. Yes.
Q. Would you say that the native white pine was more similar in character and texture to the yellow pine or to the Idaho white pine?
A. More similar to the Idaho white pine.
Q. What would you say as to color?
A. As compared with yellow pine?
Q. Compared with yellow pine.
A. It is whiter than yellow pine.
Q. What would you say as to its durability?
Mr. BURR. You haven't qualified him to see what he knows about durability.
Q. Have you had opportunity to observe the durability of
3412 the New Mexico white pine?
A. No; only from hearsay—you don't want any hearsay.
Q. No; not unless you have had opportunity to observe it.
A. I don't have, I think; I haven't been here long.
Q. Did you ever receive an order for western yellow pine?
A. No, sir.
Q. Either in Chicago or here?
A. No, sir.
Q. Do you ever receive orders for soft pine?
A. No, sir.
Q. Do you ever receive orders for pondosa pine?
A. No, sir.
Q. I believe your business was for some time in Santa Fe?
A. Yes; I lived four years in Santa Fe.
Q. Do you know what the custom is in Santa Fe about the designation given to this native pine?
A. White pine.
Q. Do you know the Governor's Palace in Santa Fe?
A. Yes.
Q. What is the Governor's Palace?
A. It is a building that was put up three hundred or more years ago for the use of the governors of that time.
Q. The old Spanish governors?
A. The old Spanish governors; it is a block long.
Q. Is the building still in use?
3413 A. Yes.
Q. As a museum?
A. Museum and offices.
Q. Have you ever examined the timbers in that building?
A. Casually.
Q. Is there any Pinus ponderosa used in that building?
A. All of the vigas or roof supports are Pinus ponderosa.

Q. Do you know the reputed age of those?
A. They are reputed to be three hundred years old.
Q. What, from your general observation, was their condition when you looked at them?
A. Good.
Q. What is the altitude of Santa Fe?
A. Seven thousand feet.

Cross-examination by Mr. BURR:

Q. Now, do you know anything about sugar pine?
A. I know it when I see it *im* the lumber.
Q. Did you handle that when you were in Chicago?
A. To a very limited extent.
Q. Then you handled northern white pine?
A. Very limited extent.
Q. And you handled Idaho white pine?
A. To a limited extent.
3414 Q. And you handled sugar pine?
A. Very little of it.
Q. Did you say ten per cent of your pine sales were Idaho white pine?
A. Approximately that.
Q. You are referring now to your total sales?
A. No.
Q. But to your pine sales?
A. Yes.
Q. Then you handled some yellow pine up there?
A. To a very limited extent; yes.
Q. Now, you handled the ponderosa under the trade term Western white and California white pine?
A. Yes.
Q. Did you buy any Arizona and New Mexico white pine at that time?
A. No; I am thinking of the early days of our selling there.
Q. Yes. How, as to the later years?
A. In the later years we did sell New Mexico pine.
Q. After you came down here yourself?
A. Yes.
Q. But not prior to your coming here?
A. To a limited extent we did; yes, sir.
Q. What do you find to be the characteristics of the ponderosa considered now in its general sense. Do you find considerable variety in the character of lumber received from these
3415 various districts, referring now to ponderosa only?
A. Yes; I should say so.
Q. Do you regard the native pine or Arizona as being as good as the California?
A. Better.
Q. California white pine of what localities; do you have any particular localities in mind?

A. Well, of course, I don't know that I do; when I said better I was thinking of certain purposes.

Q. What purposes have you in mind it is better for?

A. For sash and door and interior finish.

Q. And why?

A. It is softer and whiter.

Q. Does it hold its color better when exposed to the weather?

A. I don't know.

Q. Or to the light?

A. I don't know, I know it is easier worked.

Q. It is closer in quality than to the northern white pine, is it?

A. I don't think so.

Q. Are you familiar with the California white pine, so-called, that is raised in the Klamath district in Oregon?

A. Yes.

Q. And what you say you think would apply as compares with that?

A. For the purposes I have mentioned.

3416 Q. You think it is softer and whiter in color than that?

A. Yes.

Q. Are you familiar with the California white pine raised on the eastern slope of the Sierra County?

A. Yes.

Q. Modoc County and Alturus County?

A. No; I don't think so.

Q. When you were in business in Chicago, people would come in occasionally and ask for white pine, would they?

A. Yes.

Q. And then you supplied them with whichever of these varieties you had in stock designated as white pine?

A. No; we explained to them that there were two kinds.

Q. This was in the early days?

A. Yes; in the introductory period.

Q. They would designate themselves later?

A. They would say, I want Idaho white pine or western white pine.

Q. How recent is your actual familiarity with the Chicago situation in meeting customers, to how recent a day does it come down?

A. Prior to three years ago.

Q. In other words, you were meeting customers regularly up to three years ago?

A. Not very regularly after I came out here; I would go

3417 back and stay a month or two and come back here.

Q. When was the most recent time you were meeting customers regularly?

A. Prior to seven years ago.

Q. Prior to seven years ago customers would specify white pine without further designation?

A. No, sir.

Q. You are sure they always designated California or northern or Idaho, as the case might be?

A. Yes, sir.

Q. Did you have much call for sugar pine?

A. No, sir.

Q. How did you sell it when you did sell it?

A. We sold it for specific purposes, such as piano keys, something that required a fine-grained softwood, earier worked.

Q. How about pattern purposes?

A. Excellent for that purpose.

Q. For piano keys and pattern purposes you regard it as probably similar to Idaho white pine?

A. Very similar.

Q. Is it preferable to the ponderosa of the various descriptions?

A. Positively superior.

Q. For what reason do you regard it as superior for these
3418 purposes?

A. It is softer, finer-grained wood, not as hard to work.

Q. Is there a little difference with regard to the ability to stay in place and hold the shape?

A. Yes.

Q. Little less liable to warp?

A. Much less liable.

Q. Is that the reason for the market for sugar pine for French doors and windows also?

A. Yes; if there is any used for that purpose.

Q. Now, when the people here ask for your native pine, don't they, as a rule, come in and ask for pine; it is the only pine there is, isn't it?

A. Yes; that is true.

Q. Instead of saying native or white they say pine, do they?

A. I must say they say native pine more often than just pine.

Q. And they say native pine more often than white?

A. I think so.

Q. That product commands the pine market here completely?

A. Yes.

Q. How much more does it cost you a thousand to get in yellow pine than get your native pine?

A. There is such a limited amount of yellow pine used here; previous to ten years ago yellow pine was a big seller in this market; so far as I know, there hasn't been a carload of yellow pine used in Albuquerque in five years.

3419 Q. Did you hear the testimony of the previous witness, that there is fifty percent greater strength in size in the yellow than the native; how would you figure that?

A. That is what I would figure; I didn't hear that testimony, however.

Q. You think it makes a soft structural building material for strength?

A. Certainly.
Q. In that ratio?
A. Yes.
Q. Is it cheaper than the yellow pine when you have added fifty percent to the size?
A. I am not sufficiently familiar with yellow pine to compare the prices.
Q. Now, referring to your Chicago sales up to seven years ago, what percentage was retail and what percentage wholesale or commission business?
A. Ninety percent was wholesale and commission.
Q. Would you say at retail your customers were not quite so well posted as to the various varieties of white pine?
A. No.
Q. And they would come in occasionally and ask for white pine without knowing about the different varieties?
A. Yes.
Q. And in that case they would get whatever variety of
3420 white pine you had in stock; is that true?
A. Yes.
(Witness excused.)
(At this time an adjournment was taken until 10 a.m. the following day.)

FEBRUARY 11TH, 1930—10 A.M.

RAY MOORE, called as a witness in behalf of the respondents, having been first duly sworn, testified as follows:

Direct examination by Mr. WOOD:

Examiner BRULER. You may state your name and residence.
A. Ray Moore, Albuquerque, New Mexico.
Q. Mr. Moore, are you connected with the Breece Lumber Company?
A. I am.
Q. What is your position?
A. Secretary and auditor.
Q. How long have you been connected as secretary and auditor with the Breece Lumber Company?
A. Since its inception.
Q. When was the Breece Lumber Company organized?
A. August 1st, 1924.
Q. Did it purchase the property and assets of some other
3421 corporation?
A. It acquired by lease the assets of the McKinley Land & Lumber Company and a West Virginia timber company.
Q. Did those assets consist of the same mills you are now operating?
A. They did, except we have acquired one mill subsequent to the organization.
Q. Then what is the American Lumber Company, or was?

A. The American Lumber Company was originally a New Jersey corporation; they reincorporated, I would say, about 1907, changed their domicile.

Q. Give briefly the history of these four corporations you have mentioned, the American Lumber Company, the McKinley Land & Lumber Company, and the West Virginia Company and the Breece Company, and their relationship to each other.

A. The American Lumber Company was organized in 1902 as a New Jersey corporation by lumbermen then operating in Michigan, including bankers. They acquired several hundred thousand acres of timber land located in McKinley and Valencia Counties, New Mexico, from Mitchell Brothers, of Cadillac, Michigan. Mitchell Brothers had acquired the property from the old Atlantic and Pacific Railroad Company, who received the property as part of land that was given them when they built the railroad, for building it. They operated from about 1903 at Albuquerque until
3422 about June 1913, at which time they defaulted on an issue of bonds——

Q. I don't know it is necessary to go into changes made in the organization.

A. It will be necessary in order to lead up to our employment. They defaulted on issue of bonds, went into receivership. The McKinley Land & Lumber Company was organized as a New Mexico corporation in November 1916.

Mr. BURR. If the examiner please, I regard this as rather immaterial, the way in which the various subsidiary properties which have been acquired were obtained.

Examiner BRULER. There is no use taking time to go into that; just your connections now is the principal thing.

Q. In substance, Mr. Moore, the properties you are operating at the present time have been operated by three companies; the American Lumber Company, from what date did they operate?

A. 1903.

Q. To when?

A. To 1913.

Q. And then they were operated by the McKinley Land & Lumber Company?

A. From 1919 until August 1st, 1924.

Q. And then by the Breece Lumber Company?

A. From August 1st, 1924, to the present time.

3423 Q. Have you the price lists, copies of the price lists, that were issued by the American Lumber Company?

A. I have some of them.

Q. And by the McKinley Land & Lumber Company?

A. I have some.

Q. Have you examined the same?

A. I have.

Q. Have you those copies with you in the courtroom?

A. Yes, sir.

Q. Will you produce them?

(Witness produces price lists.)

Q. Have you some price lists with you showing how the American Lumber Company designated thie product?

A. I have.

Q. And what do they show as a heading to the price lists?

A. "White-pine lumber, sash, doors, and boxes."

Q. "Wholesale price list, American Lumber Company, manufacturers of white-pine lumber, sash, doors, and boxes, price list", under date of January 13——

A. 1909.

Q. What is the earliest one that you have in your book?

A. January 21st, 1907.

Q. And how does that read?

A. "Wholesale price list, American Lumber Company, manufacturers of Navajo white-pine lumber, sash, doors, and boxes."

3424 Q. Is any part of your timber holdings, timber contracts, located on the Navajo Reservation?

A. Our timber holdings are adjacent to the Navajo Indian Reservation.

Q. Do you know why the term "Navajo" was used?

A. It was adopted as a trade name by the American Lumber Company.

Q. Do you know how long they continued to use the term "Navajo white pine"?

A. I don't know when they commenced using it; the earliest price list is dated January 21st, 1907.

Q. Do you know when they discontinued using it?

A. About June 1st, 1907.

Q. And after that what term did they use?

A. White-pine lumber.

Q. Have you any price lists of the McKinley Land & Lumber Company?

A. Yes, sir; I have.

Q. You have one before you dated March 23rd, 1920?

A. I have.

Q. What is the heading?

A. McKinley Land & Lumber Company, manufacturers of white-pine lumber, Albuquerque, New Mexico.

Mr. BURCH. The terminology that you last quoted continued then until the Breece Lumber Company took it over, did it?

A. It did; yes.

Mr. WOOD. I will take care of that.

3425 Q. Now, then, Mr. Moore, what name is used at the present time in your price lists to designate your product?

A. Our present price list is headed "George E. Breece Lumber Company, manufacturers pondosa pine, fir, oak flooring, Albuquerque, New Mexico."

Q. Do you use the same price list for both your Albuquerque customers and for your customers in other parts of the country?

A. We use a different price list for our Albuquerque customers, our local trade.

Q. I show you a price list of the George E. Breece Lumber Company, a form, stating that it manufactures pondosa pine, fir, oak flooring, Albuquerque, New Mexico, and ask if that is a price list you use?

A. This is a printed form we use for price lists mailed to our various agents and customers outside the State of New Mexico, outside of Albuquerque.

(Price list marked "Respondent's Exhibit No. 45.)

Mr. Wood. I offer price list headed "The George E. Breece Lumber Company, manufacturers pondosa pine, fir, oak flooring, Albuquerque, New Mexico", in evidence.

A. That is a price-list form.

Mr. Wood. Price-list form.

Mr. Burr. No objection.

Q. I show you price list of the George E. Breece Lumber
3426 Company, manufacturers white pine, hardwood, yellow pine, Douglas fir, on yellow paper, containing the words "We quote f.o.b. Albuquerque, N.M.", and ask if that is the price list for this firm as used by your company?

A. That form is used by our company.

Q. For what purpose?

A. Quotations to local dealers.

Q. Is it ever used for quotations outside of the State?

A. This is quotations to local dealers; we adopt this other form for quotations outside of the State.

(Form marked "Exhibit Respondent's No. 46.")

Mr. Wood. I offer this form in evidence, respondent's exhibit 46.

Q. Those are the forms for price lists that are used at the present time?

A. Locally.

Examiner Bruler. Then, Mr. Wood, you are offering respondent's exhibit no. 46 for the record, are you?

Mr. Wood. For the record.

Mr. Burr. No objections.

Examiner Bruler. Received.

Q. Is this a form of invoice you are using at the present time?

A. It is.

Q. And how does that read as to its designation of the product?

A. "Pondosa pine, hardwood, red and white fir."

3427 Q. Is that used only in interstate trade or is it also used in the State of New Mexico?

A. That form is used generally by all of our offices.

(Form marked "Respondent's Exhibit No. 47.")

Mr. Wood. I offer this in evidence, respondent's exhibit 47.

Mr. BURR. No objection.

Examiner BRULER. Respondent's exhibit no. 47 offered and accepted in evidence.

Q. Do you advertise at all in trade journals?

A. Very little; we have some.

Q. Have you advertised in trade journals in the last two years?

A. We have.

Q. In what trade journals?

A. The Timberman.

Q. In any others?

A. Not to my knowledge.

Q. When did you last advertise?

A. Our last advertisement appeared in the December issue of the Timberman.

Q. How many advertisements have you had in the Timberman for the last two years?

A. I am not prepared to state; I don't know.

Q. Have you a copy of such advertisement?

A. I don't have with me; no, sir.

Q. How long have you used the term "pondosa pine" in
3428 designating your product for interstate commerce?

A. I couldn't say exactly, but from about May or June 1928.

Q. Prior to that time what term did you use in designating your product?

A. White pine.

Q. Have you a copy of your price lists that were used by the Breece Lumber Company prior to the time you changed to the use of the term pondosa pine?

A. It has been offered as an exhibit, the early one.

Q. That is the form that has been used from the inception of the company?

A. Yes.

Q. I show you form of invoice "The George E. Breece Lumber Company, manufacturers white pine, hardwood, yellow pine", and ask you if that is a form that was ever used by your company, and when?

A. That isn't an invoice form; that is an office form of an order when it is written up.

Q. Is that used at the present time?

A. Yes, it is; that form doesn't go outside of the office.

Q. It is only used for your own files?

A. That white sheet is only used when the order is written up for our own files.

Mr. WOOD. Please mark this.

(Form marked "Exhibit Respondent's No. 48.")

3429 Mr. WOOD. I offer in evidence original order form of George E. Breece Lumber Company, manufacturers, white pine, hardwood, yellow pine, Albuquerque, N.M.

Examiner BRULER. Respondent's exhibit no. 48 admitted for the record.

Q. I show you what purports to be copy of an advertisement I take from the Timberman and ask you if that is an advertisement that was inserted in the Timberman by the George E. Breece Lumber Company?

A. It is an advertisement published in the Timberman and paid for by the George E. Breece Lumber Company.

Examiner BRULER. What is the date of that?

A. There is no date on this.

Q. Do you know whether or not that is a form of advertisement that has been inserted in the Timberman in the last two years?

A. It appears to be.

Q. You have advertised in the Timberman in the last two years your product as "Soft texture New Mexico white-pine lumber", "ponderosa pine" in parentheses underneath?

A. We have.

Q. Who were those advertisements prepared by?

A. By the advertising department of the Timberman.

Q. Were they ever submitted to you before they were inserted?

A. Not to my knowledge.

3430 Q. How did you give the order to the Timberman?

A. The order was given probably to Mr. Cornwall, the editor of the Timberman, when he was in our office.

Q. What was said to him?

A. He was told to write up the advertisements.

Q. And he did not, so far as you know, submit them to you?

A. They were not submitted to me, and to my knowledge they were not submitted to our company; that is, the proofs were not.

(Marked "Respondent's Exhibit No. 49.")

Mr. WOOD. I offer this form of advertisement, apparently taken from the Timberman, in evidence.

Mr. BURR. No objection.

Examiner BRULER. Respondent's exhibit no. 49 admitted for the record.

Q. I show you form of letterhead "The George E. Breece Lumber Company, manufacturers white pine, hardwood, yellow pine", and ask you if that is a letterhead that is used or has been used by the George E. Breece Lumber Company?

A. That letterhead has been used by the George E. Breece Lumber Company.

Q. And is it still used?

A. It is now an obsolete form, although some of them may be scattered among our branches.

Q. That is, you use a new form of letterhead at the present time?

3431 A. We use a new form of letterhead at the present time.

Q. Have you got a copy of that letterhead with you?

A. I think we have.

Q. I show you form of letterhead reading "The George E. Breece Lumber Company, manufacturers pondosa pine, hardwood, red and white fir", and ask you if that is the form of letterhead you are at present using?

A. It is.

(Forms of letterheads marked "Respondent's Exhibits Nos. 50 and 51.")

Mr. Wood. I offer the form of letterhead reading "George E. Breece Lumber Company, manufacturers white pine, hardwood, yellow pine", in evidence (respondent's exhibit 50).

Examiner Bruler. That is respondent's exhibit no. 50 admitted for the record.

Mr. Wood. Which is the form of letterhead formerly used by the Breece Lumber Company.

I offer the form of letterhead reading "The George E. Breece Lumber Company, manufacturers pondosa pine, hardwood, red and white fir", as now used by the George E. Breece Lumber Company (respondent's exhibit no. 51).

Examiner Bruler. Respondent's exhibit no. 51 admitted for the record.

Q. How do you now sell your lumber outside of the State of New Mexico?

3432 A. Our principal price list is headed "pondosa pine."

Q. And you sell none under price lists of the designation of white pine?

A. Some of the typewritten matter in our current price lists reads "white pine."

Q. Will you explain that?

A. I would call it an error on the part of the girl who makes up the price list.

Q. What is the occasion for it; will you explain how it happens?

A. A large part of the orders we receive—I am not prepared to state how many—call for white pine, and the trade generally understands what we are selling, and the girl who makes up these price lists has used the word "white pine" for so long—she has been with us since 1920—that in making up price lists she occasionally drops into the use of the word "white pine"—New Mexico white pine, sometimes simply pine.

Q. Is it her custom to follow the language of the order?

A. Yes; it is.

Q. If a customer says "white pine", then she writes "white pine" in her order?

A. She would more than likely write her order up "white pine."

Q. And if they said "pine"——

A. She would write her order up "pine"; just specify the grade and size of the lumber; she probably wouldn't put anything

3433 in there to designate the kind of wood.

Q. What was the occasion of your changing of the name and designation of your lumber from white pine to pondosa pine?

A. The change was effected after the visit to our office of the examiner for the Federal Trade Commission.

Q. Do you remember when that visit occurred?

A. It was early in 1928; I think probably March or April.

Q. And do you remember what he said to you?

A. He said he was making an examination for the Federal Trade Commission on an informal complaint against ourselves and a number of other lumber companies for the use of the name "white pine" in designating our products.

Q. And after his visit did your official hold a conference?

A. They did.

Q. What did they determine to do?

A. Colonel Breece, our president and general manager, instructed our sales department that we should discontinue the use of the name "white pine" until this matter had been put out of the way.

Q. You mean until this case had been closed?

A. Until this case had been closed one way or the other.

Q. Did he give any reason for so doing?

A. As I recall, his reason was a spirit of fairness; that if we were using a name to which we were not entitled we didn't want to use it.

3434 Q. Have you any preference as to the use of the term "white pine" or "pondosa pine" in designating your product?

A. I most assuredly have.

Q. What is that preference?

A. White pine.

Q. Why?

A. Because our product has been generally sold under that name since the inception of our purchases in 1903, and the trade generally knows it as white pine.

Cross-examination by Mr. BURR:

Q. Do you know whether there has been a good deal of advertising done by the inland empire producers of ponderosa pine of the word "pondosa" pine?

A. I am not qualified to speak.

Q. You have not investigated whether there was a large amount of advertising of pondosa pine done by the inland empire producers?

A. I am not qualified to speak; I am not a student of the sales business; I am auditor and secretary of the sales department.

Q. You have a number of branches out of the Breece Lumber Company?

A. We have some branches out of the Breece Lumber Company.

Q. Where are they located?

3435 A. One at Alamagordo, New Mexico, where we operate a mill.

Q. Do you have sales branches, too?

A. No sales branches, other than our Monroe, Louisiana, office sells their yellow pine and hardwood from their office as well as from out office here.

Q. When you referred in your direct examination to branches you referred to those two?

A. I referred to those two, and I also referred to what I call operative branches; we have an office at Grants, New Mexico, that handles transportation matters and logging matters, nothing pertaining to sales; we also have an office at Cloudcroft, New Mexico, which fulfils the same purpose.

Q. And you think some of those branches may still be using the letterhead "White pine", do you?

A. They may be using the obsolete form.

Q. Do you have salesmen on the road?

A. We have no salesmen; we have commission representatives.

Q. They are selling for you rather than taking title and receiving shipment, aren't they?

A. They are.

Q. Do you know whether you have lost sales as a result of the use of the word "pondosa" instead of the word "white" pine?

A. I am not prepared to state; I am not in the sales depart-
3436 ment; we probably have, but I wouldn't want to say, because I don't know it to be a fact.

Redirect examination by Mr. WOOD:

Q. Do I understand you to say that you only have one sales office for the white Pinus ponderosa?

A. All of our Pinus ponderosa is sold from our Albuquerque office.

Q. And not from any of the other offices you refer to?

A. No.

Q. Your commission representatives throughout the country, do they use your letter forms?

A. No, sir; they use their own forms; they aren't provided with any of our stationery.

Mr. WOOD (to Mr. Burr). You don't care to have these books in evidence?

Mr. BURR. No, indeed; I will take the testimony as satisfactory. (Witness excused.)

DEWITT GARBER, called as a witness in behalf of the respondents, having been first duly sworn, testified as follows:

Direct examination by Mr. RYAN:

3437 Examiner BRULER. What is your name and address, please.

A. Dewitt Garber; Albuquerque, New Mexico.

Mr. RYAN. Mr. Garber, you are employed by the White Pine Lumber Company?

A. I am.

Q. What is your position with that company?
A. Assistant secretary and treasurer, and auditor.
Q. How long have you held that particular position?
A. I have held the position of auditor since about July 1925 and the other positions since the first of the year.
Q. First of January, 1930?
A. Yes, sir.
Q. When was the White Pine Lumber Company organized?
A. It was organized about 1922 or 1923, as I recall it, Judge.
Q. Its plant is situated where?
A. At Bernalillo, New Mexico.
Q. Where does it get its timber?
A. From the Canyon de Santiago land grant up in the Jemez Mountains.
Q. In New Mexico?
A. Yes.
Q. How far is that from Bernalillo?
A. About fifty miles to our logging camp.
Q. When did the White Pine Lumber Company begin operations?
A. About January 1st, 1924, as I recall.
3438 Q. And it operated from that date until when?
A. September 13th, 1928, we closed the sawmill.
Q. And also logging operations?
A. Well, we stopped the logging operations a short time before September 28th.
Q. When were logging operations resumed?
A. December 1929.
Q. They are now in progress, are they?
A. Yes.
Q. Preparatory to milling lumber?
A. Yes.
Q. And selling lumber?
A. Yes.
Q. As auditor or as assistant secretary and treasurer of the company, you are familiar with the affairs of the company, the business administrations of the company?
A. Yes.
Q. From the time of the inception of the company by what method were the sales of lumber handled?
A. We didn't have a sales manager until, I think, about the first of 1926, I don't recall the dates, they handled it themselves at Bernalillo; we didn't have much of a sales organization before that time, but, as I recall it, we employed a sales manager about the first of 1926.
Q. By that method the sales were handled directly by the
3439 company?
A. Yes.
Q. How long did that continue?

A. I don't know the exact time, but I should say in 1927 the sales were handled by the Southwest Lumber Sales Corporation of Albuquerque; I don't recall the date that sales organization took it over.

Q. That is the organization of which Mr. Ramshaw was at one time president and vice president?

A. Yes.

Q. I merely wanted to identify the same man that testified yesterday. I hand you a form of letterhead of the White Pine Lumber Company and ask you how long this form of letterhead has been in use by the company?

A. This is the form we are now using and have been using since the first part of 1926, I should say the early part of 1926.

Q. And that is the form of letterhead used in all your correspondence?

A. We are using that now. We had that one there——

Q. I will show you that.

(Letterhead marked "Respondent's Exhibit No. 52.")

Mr. RYAN. The respondent, White Pine Lumber Company, now offers in evidence the form of letterhead reading "The White Pine Lumber Company, manufacturers of high-altitude soft-texture double-band and resaw mill Pondosa pine, annual capacity
3440 60 million feet, modern millwork facilities, Bernalillo, New Mexico" (respondent's exhibit no. 52).

Examiner BRULER. Respondent's exhibit no. 52 is offered and admitted for the record.

Q. Now, at the time the company was handling its sales directly through its own organization, did you use this form of price list [handing witness price list]?

A. Yes; this was the form in use at that time we were handling our own sales at Bernalillo.

Q. And used by you up until the time that the sales of the company's product was handled by the Southwest Lumber Sales Corporation?

A. That is correct.

(Price list marked "Respondent's Exhibit No. 53.")

Mr. RYAN. Price list is offered as respondent's exhibit no. 53.

Examiner BRULER. Respondent's exhibit no. 53 offered and admitted for the record.

Q. This form of letterhead I hand you is the form of letterhead which you refer to as being used by the company prior to the use of respondent's exhibit no. 52?

A. This letterhead was used, as I recall it, prior to 1926; we still use some of the forms for communications between different departments, our logging camp, and mill superintendent.

Q. Just among the departments of the company at Bernalillo?

3441 A. Yes; none of this goes out to the trade; it was used prior to 1926.

(Letterhead marked "Respondent's Exhibit No. 54.")

Mr. RYAN. We offer this letterhead as respondent's exhibit no. 54.

Examiner BRULER. Respondent's exhibit no. 54 admitted for the record.

Q. I hand you form of invoice of the White Pine Lumber Company; how long has that been used?

A. Since the inception of the company, as far as I know; it was in use when I came to Bernalillo in February of 1925.

(Marked "Respondent's Exhibit No. 55.")

Mr. RYAN. We offer it in evidence as respondent's exhibit 55.

Examiner BRULER. Respondent's exhibit no. 55 offered and admitted as part of the record.

Q. This is a form of statement used by the company, is it? [Handing witness statement.]

A. This is a form used ever since I have been there, since 1925.

(Marked "Respondent's Exhibit No. 56.")

Mr. RYAN. We offer this in evidence (respondent's exhibit 56).

Examiner BRULER. Respondent's exhibit no. 56 offered and admitted as part of the record.

Q. Has the company done any advertising in trade journals you know of?

A. You mean the White Pine Lumber Company?

3442 Q. Yes.

A. Well, some local, just in programs.

Q. That is local advertising?

A. Yes; just more or less of a donation.

Q. That is in New Mexico?

A. Yes.

Q. But you haven't advertised in journals outside of New Mexico?

A. At one time we had several pages in the American Lumberman showing pictures of the mills, logging operations; I don't recall the date, but that is sometime ago.

Q. You haven't a copy of that advertising?

A. No.

Q. Beginning with 1927 when the sales were handled by the Southwest Lumber Sales Corporation——

A. I don't recall the date; I think it was 1927.

Q. They sold your product and after the sales you shipped directly to the buyer and sent the buyer the invoice?

A. Yes; they made the sale; we invoiced the lumber and made the collections.

Cross-examination by Mr. BURR:

Q. Where does your so-called "white pine" go; that is, what parts of the country?

A. It goes into the New England States, New York, Pennsylvania, Indiana, Michigan, Illinois, Kansas, Colorado, Oklahoma, Texas, principal points.

3443 Q. How large a percentage is sold right here in the State, more than half of it?

A. No; not half of it.

Q. Who are your customers; do you sell through commission houses, brokers, or how?

A. Before the Southwest Lumber Sales took it over we did sell more or less through commission men; a great deal of it was handled ourselves, but some sales were made through commission men.

Q. Well, now, since the Southwest Lumber Sales Corporation has discontinued selling your product, how are the sales now made?

A. We have had very little lumber to sell since then; we have been inoperative since 1928.

Q. That is right, I had forgotten. And you have just resumed?

A. Just resumed operations; we intend to start tomorrow with the mill.

Redirect examination by Mr. RYAN:

Q. Just one more question I didn't think to ask on direct examination. The contract with the Southwest Lumber Sales Corporation is not now in existence, is it?

3444 A. As far as I know it is not.

Q. And it is the plan of the company to sell directly through its own organization?

A. Yes, sir.

(Witness excused.)

W. G. RAMSHAW, recalled as a witness in behalf of the respondents, having been previously duly sworn, testified as follows:

Redirect examination by Mr. Wood:

Q. Have you a copy of the letterhead that is now in use by the Southwest Lumber Sales Corporation?

A. Yes, sir.

Q. Will you produce it?

(Witness produces letterhead, which is marked "Respondent's Exhibit No. 57.")

Mr. WOOD. I offer letterhead of the Southwest Lumber Sales Corporation now in use by it.

Mr. BURR. No objections.

Examiner BRULER. Respondent's exhibit no. 57 offered and admitted as part of the record.

Q. How long has that letterhead been used by the Southwest Lumber Sales Corporation to your knowledge?

A. Since July 1928.

3445 Q. Was that the date that the term "pick of the pondosas" was removed from the letterhead?

A. Yes.

Q. Do you know why it was removed?

A. Because it wasn't very appropriate for the general sales of the Arizona white pine.

Q. In what way?

A. Because the general trend of the trade is the Arizona white pine.

Q. Do you mean the word "pondosa" in your mind did not describe the Arizona white pine?

A. No; because the pondosa was used so much in the Spokane district.

Q. Were you the cause of the removal of the name from the lumber and sales list of the Southwest Lumber Sales Corporation?

A. Yes.

Q. And how long had the term "pick of the pondosas" been used?

A. About six months, I think.

Q. I believe you testified yesterday that a Mr. Hobb was responsible for it?

A. Yes; he had charge of the sales department.

Q. For about six months?

A. Yes.

Q. He came here from the North?

A. From Minneapolis.

3446 Recross-examination by Mr. BURR:

Q. The word "pondosa" suggests a technical name for the species that you are engaged in selling, ponderosa, does it not?

A. Yes.

Q. The word "pondosa" has been very extensively advertised, has it not?

A. Yes.

Q. Do you know whether that term is now being used by jobbers and wholesalers?

A. Yes, sir.

Q. In various parts of the country?

A. Yes.

Q. It is, is it?

A. Yes.

Q. Did you regard the use of the word "pick" in connection with the slogan "pick of the pondosas" as rather unfortunately comparitive in its character as against some of the other ponderosa manufacturers?

A. No; I didn't think it was appropriate for this district.

Q. Did you regard it as too much of a boast by saying the pick or best of the pondosas?

A. No; that wasn't my idea at all.

Q. That wasn't your motive to get rid of that. Now, there is just one question I would like to ask that was proper
3447 cross instead of recross, if I may. I think you testified that for French doors and windows the sugar pine was preferable, and I was going to ask you way, but it escaped my mind.

A. The sugar pine isn't considered a pondosa pine.

Q. I know it is not; I think you testified on your direct that the sugar pine was preferable to the pondosa for French doors and windows?

A. For certain purposes. It just seemed to be the choice of the sash and door manufacturers; that isn't my idea at all.

Redirect examination by Mr. WOOD:

Q. You stated that the term pondosa you know is being used by retailers and jobbers in selling ponderosa pine?

A. Yes.

Q. The term white pine is also being used by them, is it not?

A. Yes.

Q. Do you know which is being used the most?

A. I couldn't say that; no.

Q. Have you any opinion on the subject?

Examiner BRULER. If he says he couldn't say an opinion would be rather out of order, I should say.

Mr. WOOD. He has had occasion to see, he has been all over the country.

3448 A. From my own experience I would say the white pine is used more because that is my contact with the trade.

Q. In your contact with the trade, do they ever use the term "pondosa" in connection with your lumber?

A. Yes; they do.

Q. And they use the term "white pine"?

A. Yes.

Q. Which do they use more often?

A. In my experience, the white pine.

(Witness excused.)

GEORGE E. BREECE, called as a witness in behalf of the respondents, having been first duly sworn, testified as follows:

Direct examination by Mr. WOOD:

Examiner BRULER. Let me have your full name and address, please.

A. George E. Breece, Albuquerque, New Mexico.

Mr. WOOD. What is your age, Mr. Breece?

A. Sixty-six.

Q. Are you the president and general manager of the Breece Lumber Company?

A. Yes, sir.

Q. How long have you held that position?

A. Since its organization.

Q. And that was when, about eleven years ago?

3449 A. I can't now tell you the number of years, I forget.

Q. But ever since it has been organized?

A. Yes.

Q. Prior to that, were you in the lumber business?

A. Yes.

Q. How long have you been in the lumber business?

A. All my life.

A. You started as a sawyer?

A. I started in the sawmill.

Q. Where did you start?
A. Roundhead, Ohio.
Q. What kind of lumber did you manufacture there?
A. That was hard woods, oak, hickory, ash, and walnut.
Q. Subsequently you were in the lumber business in West Virginia?
A. Yes.
Q. What kind of lumber was that?
A. That was hardwoods; we had poplar and some hemlock.
Q. Then you went farther south?
A. Yes.
Q. And you were in the yellow-pine business in the South?
A. Yes.
Q. For how long?
A. For thirty years.
Q. During the World War were you connected with the United States Government in lumber matters?
3450 A. Yes.
Q. What position did you hold?
A. I had charge of the lumber department of the spruce division.
Q. Where were you located?
A. At Portland.
Q. Oregon?
A. Yes.
Q. How many mills does the Breece Lumber Company operate?
A. At present we are operating three mills.
Q. How many mills do you own?
A. That is all that is in operation; they were cut out other places.
Q. Where are those mills located?
A. Albuquerque, Alamagordo, and Monroe, Louisiana.
Q. At Albuquerque, what kind of lumber do you produce?
A. Pondosa pine.
Q. At the present time?
A. Yes.
Q. Any other?
A. Very little.
Q. Is that true also at Alamagordo?
A. We have the pine and have the fir.
Q. And how about your mill at Monroe?
A. That is yellow pine and some hardwood.
Q. What kind of yellow pine, both short and long leaf?
3451 A. Shortleaf and some longleaf.
Q. What is your present production of Pinus ponderosa?
A. I should say in one shift it is two hundred thousand feet; I have been only running one shift.
Q. A day?
A. Yes.
Q. What is your production of yellow pine at the present time?
A. At the present time it is small; we are pretty well cut out in yellow pine.

Q. About what percentage?

A. They run, I should say, about twenty-five percent yellow pine there now.

Q. Twenty-five percent of your total production?

A. Total cut.

Q. At one time——

A. It was all yellow pine at one time; now we are cutting the hardwood.

Q. Do you know the common name among the public generally in New Mexico for the ponderosa pine?

A. Well, we have always called it white pine.

Q. How long have you always called it white pine?

A. Well, I came out here in 1907 and looked over this tract, and it was called white pine at that time, the tract of timber we are now cutting.

Q. Would you say that is the common name for it throughout New Mexico?

3452 A. That was the common name throughout the State.

Q. And is it at the present time the common name?

A. At the present time it is the common name.

Q. On the occasion of the visit of a member of the Federal Trade Commission or investigator from the Federal Trade Commission at Albuquerque, you had a conversation with him, about two years ago?

A. I didn't, but the sales manager, Mr. Moore, did; I wasn't in the city.

Q. And as a result of that you changed the name from New Mexico white pine to pondosa pine in designating your product?

A. Yes, sir.

Q. What was the reason for that?

A. Well, we wanted to establish ourselves in some way; if we weren't to use white pine, we had to have some other trade name, and we just chose pondosa.

Q. Did you do it from preference?

A. No, sir.

Q. What name would you prefer to use?

A. White pine.

Q. Why?

A. It is the established word in this country; that is the established name of it.

Q. From the standpoint of the species and the general
3453 characteristics of the woods, is that a factor in your mind in determining that question?

A. The wood we have back there—would you gentlemen care to look at it?

Q. We will produce that later. Go ahead.

A. It is the same as white pine, as far as I can detect in any way. It looks like Michigan white pine.

Q. You consider it a real white pine?

A. Real white pine.

Q. Have you ever had an opportunity to observe the Michigan white pine?

A. Yes, sir.

Q. What has been that opportunity?

A. We used to have a yard—I was with the Advance Lumber Company for years—we had a yard in Cleveland, where we sold white pine.

Q. That is, the Michigan white pine?

A. Michigan and Minnesota.

Q. How, in your opinion, do the Michigan white pine and the ponderosa pine compare in general characteristics and texture?

A. Well, for finish, I think New Mexico white pine makes a better finish, the timber grows slower, it is an old-growth timber, and it makes a nicer finish.

Q. In any other way would you compare the two?

A. The Michigan white pine grows much larger; our pine in
3454 this country doesn't grow large; it is a very slow growth.

Q. What comparison would you make as to color?

A. Well, I think the New Mexico white pine is whiter; it has a whiter cast.

Q. Than the Michigan?

A. Than the Michigan. The difference lies in favor of New Mexico.

Q. From the standpoint of durability, what comparison would you make?

Mr. Burr. I wish you would qualify him on that first.

Q. Have you had opportunity to observe the durability of the Michigan white pine for exterior and interior work?

A. No more than the sale of it. I lived there—we sold it for years.

Q. You from time to time saw it in buildings?

A. I saw it in buildings, but I couldn't tell as to the years of durability.

Q. You have had opportunity to observe the durability of the New Mexico white pine?

A. Yes.

Q. From your observation, what would you say as to their comparitive durability?

Mr. Burr. I don't think he has qualified himself on that.

Examiner Bruler. No; I don't think he has qualified himself on that point. I don't think that question is proper.

3455 A. I couldn't say in regard to that; I think the two woods are on a par as to that.

Q. What would you say as to the difference between yellow pine—that is, the shortleaf and the long leaf—and the ponderosa pine?

A. There is no comparison in the two woods at all.

Q. In what respects?

A. Either in life or in color or in finish.

Q. Will you kindly state the differences as you have noted them that is, the short leaf and the long leaf—and the ponderosa pine?

A. Well, the yellow pine of the South, of course, is yellow; it grows with a quick growth, and it won't take finish and it won't take paint—that is, the paint won't hold on it; while the white pine will take a nice finish and it will hold paint, and it is superior in every way.

Q. By white pine, you mean ponderosa pine?

A. Ponderosa pine; yes, sir. I think the yellow pine has the greatest tensile strength than the white pine; it will carry a heavier load; it is better for certain classes of buildings where they have a heavy strain.

Q. Have you any other differences to note between the two?

A. Nothing, only the white pine is much better for doors, sash, interior finish that goes into a house, and is better for boxes and crates.

3456 Q. And why is it better for boxes and crates?

A. It makes a better-looking box and works easier, and it is lighter.

Q. Do you know whether the white pine or yellow pine is used for shook purposes in boxes at the present time?

A. Some of the yellow pine used there, but there is more white pine; people don't buy that yellow pine for shook.

Q. They used to, didn't they?

A. They used to down in Texas; in that part of the country the freight rates were so much better.

Q. At the present time they use the white pine?

A. They use the white pine, pondosa pine, and pay more money for it.

Q. And why is it preferable to the yellow pine?

A. It makes a nicer package; it is lighter wood, less freight.

Q. How about the comparison from the standpoint of nailing?

A. It nails easier.

Q. Does the yellow pine tend to split when nailed?

A. It splits easier than white pine does.

Q. Where do you sell your lumber?

A. Well, we sell it in New Mexico, Arizona, California, Texas, Arkansas, up in Michigan and Ohio, Illinois.

Q. You sell it throughout the country?

A. Throughout the country.

Q. What proportion of it is sold locally? By local, I mean

3457 in the State of New Mexico.

A. Well, I would say forty percent.

Q. Of your product is sold locally?

A. Yes.

Q. And the other sixty percent in the East and Southwest?

A. Larger in the West here, Texas, Arizona.

Q. What part of your lumber is sold in the Southwest—the area east of California? By that I mean the States of Arizona, New Mexico, Texas, Oklahoma, and Kansas.

A. In Arizona we sell nothing but box shook; in Texas we sell building material and box shook; the bulk of our lumber is sold through Kansas, Oklahoma, Texas, and New Mexico.

Q. For what purposes is it used through there?

A. Building purposes, boxes, crates.

Q. For exterior purposes in building?

A. Yes; for finish, anything that goes into a building.

Q. Framework?

A. Framework.

Q. Have you had an opportunity to observe how durable it is for exterior purposes?

A. In our own buildings out there it shows it; those buildings have been up, I think, twenty-eight years.

Q. And they are built of Pinus ponderosa?

A. Yes.

Q. Inside and outside?

A. Inside and outside.

3458 Q. What is their present condition?

A. Very good condition.

Q. Any evidence of rot and decay?

A. Some, of course.

Q. But no unusual evidence?

A. Where it lays close to the ground. I have samples there that I will show you gentlemen.

Q. Have you samples of that building?

A. Yes.

Q. Will you produce them?

A. Yes. This is part of the structure of the mill that laid on the ground, and that is the amount of rot in twenty-eight years [indicating another piece]. That didn't lay on the ground.

Mr. Wood. I would like to have those marked for identification.

(Marked "Respondent's Exhibits Nos. 58 and 59.")

Mr. Wood. I offer in evidence sample of Pinus ponderosa taken from the sawmill of the George E. Breece Lumber Company.

Examiner Butler. Respondent's exhibit no. 58 admitted in evidence.

Mr. Wood. And I offer in evidence another sample taken from the same mill.

Examiner Butler. Respondent's exhibit no. 59 offered and accepted in evidence.

Q. From what part of the mill were those exhibits taken?

3459 A. From under the back part of the mill; from under the mill.

Q. From the upper part?

A. No; on the ground.

Q. Did it lay on the ground?

A. This was exposed.

Q. Exhibit 58 was laid on the ground?

A. Yes; it was exposed to the ground.

Q. How about exhibit 57?

A. This was not.

Q. Where was that?

A. That is from the floor system; they are both from the floor system.

Examiner BRULER. Number 59 did not touch the ground?

A. No.

Examiner BRULER. Number 58 did touch the ground?

A. Yes.

Mr. WOOD. From the exterior construction?

A. Exterior construction in the lower part of the building.

Q. This is the one that touched the ground?

Examiner BRULER. I think you got them reversed. In order to get this matter straightened out, Mr. Wood, will you now state which touched the ground, by number, for the record.

Mr. WOOD. Exhibit 59 is the specimen of lumber that touched the ground, referred to by Mr. Breece in his preceding testimony.

3460 Q. Number 58 is the specimen of lumber which was in the building and did not touch the ground.

A. Yes; in the floor system.

Q. Which was in the floor system of the mill. What mill were they taken from?

A. Albuquerque sawmill.

Q. From the mill of the Breece Lumber Company in Albuquerque, to which you refer in your preceding testimony?

A. Yes.

Examiner BRULER. That corrects the record.

Q. Do you know how long those specimens of lumber have been in that mill?

A. The mill was built, I think, along about twenty-eight years ago; I can't state definitely; that is about the time; it must be along in there.

Q. Mr. Breece, have you any boards with you produced by your company?

A. Yes, sir.

Q. Of the different grades?

A. No, sir; showing the quality of the wood.

Q. Will you produce those.

(Witness produces boards.)

Q. I show you specimen of lumber; will you kindly describe it?

A. This is a piece of the wood from the Bernalillo mill down here at Bernalillo.

3461 Examiner BRULER. What kind of wood?

A. I would say it was white pine, but we have to say ponderosa; this is from the White Pine Lumber Company at Bernalillo.

Mr. BURR. Let me ask the colonel a question before it is offered.

A. The reason I am giving you these samples, we have them all in our own mill. I buy this lumber and sell it to the public, and we

have it from California, and we have it from Oregon and from our own State. It is all out here in the building; you can see it if you want to, but I want you to see the different casts of the white pine from Oregon and from California; this shows for itself here better than I can tell you.

Mr. BURR. Let me ask you a question or two in regard to that sample.

Q. Is that heartwood or sapwood, would you say?

A. It borders a little on the heart here, see. This is sapwood here.

Q. The part that has the yellowish grain in it is the heartwood?

A. Yes.

Q. Do you contend that that is about the average sample, or is that an especially good sample, or what?

A. I would say it is an average sample; that is the reason I brought the boards so you could see.

3462 Q. You would declare that to be an average sample?

A. I am going to tell you how we got this.

Q. I want you to answer the question, Is that an average sample?

A. This lumber is brought into our plant as finish.

Mr. WOOD. We identified this sample of lumber.

(Marked "Exhibit Respondent's No. 60.")

Examiner BRULER. Respondent's exhibit no. 60 is offered for identification.

Mr. WOOD. I offer for identification a sample with the word "California" on it.

(Marked "Respondent's Exhibit 61.")

Examiner BRULER. Respondent's exhibit no. 61 offered for identification.

Mr. WOOD. I offer for identification sample with the word "Arizona" written on it in pencil.

(Marked "Respondent's Exhibit No. 62.")

Examiner BRULER. Respondent's exhibit no. 62 offered for identification.

Mr. WOOD. I offer sample of lumber with Breece written in pencil on it.

Examiner BRULER. Respondent's exhibit no. 63 offered for identification.

(Sample marked "Respondent's Exhibit No. 63.")

Mr. WOOD. I show you exhibit no. 60, marked "Bernalillo

3463 Lumber", and ask where that came from?

A. That came from Bernalillo, the White Pine Lumber Company.

Q. Is that Pinus ponderosa?

A. It is what we call the pondosa white pine.

Mr. BURR. Is that the one as to which you testified as to the heart and sap wood a few moments ago?

A. No.

Mr. BURR. Is that an average sample of your wood?

A. That is an average sample of the finish we buy that comes from that mill.

Mr. Wood. I offer this in evidence.

Mr. Burr. No objection.

Examiner Bruler. Respondent's exhibit no. 60 offered and admitted in evidence.

Mr. Wood. I show you sample marked for identification "Number 61", containing the pencil marks on it "California", and ask you what kind of lumber that is?

A. It is the same thing.

Q. Pinus ponderosa?

A. Yes; that is from California.

Mr. Burr. What part, Colonel?

A. It is from the Clover Leaf Lumber Company.

Mr. Burr. Do you know where their mill is located?

A. The eastern part of California—Loyalton, Sierra County, California.

3464 Mr. Burr. Do you buy very much from the Clover Leaf Lumber Company?

A. I will explain to you how and why. Our timber, as I said on the start, is small. We don't cut as much wide lumber as we use. We have to buy our grain boards, our wide finish, from California. The timber grows bigger there, and we get wider boards, and we have to have it for drain boards in our sales of lumber. I get it out there—we buy it from them.

Mr. Burr. Referring to respondent's exhibit no. 61, would you say about three fourths of it is heartwood?

A. That is the reason I gave you—that is for that reason. This is the heartwood, and this the sap part of that wood; this is just bordering on the heart [indicating].

Mr. Burr. That finger won't show in the record; just say how large a percentage is heartwood and sapwood?

A. I will leave that to you; that is in the center.

Examiner Bruler. You are testifying; not he.

A. I would say the sapwood represents about half of that piece, wouldn't you?

Examiner Bruler. Don't ask questions; you are testifying.

Mr. Burr. Let me call your attention to the line that appears to be about in the middle of the stamp——

A. The yellow starts in about there—the yellow cast.

Q. Doesn't the yellow cast start in right through the middle of the rubber stamp?

3465 A. I would say that far over; wouldn't you?

Mr. Burr. You are the lumber expert; I am not.

A. Right there is where it starts in, just about one third sap.

Examiner Bruler. Then you want the record to show, Colonel, that that piece is just about one third sap?

A. Yes.

Mr. BURR. Is it about the average sample of what you get from California?

A. That is an average sample cut off; the whole board is there, too. We buy it C and better.

Mr. BURR. You regard that C select and better?

A. That is clear; we buy it C and better.

Mr. WOOD. You make a distinction between clear and C and better?

A. One grade higher.

Examiner BRULER. Very well, Mr. Wood; do you want to offer that in evidence now?

Mr. WOOD. I offer this in evidence, this sample marked for identification "Respondent's Exhibit No. 61."

Examiner BRULER. It may be admitted.

Mr. WOOD. I show you sample marked for identification "Respondent's Exhibit No. 62", having in pencil on it the word "Arizona"; is that a Pinus ponderosa piece of lumber?

A. Yes.

Mr. WOOD (to Mr. Burr). Do you want to ask any questions on this?

3466 Mr. BURR. Is that heart or sap?

A. Well, it is cut out of the sap; it is into the—close to the heart.

Q. It is pretty hard to say whether it is sap or heart?

A. Well, no.

Q. You think that is heart?

A. It is bordering in towards the heart; it is quite a little ways to the bark, and the growths begin to show, and the yellow cast begins to show there on it.

Q. Is that about the average piece of the Arizona ponderosa?

A. Of course, we have it with more sap than that, but in cutting the clear stuff that is an average piece, some of it whiter, might be a little closer to the heart; of course, the sap is the white wood; as you go in then it begins to get this color.

Q. That yellowish color?

A. Yes. As you get into the heart of the log.

Examiner BRULER. What you aim to say is that piece of wood represents a piece that is taken near the heart of the tree?

Mr. BURR. You don't mean the center?

A. Not near the center at all; probably one fourth in on the log, something like that, from the looks of the grain. It ain't sap and it ain't heart; it is between.

Examiner BRULER. That is what I had reference to when I asked you that question.

3467 Mr. BURR. From that part of the tree, that is the usual sample, is it?

A. Yes.

Mr. WOOD. I offer sample marked for identification, "Respondent's Exhibit No. 62."

Examiner BRULER. It is received in evidence. Go on.

Mr. WOOD. I show you sample of wood marked for identification "No. 63", and ask you what kind of lumber that is?

A. That is pondosa; white pine we call pondosa.

Q. Where did you get it?

A. Out of our lumber; that is all sap.

Mr. BURR. Is that about the average piece for your sapwood?

A. Yes, sir; our trees grow smaller and the sap is the big part of the log.

Mr. BURR. How large a percentage is sap, Colonel?

A. I would say it is about—nearly two thirds; would be in feet, two thirds of the log.

Mr. BURR. That, as a matter of fact, is a very choice piece of sap, isn't it, Colonel?

A. No; there is some over there. I just sent the man out. I didn't pick any of this stuff myself. I ordered them picked out.

Mr. BURR. Would you say your sapwood runs as clear and as broad as that on the average?

A. In the high-grade lumber; yes. Go out and look at it.

3468 Mr. BURR. That is an A select, isn't it?

A. That is the highest grade.

Mr. BURR. In other words, that is above the average?

A. Sure; we don't get any big percentage of that kind; that is what I am showing you, all of this wood.

Mr. BURR. I was asking you if that is average for sap?

A. The sap is clear.

Mr. WOOD. That is the average for sap of that grade?

A. Yes.

Mr. BURR. But that is an A select clear?

A. Sure. I would like just for your own knowledge to show you those boards, you don't need to take them. What I am trying to do is to show you what our timber is.

Mr. BURR. Have you got some boards you would like me to see?

A. Yes.

Mr. BURR. All right; I will look at them.

Examiner BRULER. You can take samples of them.

Mr. WOOD. I am offering exhibit 63 in evidence.

Examiner BRULER. That will be admitted.

(All parties inspect lumber samples.)

Mr. BURR. Colonel, do you recognize any more an A select grade?

A. Any more what?

Q. At this time do you have a grade you sell as A select?

A. We don't sell anything A select at all.

Q. Then, when I asked you a few moments ago if a certain

3469 board was A select, that was a B select?

A. B and better and C; we sell those. That is the way we grade them.

Q. That was a B and better piece?

A. That was a B a&d better.

Q. I used the word "A select", and it should have been B select and better.

Mr. Wood. You mean all the exhibits put in have been B and better?

A. Yes.

Mr. Burr. Then you do have a grade of first and second clear, do you not?

A. No.

Q. Do you follow the grades of the California white and sugar pine?

A. We buy that B a&d better.

Mr. Wood. You follow the grades of the California mills, don't you?

A. That probably is in name, when we buy a B a&d better; that is a clear board.

Q. You have the same grading, do you not, as the California mills?

A. If we have to have any lumber graded, if we ship it off and there is any objection, we are governed by those rules.

Mr. Burr. When you said a few moments ago that all the
3470 pieces you have testified about were B a&d better you referred to respondent's exhibits 60 to 63, inclusive?

A. Yes, sir; I brought the lumber because I didn't think maybe the pieces were big enough to satisfy you.

Mr. Wood. I show you a door, and ask you to have it marked for identification.

Examiner Bruler. It may be so marked, "Respondent's Exhibit 64."

(Door marked "Respondent's Exhibit No. 64.")

Q. Colonel Breece, of what wood is that door made?

A. White pine, we call it—pondosa.

Q. Of what grade is it made?

A. It is taken from shop.

Q. Shop lumber?

A. Shop lumber it is cut out of; it is clear.

Mr. Burr. Where did that particular lumber that is in respondent's exhibit 64 for identification, where did that come from?

A. From our mill here; it was made from our shop lumber in the yard; I am told by the door man that made it. He will testify to that.

Q. Do you know whether that was made from Arizona or California pondosa?

A. It came right here from New Mexico; that is our shop lumber in the yard.

Q. Is that made from heart or sap, or what?

3471 A. It is both; that is the reason I brought it here. It has got sap and it has got heart—it has got it all there.

Q. That is made from number one shop, is it?

A. What we call shop common, four quarter shop common.

Q. Shop common has knots in it, hasn't it?

A. Sure, but we cut that out in making a door.

Q. It isn't number one common shop?

A. It is made from shop; it is what they call shop.

Mr. Wood. I offer this sample of door, marked for identification "No. 64", in evidence.

Examiner Bruler. It is admitted.

Mr. Wood. May I ask if there is any objection to our introducing that large door if we ship it?

A. It shows the samples of wood exactly—the heart and the sap.

Mr. Burr. If the examiner please, I rather urge that you can prove most any kind of thing by samples; and opposing counsel in California more or less cooperated in cutting down expenses, and you must realize we have quite a little in the way of exhibits already, and I will say this, the multiplication of a great number of samples would serve to befog the Commission, and serve to have them disregard them all, rather than if we have just a few samples which can be readily comprehended.

Mr. Wood. If we would be allowed to send that one sample it would be sufficient.

3472 Mr. Burr. I am not going to object; I think it is competent.

Examiner Bruler. If you want to offer that sample and will be solely responsible in seeing it gets to Washington, it may be offered.

Mr. Wood. We will.

(Door marked "Respondent's Exhibit No. 65.")

Q. Referring, Mr. Breece, to sample of door marked for identification "Exhibit No. 65", will you state what kind of lumber that door is made of?

A. It is called pondosa, but it is white pine.

Q. Pinus ponderosa?

A. Yes.

Q. Do you know by whom that door was made?

A. Whitmer Jackson Company.

Q. Where did the lumber come from?

A. From our mill over there.

Q. Your mill where?

A. In Albuquerque.

Q. The door came from Whitmer Jackson's; are they sash and door manufacturers in Albuquerque?

A. They have their sash and door plant—they have our sash and door plant leased and we sell them our shop and lumber.

Q. Where did the timber come from?

A. The Zuni Mountains.

Q. Where are they located?

3473 A. In McKinley and Valencia Counties.

Examiner Bruler. New Mexico?

A. New Mexico.

Mr. Wood. What grade of lumber is used for it?

A. Shop.

Mr. Burr. Now, referring to respondent's exhibit 65, Colonel, referring to the top, the crosspiece—I don't know the technical name of it—that is about half heart and half sap, isn't it?

A. I would think so; don't you?

Examiner Bruler. Don't ask him a question; answer his question.

A. I am just guessing the same as you would be; you said about half. I think you are right.

Q. Referring to the two side pieces, are they heart or sap?

A. They are sap on this side.

Q. Referring now to the side where the Commission's mark is located?

A. This is bordering on the heart, don't you see?

Q. There is a line of demarcation between the heart and sap, is there, in the side piece?

A. Yes, sir; this is sap on this side, you see.

Q. Referring to the side, the perpendicular part, where the Commission's exhibit stamp is located, that is largely heart, is it?

A. No; it isn't largely heart. Here is the heart along here.

3474 Here is sap along out here; it is just bordering on the heart. That is off of the center of the log. It ain't heart and it ain't sap; that looks as though it was all sap.

Q. Referring now to the other perpendicular piece, you say it looks as though it was all sap?

A. That looks as though it was on that side; yes, that is all sap.

Q. Now, then, referring to the part below the open space; the first piece is all sap, is it?

A. This piece is all sap; yes.

Q. The first panel?

A. That is about, I should say, one third in towards the heart; it is betwixt and between, bordering on the heart; it hasn't got into the red wood yet.

Q. The next panel is all sap?

A. That is sap.

Q. The next panel is what?

A. That is sap; this is bordering on the heart here. You can see there as well as I do.

Q. Now, then, referring to the bottom cross board?

A. That shows the heart there.

Q. About half heart?

A. About half heart, over half heart.

Mr. Wood. Colonel Breece, how do your customers order ponderosa pine?

3475 Mr. Wood. I offer in evidence respondent's exhibit no. 65.

Examiner Bruler. It may be admitted in evidence.

Q. Colonel Breece, how do your customers customarily order Pinus ponderosa from the Breece Lumber Company? Under what name, if you know?

A. We advertise it as pondosa; I can't say just how they do that.

Q. You receive orders?

A. We receive orders, but I don't take care of that part of it.

Q. Do you ever receive any orders under the name of yellow pine?

A. Never.

Q. Did you ever see any orders under the name of soft pine?

A. Well, I have had them to inquire for soft-texture pine; I have noticed sometimes.

Q. But have you had the term "soft pine" used in ordering, to your knowledge?

A. I will tell you we get all kinds of terms; they ask for all kinds of stuff.

Q. Tell us what they ask for.

A. They ask for white pine, pondosa pine.

Q. Those are the two main things they ask for?

A. Yes.

Q. But they never have asked for yellow pine or western yellow pine?

A. I never had an inquiry; yes, I have seen inquiries for western yellow pine.

3476 Q. Were they from the Government?

A. I don't think so.

Q. Have you seen many inquiries for western yellow pine?

A. Very few.

Q. Did you at any time maintain retail yards outside of Albuquerque?

A. Yes, sir.

Q. Where did you maintain those?

A. Kansas and Colorado.

Q. How many yards did you maintain?

A. We had five.

Q. For how long a time did you maintain them?

A. Now, I can't just state the length of time; anywhere from three to five years.

Q. Did you sell any other kind of pine there?

A. Yes.

Q. Did you sell any other kind of pine ther?

A. Yes; we sold yellow pine at one of the yards. We sold the white pine at the other yards—pondosa pine.

Q. Do you know what purposes they were sold for?

A. Building purposes.

Q. In those yards, do you know how your customers used to order lumber from those yards?

A. Well, they would send us an order for what they needed.

Q. Sometimes they would designate it pine, sometimes white pine——

3477 A. All the yards handled it, and they would order it as white pine, pondosa pine.

Q. Then they would designate pondosa pine, white pine, or pine?

A. No; we advertised it as pondosa pine; I believe we did; I won't make that positive.

Q. Your customers in ordering sometimes ordered as white pine, didn't they?

A. I don't know; I didn't run the yards.

Q. You don't know how the customers ordered?

A. I don't know how they ordered; I wasn't there, but I know that is all we had in the yards.

Q. Has the Breece Lumber Company at any time, to the knowledge of yourself, received any complaint or objection on the part of a manufacturer of strobus pine, Idaho white pine, or sugar pine, to the use by the Breece Lumber Company of the term "New Mexico white pine", when you used it?

A. I don't know just what you mean by that.

Q. At any time has the Breece Lumber Company, to your knowledge, received any objection by any manufacturer of other pines—that is, the so-called "genuine white pines"—to the use by the Breece Lumber Company of the term "New Mexico white pine" in marketing your product?

A. I have never had any complaints in marketing our products.

Q. Have you had any other jobbers object?

A. Why, sometimes maybe the grades wouldn't be just right
3478 or the texture of the wood wouldn't be; we might have too many knots.

Q. Have you had any objection to the species that was given them?

A. Any what?

Q. Have you ever had any wholesaler or retailer object to the species of lumber that was given them when they ordered New Mexico white pine and received New Mexico white pine?

A. No, sir; never had any trouble on that score.

Q. Have you ever had any customers, so far as you know, state or represent to you or the Breece Lumber Company that in receiving Pinus ponderosa from you that they had expected to receive some other kind of a white pine?

A. No, sir.

Cross-examination by Mr. BURR:

Q. Colonel, when you were back there in Michigan and familiar with the northern white pine——

A. I wasn't back in Michigan.

Q. In Ohio, and familiar with the white pine, would you state whether that product had a high reputation for durability where exposed to the weather?

A. It did.

Q. If you were advising anybody for a drain board where it was going to be alternately wet and dry, would you advise ponderosa or northern white pine?

3479 A. If ours was white enough, I would say New Mexico white pine; I think it is better and I will tell you why: It is a slower growth than Michigan or California; the heart is smaller; it wouldn't hold the dampness or absorb the water much—there is no place for it to go.

Q. The cells are in an entirely different shape from the genuine white pines of the northern woods, aren't they?

A. I don't think so.

Q. Would you be surprised if you were informed that the experts have testified that the cells of the genuine white pines are different in shape from the cells of the ponderosa pine?

A. I have never been able to note it with my eye.

Q. That is a microscopic matter, those cells, isn't it?

A. They grow so fine in this timber here you can't detect it with your eye.

Q. What do you mean by a drain board?

A. They use them, I guess, where the ladies wash dishes in the kitchen to drain the dishes on.

Q. It is exposed to the running water, is it?

A. Yes, it is; after they wash the dishes they put them up there and have them drain off.

Q. Ponderosa doesn't have as high a reputation for durability as Michigan white pine, does it?

Mr. WOOD. Are you referring to any particular part of the country?

3480 Mr. BURR. Outside of this place, where they don't use the northern white pine.

A. This pine hasn't been known out of the State to amount to anything.

Q. Your answer would be it hasn't as high a reputation for durability as Michigan white pine, would it?

A. It is owing to where we talk about the reputation; in New Mexico it is good. Talk about reputation for durability, some of this pine has been in use for hundreds of years here in New Mexico.

Q. This is a very dry climate, isn't it?

A. Just now it is.

Q. It is a very dry climate usually, isn't it?

A. We don't have much rainfall here.

Q. And there is no humidity in the atmosphere to speak of?

A. Not much.

Q. That makes a difference in the durability of lumber, doesn't it?

A. That makes a difference in the growth of timber and makes it more compact, and it will last longer and take a better finish.

Q. It makes a difference also in the length of time where lumber exposed to the weather will last, this question of humidity, doesn't it?

A. What is that?

Q. The matter of humidity makes a difference in the length of time where lumber ordinarily will last when exposed to
3481 the weather, doesn't it?

A. I think so; we all agree to that.

Q. Returning to this question of reputation, the northern white pine of Michigan and Maine has a higher reputation than the ponderosa for durability where exposed to the weather, doesn't it?

A. Has a higher reputation?

Q. Yes.

A. It has been used back East longer.

Q. Your answer is yes, isn't it?

A. No; that ain't my answer.

Q. Answer yes or no and explain after.

A. It has a reputation back East, but take it out in this country where this wood is used, this wood is considered the most lasting wood there is.

Q. Northern white pine hasn't been used in New Mexico, has it?

A. It has been used in Kansas, through there.

Q. Let me get you to answer this question: In the eastern part of the country where you market your goods, which has a higher reputation for durability where exposed to the weather—the northern white pine or the New Mexico white pine?

A. I am not competent to answer that question; I don't know.

Q. You don't know?

A. I don't think any of us know.

Q. Now, do you have any sale for your product for pattern purposes?

3482 A. No, sir; if we do we don't know it. To begin with, we don't make pattern lumber.

Q. How do you mean?

A. We don't make any heavy planks; they want two, two and a half, three inch heavy planks for patterns, as a rule; we don't make it.

Q. You don't make it wide enough for that purpose?

A. We don't make it thick enough; we don't offer it for sale.

Q. I think you said there was no comparison between the yellow pine of the South and New Mexico or Arizona white pine, did you not?

A. I think so. Here it is; I will let you judge it.

Q. I am not the judge in this case, Colonel.

A. When you see it, that is the best way to tell it.

Examiner BRULER. Just answer the question; we will get along faster.

A. I have answered that question.

Q. Now, Colonel, do you sell your lumber for structural building purposes, beams, things of that kind, stringers?

A. Bridges—the State uses them for bridges all over the State.

Q. Do you regard that a safe use for that purpose?

A. The State engineers do; I will be governed by them.

Q. You also in this country use yellow pine of the South for that purpose?

A. Not that I know of.

3483 Q. It is used in other parts of the country?

A. There is some fir used here, but I don't think the yellow pine ever comes up here; I think it is shipped in here for piling purposes, where it is treated.

Q. You do use yellow pine and sell yellow pine from the Louisiana plant for those purposes, don't you, for structural work?

A. For house building; things of that kind.

Q. And for stringers?

A. No; we don't find any used for stringers.

Q. The yellow pine is used for that purpose, is it not?

A. It used to be the longleaf was used for stringers.

Q. Do you think the ponderosa is as strong for that purpose as the yellow pine?

A. No, sir.

Q. How do you think it compares?

A. In comparison, we use it in the highway, railroad stringers.

Q. You use it for bridges?

A. Yes.

Q. How much larger do you have to get it in order to have it equally strong with yellow pine longleaf?

A. I am not an engineer; I couldn't tell you the exact difference in strength; I would't be competent to do that. I will say to you that yellow pine is stronger, has more tensile strength, than our white pine here.

3484 Q. A smaller piece will do for the same strength of the yellow pine?

A. I think so, of the yellow pine; that is what all architects and everybody claim.

Q. You testified about your buildings from which respondent's exhibits 58 and 59 came?

A. Yes.

Q. Now, where were those buildings, that mill from which these came?

A. From underneath the mill out there; from the floor underneath.

Q. Where is that mill located?

A. Out here in Bernalillo County, in my mill yard right outside the city of Albuquerque.

Q. These were supports for the floor, were they?

A. They were joists underneath there.

Q. Underneath the building?

A. Underneath the floor. We have timbers out there that old that we are piling lumber on yet; you can go out and see them.

Q. Is it sometimes difficult to detect whether a given piece of your Arizona Ponderosa pine is heartwood or sapwood?

A. I don't think so.

Mr. WOOD. You mean, Arizona or New Mexico?

Mr. BURR. New Mexico, I should say.

A. No; anybody can tell the difference.

3485 Q. You seemed to hesitate over your testimony as to some of those pieces, where that line came.

A. I don't know whether my eyesight was as good as yours.

Q. Colonel, I am not an expert on that subject, and several times you used the term, "it is getting towards the heart."

A. That is what it is; here in the log here [indicating], and as you go in, you keep going in, of course, the grain gets larger as you go in, this is the white wood, still white wood here, grain keeps getting larger as you go in there, after a bit you strike the red wood.

Q. The heartwood is the redder type?

A. When it gets into the heart, of course, that is just cut lumber; you don't get any of the finish in the heart you are talking about, but it is bordering on the heart, the red part of the log.

Q. I think you used the word "heart" in two different senses in your testimony.

A. I was just trying to show you.

Q. The last time you used the word "heart" you used it in connection with the place where all the knots are.

A. I didn't say all the knots; you got that wrong. I was just trying to show you how the heart was in the log and how you cut in the log; I kept telling you those boards were one third or such a matter in the log towards the heart; as you go in, it gets more pronounced.

3486 Q. Isn't there a line of demarcation where you can say just where the heart beings and the sap leaves off?

A. Sure, if you have the 'og, but we couldn't do it in a board; you can't always tell just where it begins in a board, but if you will look at the log you can tell; no man in the world can tell exactly where it begins in a board.

Q. You woud say, would you, Colonel, that there is a——

A. Now, get this right. Now, here is what happens: You throw the log on the carriage here, you place it on your carriage, and you see in here, here is the sap portion.

Q. This won't all get on the record; this won't mean anything.

A. And as you go into the log the grain gets more pronounced, larger, and finally you have got to the red wood, if there is any in the tree, but when you get one fourth in your grain gets a little larger—that is your growth—and it keeps on until it gets to the heart. Every board you get off of there, it has a different look, until you get clear to the heart of the tree, and as you get to the heart the growths get bigger around the heart like that as we cut. You are a lumberman, or seem to be——

Examiner BRULER. Don't ask so many questions; you do the testifying.

Q. Would you say that there is a positive line of demarcation between the sapwood and heartwood of lumber?

A. Sure. The sapwood, of course, is different, just as I told you, and as you go in——

3487 Q. Sometimes in the case of viewing a board it is difficult to tell with this New Mexico white pine, so called, whether a given piece is heartwood or sapwood, is it?

A. It is hard to tell what part of the log it comes from exactly, if it ain't all sap it is closer to the heart, and then you cut in and it will be all heart.

Q. Colonel, when you changed from the word "heart" in your trade term to "pondosa", did you find that you lost a lot of sales to the people who were calling it white pine?

A. No, sir; I have always had sale for all of my lumber.

Q. Did you find you got a less price than you had been getting?

A. No, sir.

Q. Didn't bother you at all to make that change?

A. I ain't bothered a bit with the price.

Q. It hasn't bothered you at all to make that change?

A. It hasn't bothered, I don't think.

Redirect examination by Mr. WOOD:

Q. You say it hasn't bothered you to make the change from New Mexico white pine to pondosa pine from the standpoint of price and sale?

A. We never changed the price any; we know it is white pine.

Q. But as a matter of fact, you would prefer to use the word "New Mexico white pine"?

A. Sure; I have testified to that.

(Witness excused.)

3488 *Stipulation re effect of evidence taken elsewhere, etc.*

Mr. BURR. It is hereby stipulated, subject to the approval of the Commission, that all of the objections and exceptions heretofore made in this group of proceedings on behalf of other respondents, and any which may still be made at the hearings in Chicago and elsewhere, if any, shall inure to the benefit of respondents located in Arizona and New Mexico. It is further stipulated that the said respondents are entitled to the benefit and are charged with the disadvantages that may result from the testimony taken in these proceedings prior to the hearing at Flagstaff and at Albuquerque, and also of all testimony that may be taken for or against the other respondents at hearings yet to be held, to the same extent and in the same manner as is the case as regards other respondents.

Mr. WOOD. In which stipulation we join.

Mr. RYAN. And in which stipulation we join.

Mr. BURR. I move now we do adjourn to No. 2243 Transportation Building, Chicago, to meet for defense purposes primarily on Wednesday, the 19th day of February 1930, at 10 o'clock a.m.

Examiner BRULER. The motion is granted, and the taking of testimony in this matter is now continued unto the time and place above specified, pursuant to the order of the Commission.

(Testimony closed.)

3489 Before the Federal Trade Commission

Docket Nos. 1620–1629, inclusive

In the matter of White Pine cases

WEDNESDAY, FEBRUARY 19, 1930.

Met pursuant to adjournment 10:00 o'clock a.m.

Before: William W. Sheppard, examiner.

Appearances:

Eugene W. Burr, Washington, D.C., for the Federal Trade Commission.

Carl I. Wheat, representing McCutcheon, Olney, Manon & Greene, Balfour Building, San Francisco, California, for respondents.

Jesse Andrews, for respondents.

3490 PROCEEDINGS

The examiner convened the hearing pursuant to the adjournment taken in the case by the examiner then presiding in the city of Albuquerque, New Mexico, on the 11th instant, and reconvened by order of the Commission in Chicago before the examiner taking the place of the substituted examiner.

Examiner SHEPPARD. All right, gentlemen, I am ready to hear whatever you want to submit.

Mr. WHEAT. I will call Mr. Hornibrook.

Examiner SHEPPARD. All right, Mr. Hornibrook.

C. W. HORNIBROOK was thereupon recalled as a witness and, having been previously duly sworn, testified further, as follows:

Direct examination by Mr. WHEAT:

Q. You have appeared on the stand, on the witness stand, in this case at a prior hearing held in Madison, Wisconsin, have you?

A. Yes, sir.

Q. Subsequent to that hearing did you, at my request, make an examination of certain urns on the Charles Street Meeting House in the city of Boston?

2491 A. Yes.

Q. Will you state now what examination you made and what you found the situation to be?

A. Those urns—I was unable to make as close an examination as I would like to have, because of the rather precarious condition of the ladders inside the building and the ice on the roof, and one thing

and another, but those urns were built up and glued and then turned. They set about 40 feet above the level of the street, and the glue joints are open and can be seen from the street. And can be seen plainer from inside the steeple of the building as far up as I went. And that would just open the way for possible decay. I cannot say to what extent they had decayed.

Q. Now, would you say that the position in which these urns are placed is a difficult one for wood to be placed in?

A. Ordinarily; yes, sir.

Q. In your opinion and in your experience—well, may I first ask, did you climb to the steeple of this Charles Street Meeting House and obtain a close view of these urns?

A. Yes, sir. About eight or ten feet away.

Q. Did you take any photographs of the urns?

A. I only took one from the street. Had it enlarged. It does not show the glue joints.

Q. Does it show the location of the urns and how they are placed, exposed to the weather?

3492 A. Yes, sir.

Mr. WHEAT. Mr. Examiner, if there are no objections, I should like to have this photograph marked as respondent's exhibit in this matter.

Examiner SHEPPARD. Any objection, Mr. BURR?

Mr. BURR. None whatever.

Examiner SHEPPARD. Let it go in and be so marked.

(Said photograph was thereupon received in evidence and marked "Respondents' Exhibit No. 66.")

By Mr. WHEAT:

Q. Now, could you see the open glue joints from the street below the steeple of this meeting house?

A. Yes, sir.

Q. And could you also see them from the steeple when you climbed to the top?

A. Yes.

Q. Were they open to such an extent that moisture could enter into the interior of the urns?

A. Yes. The paint seal was broken.

Q. In that connection, have you found any other instances of wood failure which would confirm your opinion which you have just expressed as to the possibility of rotting because of exposure or the opening of joints?

A. Yes, sir.

Q. Will you just explain what this was?

3493 A. In the yard of the Charles H. White Sons Company in Philadelphia, Pennsylvania, at 18th and Indiana Avenue, they have some garage doors which they said were made of sugar pine, and the joints, the bottom part of all of these doors are all

rotted; some of them more visibly than others; but you can stick a knife in these lower joints any place.

By Examiner SHEPPARD:

Q. What house was that?

A. That is the garage at the yard of the Charles H. White Sons Company in Philadelphia.

By Mr. WHEAT:

Q. What, in your opinion, Mr. Hornibrook, was the cause of this particular instance of rotting?

A. I took a sample from one of those doors to show in connection with these pictures. These diagonal braces——

Q. Wait a minute. I will have to ask to have these photographs marked for identification first.

A. All right.

Mr. WHEAT. I will ask that the one you hold in your hand be marked "Respondents' Exhibit No. 67" for identification, if that is agreeable.

Examiner SHEPPARD. It may be so marked.

(Said document was thereupon marked "Respondents' Exhibit No. 67" for identification.)

Mr. WHEAT. And the second one as "Respondent's Exhibit
3494 68" for identification.

(Said document was thereupon marked "Respondents' Exhibit 68 for identification.")

By Mr. WHEAT:

Q. Will you please consider exhibit 67 for identification, and state where in that photograph this instance of wood failure occurred?

A. These diagonal braces come made up of the same size as this piece here, set in diagonally on the door; the water and rain fell on there and just ran down in the corner joints, and has no chance to run out.

Q. Did those joints open?

A. Some of them have opened. Most of them have rotted inside, as this piece here has [indicating]. This piece shows more evidence of rot from the outside than some of the others.

Mr. WHEAT. I will ask, Mr. Examiner, that the wood sample which he holds in his hand be marked "Respondents' Exhibit 69 for identification" at this time.

(Said sample was thereupon marked "Respondents' Exhibit No. 69 for identification.")

By Mr. WHEAT:

Q. When you mentioned "this piece of wood", you referred to respondents' exhibit 69 for identification, didn't you?

A. Yes, sir.

Q. Now, will you take the photograph which is marked
3495 "Respondents' Exhibit 69 for identification", and explain what that shows?

A. This is a close-up view of the joint from which this sample was cut.

Q. You mean when you say "this sample", you mean exhibit 69 for identification?

A. Exhibit 69.

Q. What, in your opinion again, was the cause of the deterioration of the wood?

A. The rain running down the joint, running down the sides of the piece into the joint.

Q. Now, Mr. Hornibrook, in connection with respondents' exhibit 69 for identification, have you had that examined by a wood technologist in order to ascertain what variety of wood it is?

A. Yes, sir.

Q. Will you explain, please?

A. It was examined by Professor Caylor, at Madison, Wisconsin, last week, and identified as of the——

Mr. BURR. Wait a minute; wait a minute. I think that is all hearsay.

By Mr. WHEAT:

Q. I will ask you whether you consulted Professor Caylor as to this piece of wood.

A. Yes, sir.

3496 Q. I will ask you what Professor Caylor reported it to be?

Mr. BURR. Wait a minute. That is all hearsay.

Mr. WHEAT. Now, Mr. Burr, what Professor Caylor reported these woods to be has been given by your witnesses time and time again, as the examiner will recall. In Detroit you asked the question time after time——

Mr. BURR. It was objected to and ruled out and we put Caylor on the stand.

Mr. WHEAT. It was not ruled out, Mr. Burr, as to what he said it was.

Mr. BURR. Oh, it was, and we put him on the stand. We went to Madison and put the gentleman on the stand; and, furthermore, you remember, you objected as hearsay to reports and correspondence of the same identical character as this as hearsay and it was ruled out.

Mr. WHEAT. I am not asking for a report.

Mr. BURR. I know, but you are asking for an oral statement of what the report was, which is hearsay second removed from the ordinary and legitimate testimony.

Mr. WHEAT. I will submit that this witness is entitled to make a statement as to what was found to be the species of the wood.

Examiner SHEPPARD. Mr. Wheat, of course, as Mr. Burr says, that testimony is clearly hearsay.

Mr. WHEAT. I agree.

3497 Examiner SHEPPARD. The best testimony would be the testimony of the gentleman himself, of course. If there is objection, I will have to sustain it. I hate to do it at this stage of the game.

Mr. WHEAT. Do you press your objection?

Mr. BURR. Certainly.

By Mr. WHEAT:

Q. Mr. Hornibrook, in your experience, have you had experience with both California white pine and sugar pine over a period of years?

A. Yes, sir.

Q. Will you take in your hand respondents' exhibit for identification no. 69, and, if you are able to identify the same from your experience, will you state what, in your opinion, that species of wood is?

Mr. BURR. Wait a minute. Better qualify him as an expert witness along that line. Let us see what he knows before he gives a guess.

Mr. WHEAT. I will submit that on the qualifications which he has already stated in the record, Mr. Burr, at length at the Madison hearing, showing his many years of experience in the selling of these woods.

Mr. BURR. Let me ask him a question or two before that matter is put.

Mr. WHEAT. Go ahead.

3498 Mr. BURR. Maybe I shan't object.

Examiner SHEPPARD. Go ahead.

By Mr. BURR:

Q. Have you ever taken a course in wood technology?

A. No, sir.

Q. Do you understand the testimony to be in this case that there are various varieties of yellow pine which cannot be distinguished in small samples among themselves?

A. Yes, sir.

Q. And the same is true of white pine?

A. Yes, sir.

Q. Now, have you made a study so that you are able to detect with a microscope whether the species of wood is of one variety of pine or another?

A. No, sir.

Mr. BURR. I submit he is not qualified.

Examiner SHEPPARD. I doubt if his testimony would help me much, Mr. Wheat.

Mr. WHEAT. I will ask that these samples of woods, that these exhibits marked for identification, now be received in evidence.

Examiner SHEPPARD. Any objection?

Mr. BURR. Yes; I object. I do not think they are competent. I do not think they are shown to be relevant to the issues in the case.

3499 Mr. WHEAT. I will ask the examiner, in order to conserve time and be certain of that, if in this connection and with

one other connection in this case which will appear in a moment, I will later wish to take the deposition of Mr. Caylor by correspondence, by written interrogatories, and that a sample of this piece of wood be sent to Professor Caylor again, and as to another matter which will come up in a moment, that the same be done.

Examiner SHEPPARD. Where is this professor?

Mr. WHEAT. He is at Madison, Wisconsin.

Examiner SHEPPARD. Couldn't you get him down here?

Mr. WHEAT. I doubt if we could get him down now.

Examiner SHEPPARD. That is the easiest way out.

Mr. BURR. He can come down in about three hours.

Examiner SHEPPARD. Get him down here and have his testimony. It takes a long time to get a deposition. It is rather a formal proceeding.

Mr. BURR. You have to make out formal interrogatories and——

Mr. WHEAT. I have done it forty times.

Mr. BURR. And so have I, but at the same time it holds up the case.

Mr. WHEAT. We are not in any rush. Well, I will be glad to see whether I can obtain Mr. Caylor's attendance at the hearing.

3500 Examiner SHEPPARD. Yes.

Mr. WHEAT. Probably tomorrow morning.

Examiner SHEPPARD. That will be all right.

Mr. WHEAT. I am not certain that I can.

Examiner SHEPPARD. It may delay things some, but I want you to have time to put your case in, absolutely.

Mr. WHEAT. I will do my best.

Examiner SHEPPARD. If Mr. Burr objects to it, I will have to, as I have already, uphold the objection; but if there is any way that you gentlemen can get together on it, I am perfectly willing.

Mr. WHEAT. We will attempt to obtain his attendance.

Examiner SHEPPARD. All right.

By Mr. WHEAT:

Q. Mr. Hornibrook, since the last hearing in this case, have you consulted the grading rules applicable to Arkansas soft pine?

A. Yes, sir.

Q. I will ask you whether or not those grading rules provide for any so-called "shop grades"?

A. No, sir.

Q. I will ask whether in selling California white pine from which sash and doors are made, in whatever grade that may be, you find that you come into competition with so-called "Arkansas soft pine"?

3501 A. No, sir.

Mr. WHEAT. You may cross-examine.

Cross-examination by Mr. BURR:

Q. Referring to respondents' exhibit 66, did you understand that some of these urns have been replaced?

A. Yes, sir.
Q. Did you examine the urn in the basement of the building?
A. No, sir.
Q. The removed urn?
A. I could not find it.
Q. You could not find it?
A. No, sir.
Q. Do you know whether it was one of the old ones or one of the new ones that you looked at?
A. One of the old ones.
Q. One of the old ones?
A. Yes; one that was put in, I understood, in 1920.
Q. Do you remember which one of these three that are in view in the picture you examined?
A. This one in the north corner.
Q. In the center of the picture?
A. Yes.

3502 Q. In the center of the picture. You say this was exposed to the weather. Is it your understanding that the liability of wood to decay is about proportional to the exposure to wet and drying processes alternately?
A. Not necessarily.
Q. Then what is the relevancy of your testimony to the effect that this was strongly exposed to the weather conditions?
A. The fact that practically nothing but end grain exposed on those urns. End grains absorb moisture and let the moisture out faster than a flat piece will.
Q. Now, that exposure to the weather does promote decay, of course, does it?
A. Yes, sir.
Q. And decay is more or less proportionate to precipitation and humidity, is it?
A. If the wood has the opportunity of absorbing it, and holding it.
Q. Sometimes painting actually induces decay, does it, by holding moisture in when it has had a chance to get out?
A. Sometimes; yes, sir.
Q. Now, referring to respondents' exhibit 68—by the way, has this been received?
Mr. WHEAT. For identification.

By Mr. BURR:

3503 Q. For identification. Will you state whether the rotted portion that is here dispayed is that which was exposed to weather rather than the painted portion?
A. No, sir; it was just the reverse.
Q. This is the part that was not exposed to the weather; is that true?
A. That picture is the portion that was exposed to the weather; yes.

Q. That is taken then from the outside?
A. Yes.
Q. Was that a painted surface?
A. Yes, sir.
Q. That is the picture of respondents' exhibit no. 69, is it?
A. Yes, sir.
Examiner SHEPPARD. Which one of those, Mr. Burr, on your picture? Is this straight here [indicating]?
Mr. BURR. I am referring to the obviously badly rotted piece to the left-hand side of the picture.
Examiner SHEPPARD. No; this or that [indicating].
Mr. BURR. That is what I am asking.
Examiner SHEPPARD. Go ahead.

By Mr. BURR:

Q. Respondents' exhibit 69 is the same as the piece which is shown at the left of the picture 68; is that true?
A. Yes, sir.
Examiner SHEPPARD. That is what I wanted to know.
Mr. BURR. I beg pardon?
3504 Examiner SHEPPARD. That is what I wanted to know.
Mr. BURR. Yes.

By Mr. BURR:

Q. And the picture—this is taken from the exterior of the building, is it?
A. Yes, sir.
Q. Now, the moisture, under your theory, ran down the inside of the piece, did it?
A. Ran down the edge of the piece [indicating].
Q. Ran down the edge of the piece?
A. Yes, sir.
Q. And then arose along that inside, is that true?
A. Under the joints.
Mr. BURR. That is all.
Examiner SHEPPARD. Anything else, Mr. Wheat?
Mr. WHEAT. No.
Examiner SHEPPARD. You are excused, Mr. Hornibrook.
(Witness excused.)
Mr. WHEAT. I will ask, Mr. Examiner, that respondents' exhibits 67 and 68 for identification be now received for the record.
Examiner SHEPPARD. They are those two pictures?
Mr. WHEAT. Those are the two photographs.
Examiner SHEPPARD. Any objection, Mr. Burr?
3505 Mr. BURR. I will suggest that we postpone that until we find out what kind of wood this is.
Mr. WHEAT. I am perfectly willing to do that.
Mr. BURR. All right.
Examiner SHEPPARD. I was going to ask if the record shows what kind of wood it is.

Mr. BURR. It does not.

Examiner SHEPPARD. Not yet.

Mr. BURR. No, indeed.

Examiner SHEPPARD. All right. I will put off the ruling on it until that comes in.

All right.

Mr. WHEAT. Call Mr. Murtha.

JAMES J. MURTHA was thereupon called as a witness and, having been duly sworn, testified as follows:

Direct examination by Mr. WHEAT:

Q. What is your name?

A. James J. Murtha.

Q. Where do you reside?

A. Kansas City, Missouri.

Q. In what business are you engaged?

A. Carpenter business with the R. A. Long Building.

Q. What is your position with the R. A. Long Building?

A. I am head carpenter.

3506 Q. How long have you been connected with that building?

A. Since March 6, 1911. Nineteen years the sixth of next March.

Q. What are the exact nature of your duties there?

A. Looking after all repairs in the building, carpenter work, and other work around, repairing and such.

Q. In that connection, do you have personal charge of all the work?

A. Yes, sir.

Q. Does that include the inspection and repair or rehanging of sash?

A. Yes, sir.

Q. I will ask whether or not the R. A. Long Building contains wooden sash?

A. Partly, and part metal.

Q. How many double-hung sash are there in that building?

A. Altogether?

Q. Yes.

A. I believe 827.

Q. How many wood sash?

A. 633.

Q. 633 out of the 827 are wood?

A. Yes, sir.

Mr. WHEAT. I will say for the examiner's benefit that we
3507 will undertake through Professor Caylor to identify the species of the wood when he arrives, which is used in those sash.

By Mr. WHEAT:

Q. I will ask you, Mr. Murtha, whether on February 10th you furnished me with three small cuttings from sash in the R. A. Long Building.

A. Yes.

Q. Was the sash from which you cut those small samples in place in the building?

A. Yes.

Q. Had it been in place ever since you have been in your present position with the building?

A. Yes, sir.

Q. So far as you could tell, Mr. Murtha, was this sash similar to the rest of the sash in that building?

A. Yes, sir.

Q. Did you select the sash from which to cut these small samples at random?

A. Yes, sir.

Q. I will ask whether or not you have ever replaced any sash or parts of sash in that building because any portion had decayed, and if so, explain just exactly what you did.

A. I never replaced a complete sash. I have replaced parts of sash, like meeting rails. I do not know whether you gentlemen know what a meeting rail is, but it is where the two sash
3508 meet right in the center there [indicating]. They are rabbitted so that they fit together tight when the window comes down or up.

Q. Does that mean the upper rail of the lower sash or the lower rail of the top sash?

A. Both on the top sash—the meeting rail on the top sash.

Q. Now, will you tell how many such meeting rails you have ever replaced in that building, and for what reasons?

A. Well, I would say a conservative estimate would be about seven; not more than seven windows that I remember.

Q. How many of those were replaced because of the wood rotting?

A. Well, I would say possibly about four.

Q. And for what reason did you replace the other meeting rails?

A. Defective woodwork.

By Mr. BURR:

Q. What is that?

A. In that case that was where a knotty piece of wood had been run in or a cross-grain piece. The last sash I took out, I believe was in Mr. Robinson's office, if I am not mistaken, and that was a long meeting rail with a knot and a cross-grain piece; that grain ran angleways instead of running longways of the sash.

By Mr. WHEAT:

Q. Did that meeting rail fail because of rot?

3509 A. No, sir.

Q. Now, what is the condition of the sash in general in the R. A. Long Building?

A. Well, from my observation, of course I haven't went over it lately, but I have a year ago, we go over it every year and make sure everything is all right, and they were in pretty good condition at that time. I would say in good condition.

Q. When was the R. A. Long Building constructed?

A. In the years 1906 and '07. I believe it was started in the early part of 1906 and opened up in March 1907. I only have that from the plans. I was not at Kansas City at that time.

Q. But you have been directly connected with the building, have you, since the year 1911?

A. Yes, sir.

Q. I will ask whether or not in Kansas City these sash are exposed to snow in the wintertime and to warm and humid weather in the summertime?

A. Very much so.

Q. Also to considerable rain and precipitation?

A. Yes, sir. Up until a few years ago we had no building on either the east or south side, and they were subject to considerable rain and snow; extreme hot suns in the summer.

Q. Has the painting of these sash ever been neglected over any period of years?

A. Yes; it was, during the war period, everybody was busy
3510 thinking of the war and the sash were neglected and they went for three or four or maybe five years without painting.

Q. Have you noticed any deterioration caused by that neglect?

A. Nothing with the exception that the putty came loose and we had considerable reputtying. If we had let the painting go much longer, of course, the rain would have got in the joints and worked a hardship on them.

Q. Did you find in reputtying the windows that there was rot or deterioration of that sort in the sash?

A. No, sir.

Mr. WHEAT. You may cross-examine.

Cross-examination by Mr. BURR:

Q. Do you know whether all of the wooden sash in the R. A. Long building is the same material?

A. Every one that I have handled so far.

Q. I beg pardon?

A. Every one that I have handled so far.

Q. Seems to you to be of the same material?

A. Yes, sir. Of course, we have considerable sash to ease once in a while on account of swelling, damp weather, or something like that.

Q. You are not qualified to make sure that it is the same species of wood, are you, in each case throughout the building?

3511 A. Well, I would not say yes to that question.

Q. I beg pardon?

A. I would not say yes to that question.

Q. No.

A. With the exception of my mechanical ability to determine wood.

Q. You would have to say "no" as to your knowledge of woods, would you not, and the identity of them?

A. Yes.

Q. Were the metal sash in that building put in prior to your time?

A. Yes.

Q. Do you know whether they were put in right at the beginning when the building was built?

A. Yes; I understand they was.

Q. They put in some metal and some wood?

A. Yes.

Q. Did they put the metal sash on only one side of the building?

A. On the west and the north sides.

Q. West and north sides?

A. Yes.

Q. And the wood on the south and east; is that true?

A. Yes. The wood is on the street sides of the building and the metal is on the north side where buildings are adjoining
3512 but do not come up as high. That is a fire wall.

Q. I see.

A. Also on the west.

Q. That distinction was then on account of the fire regulations?

A. Yes, sir.

Mr. BURR. That is all.

Mr. WHEAT. That is all, thank you.

Examiner SHEPPARD. Thank you. You are excused.

Mr. WHEAT. May I ask Mr. Murtha another question?

Examiner SHEPPARD. Sure.

Redirect examination by Mr. WHEAT:

Q. Mr. Murtha, have you brought with you a sample piece of one sash which was taken from the R. A. Long Building?

A. Yes.

Mr. WHEAT. I will say, Mr. Examiner, that I will ask Mr. Caylor when he arrives to make an examination of this sash. I may also state that I myself have already had Professor Caylor make an examination of the four samples of this sash but I will place that on the stand myself when Professor Calyor arrives.

Examiner SHEPPARD. All right.

Mr. BURR. Just marked for identification.

Mr. WHEAT. Will you mark for identification the wood
3513 sample which the witness holds in his hand as respondents' exhibit 70?

(Said sample was thereupon marked "Respondents' Exhibit No. 70" for identification.)

By Mr. WHEAT:

Q. Mr. Martin, I am not certain whether or not I asked you whether the wood samples, the small samples which you stated were

cut from the sash in the R. A. Long Building at random, were delivered to me on the 10th of January.

A. Yes, sir.

Q. Those were the three small samples, were they?

A. Yes.

Q. I will ask you whether this piece of sash, respondents' exhibit no. 70 for identification, shows any signs of rotting? And I also will ask you to explain the condition of the inside of the hole, how that happened?

A. I haven't noticed any deterioration in the wood. There is one place here where the metal dowel was. In putting the sash together they put a metal dowel in. Some people use wood dowels and others use metal dowels. There is where the metal dowel was in there. And in cutting this sash I had to hammer it so as to get the metal dowel out and it tore one side of the wood at one place. But I did not notice any deterioration there.

Q. I ask you whether that, in your opinion, is a fair sample
3514 of the sash and their condition, in the R. A. Long Building?

A. That is a very fair sample. That sash was in place for twenty-one and a half years, and it was only removed because I took out the window frame and took out the window. The people had a vault there, the Long Bell Lumber Company had a vault, and, of course, you could not have a window in a vault.

Mr. WHEAT. I will ask that that be received at a later time.

Examiner SHEPPARD. All right, just mark it.

Recross-examination by Mr. BURR:

Q. Those three samples that you cut, how were those taken? Were those taken all on the same side of the building or from both sides?

A. No; they were taken from one side of the building—no; two sides of the building.

Q. I beg pardon?

A. They were taken from two sides of the building.

Q. They were taken from two sides of the building?

A. One sample was taken from the court side of the building, and the other two were taken from the south side.

Q. Those taken from the south side were taken from different sash, I suppose?

3515 A. Yes, sir.

Redirect examination by Mr. WHEAT:

Q. Were they also taken from different floors?

A. Different floors.

Mr. WHEAT. I think that is all, sir.

The WITNESS. Well, sir, we could not take a big piece out of one, just took a small piece just back of the pulley side of the window in back of the stop. If you took too big a piece, it would show.

By Mr. BURR:

Q. That piece you have in your hand, respondents' exhibit 70, that is a piece that was exposed to the weather, is it?

A. Yes, sir. That is right where the meeting rail starts on the sash, that is the bottom side of the sash.

Q. Which surface is exposed to the weather there?

A. This [indicating].

By Mr. WHEAT:

Q. Will you explain which?

A. Just where it was at the side of the window, just inside of the window. Just outside of the window here. [Indicating.]

Q. Pardon me just a minute. That won't show in the record when you say "this." Will you explain for the reporter which you mean when you say "this" and "that"? Which side do you

3516 refer to as the exterior side of this sash?

A. This side [indicating].

Mr. BURR. The side with the tag.

The WITNESS. The side where the tag is on is the exterior side of the sash. The mahogany side is inside of the room.

By Mr. WHEAT:

Q. You mean the side finished in dark red?

A. Yes.

By Mr. BURR:

Q. The part where the paster is is the part exposed to the weather?

A. Yes, sir.

Examiner SHEPPARD. All right. Much obliged to you.

(Witness excused.)

H. T. HANSEN was thereupon called as a witness, and having been duly sworn, testified as follows:

Direct examination by Mr. WHEAT:

Q. What is your name?

A. H. T. Hansen.

Q. Your full name is Hans T. Hansen?

A. Yes.

Q. Where do you reside?

A. At Menominee, Michigan.

3517 Q. What is your business?

A. Inspector of lumber.

Q. How long have you been in that business?

A. More than 36 years.

Q. In connection with what wood have you been engaged in the profession of inspector of lumber?

A. I do not understand that question.

Q. In connection with what woods have you engaged in the business of inspector of lumber?

A. White pine, hemlock, and hardwoods.

By Mr. BURR:

Q. And what?

A. White pine, hemlock, and hardwood.

By Mr. WHEAT:

Q. Would you say that that included all of the commercial species of woods grown in what territory?

A. In northern territory. This territory.

Q. What States would that include?

A. Michigan, Wisconsin, and Canada.

Q. Just what is the nature of your inspection business?

A. I work for a firm who inspect, disinterested party between the buyer and seller, disinterested inspection bureau.

Q. Is that a customary matter in connection with the sale of lumber from the territory to which you have referred?

A. Yes, sir.

3518 Q. How long has that been the custom?

A. Well, for over forty years, to my knowledge.

Q. Are there other firms, or have there been other firms in your experience engaged in this same business?

A. Yes, sir.

Q. Will you tell me whether there are now as many such firms as there used to be?

A. There are a few left, sir.

Q. Since what period?

A. They commenced to dwindle about 1910, or it is 1900, I would say.

Q. For what reason have these firms gone out of this business?

A. Mostly on account of the white pine playing out, dwindling.

Q. Have you been constantly employed by the same firm during the whole period of your experience?

A. Yes, sir.

Q. I do not know whether you stated in what year you began this work?

A. In 1892 I started to learn inspection, and qualified as an inspector in 1896.

Q. Have you been continuously engaged in that business since that date?

A. Yes.

3519 Examiner SHEPPARD. Mr. Wheat, I would like from this gentleman whether he inspects lumber already manufactured or standing lumber or what?

Mr. WHEAT. Yes.

By Mr. WHEAT:

Q. Just explain to the examiner exactly what you do.

A. We inspect manufactured lumber.

By Examiner SHEPPARD:

Q. Manufactured lumber?

A. Yes.

Examiner SHEPPARD. All right. Go ahead.

By Mr. WHEAT:

Q. How are you called upon to inspect manufactured lumber, and by whom?

A. The contracts are made mentioning our concern as inspector in measurements of lumber.

Q. Contracts between whom?

A. Buyer and seller.

Q. Is that a general custom in that part of the country?

A. Yes, sir.

Q. Has it been throughout your entire experience?

A. Yes, sir.

Q. During the entire time that you have been employed by this firm—will you first tell us the name of the firm, and then tell me whether or not you have regularly inspected northern

3520 white pine.

A. I have been working for the Coman Inspection Bureau since 1892.

Q. During that period have you regularly inspected northern white pine?

A. Yes, sir.

Q. May I ask you, during the first few years of your work as an inspector for this bureau, what was the predominating softwood?

A. White pine.

Q. Has your work in connection with northern white pine increased or decreased during the period of your experience?

A. Decreased.

Q. Will you state the nature of that decrease and the time?

A. The timber played out and each year there was less white pine manufactured.

Q. How was this lumber shipped predominatingly in the early period of your inspection?

A. By cargo shipments.

Q. By water?

A. By water.

Q. To what particular destinations?

A. Chicago, Milwaukee, Buffalo, and Tonowando, New York.

Q. Do cargo shipments of northern white pine move today?

A. No, sir; very few.

3521 Q. How many cargo shipments do you have any personal knowledge of in the last ten years, for instance?

A. Perhaps fifteen.

Q. During the last year or two?

A. About three.

Q. Do you know, as a matter of fact, of any mills in the region producing northern white pine which now produce sufficient lumber, or lumber in sufficient amount to continue the practice of selling their log-run production in cargo lots?

A. No, sir.

Q. May I ask you whether or not that was at one time the general practice?

A. Yes, sir.

Q. Do you know whether there is any large stand of northern white pine left in the States of Wisconsin or Minnesota or Michigan?

A. No, sir.

Mr. BURR. He doesn't know?

The WITNESS. I do not know.

By Mr. WHEAT:

Q. You do not know?

A. I do not know.

Q. Do you know whether there is any such stands?

A. I understand there is some. To my knowledge, I do not know. I have never seen it.

3522 Q. Do you know whether or not any large white pine producing mill has closed down in recent years? If so, what is it?

Q. Quite a few of them have closed.

Q. Just state some of those.

A. In recent years only?

Q. Yes.

A. Well, there was a mill at Rapid River, Michigan, the Collins Lumber Company. They manufacture some pine. And last year the C. H. Worcester Lumber Company at Chessel, Michigan.

Q. Is there a mill producing northern white pine at Virginia, Minnesota?

A. No; I don't think so.

Q. Did there use to be?

A. Used to be.

Q. Has that closed down?

A. I understood it closed down some time ago.

Q. Will you state what company that was?

A. Virginia & Rainey Lake Lumber Company.

Q. Have you ever visited the mills producing northern white pine at Cloquet, Minnesota?

A. Yes, sir.

Q. When was the last date that you visited that mill?

A. 1918.

Q. Did you at that time notice the size of logs of northern
3523 white pine which were being cut at that mill?

A. Yes.

Q. Will you state what in your opinion was the average size of those logs?

A. About twelve inches.

Q. How many?

A. About twelve inches.

Q. Have you ever been in the Pinus strobus region, the northern white pine producing region of Canada?

A. Yes.

Q. Will you state whether or not the trees produced in that Pinus strobus region are larger or smaller than those with which you were familiar in Michigan, Wisconsin, and Minnesota territory?

A. Smaller.

Examiner SHEPPARD. Where is the Pinus strobus region of Canada you refer to?

By Mr. WHEAT:

Q. Where is it?

A. In Ontario.

By Examiner SHEPPARD:

Q. Ontario, the Province of Ontario?

A. The Province of Ontario.

Examiner SHEPPARD. All right.

By Mr. WHEAT:

3524 Q. Have you ever had occasion to notice the average size of the logs being cut in that area?

A. Yes, sir.

Q. Will you state what that was, from your experience?

A. About ten inches.

Q. Are you familiar with the grading practices in connection with the northern white pine, or have you been during all of this period?

A. Yes, sir.

Q. Has it been a part of your duty to keep fully informed of any changes in these practices?

A. Yes, sir.

Mr. BURR. If the examiner please, I am going to object to the introduction of the grading rules.

Mr. WHEAT. I am not introducing the grading rules.

Mr. BURR. Go ahead, answer that question.

Mr. WHEAT. I do not intend to produce the grading rules.

Examiner SHEPPARD. I think I said in New York I did not care anything about the grading rules.

Mr. WHEAT. No; I am merely asking as to the general practice.

Examiner SHEPPARD. All right, go ahead.

By Mr. WHEAT:

Q. Has it been a part of your duty to keep fully informed as to any change in these practices during that period?

3525 A. Yes, sir.

Q. Have you done so?

A. Yes.

Q. Without going into the particular detail, will you please tell the Commission how the general practices in shipping northern white pine differ today from when you started in this business?

A. When I started in, the practice was to cut four quarters, and the saps are piled by themselves and generally sold pile run.

By Mr. BURR:

Q. Sold what?

A. Pile run.

Q. I did not get you.

A. Pile run.

By Mr. WHEAT:

Q. Just as it runs?

A. Straight trees, pile run.

Q. When you started in grading or inspecting northern white pine, was bright sapwood considered a defect?

A. Yes, sir.

Q. What is the general practice now in selling northern white pine?

A. The defect is not considered—bright sap is not considered a defect.

3526 Q. When you say "bright sap", you mean to distinguish it from stained lumber?

A. Stained sap; yes.

Q. When you started inspecting northern white pine, did you say that you piled sapwood separately?

A. Most of the mills piled their saps separately. They called them saps.

Q. Now, when you started in inspecting northern white pine, would the average width of the boards or the logs run greater or less than it is today?

A. Greater.

Q. To what extent, sir?

A. I would say they would average more than twice as wide as they do today.

Q. What have been the underlying reasons for the changes which you have mentioned in the practice with reference to sapwood in inspecting and shipping northern white pine during this period?

Mr. BURR. I think you better qualify him on that. What does he know about it? I would like to know whether he knows what the reasons for it are.

By Mr. WHEAT:

Q. I will ask you, Mr. Hansen, whether or not the northern white pine has been constantly decreasing in amount, so far as its shipments have been concerned, throughout the period which

3527 you mentioned?

A. Greatly decreased.

Q. Pardon me?

A. Greatly decreased, sir.

Q. Has this practice of being more lenient in regard to sapwood been growing or lessening during these years in which you have been engaged in this business?

A. Would you repeat that, please?

Q. Has the practice of being more lenient with sapwood been growing or lessening during the period in question?

A. Lessening—I did not get your question. What is it?

Q. Have the inspectors of northern white pine been growing more lenient with sapwood?

A. Growing more lenient; yes, sir.

Q. You did not mean they had been growing less lenient when you answered the other question?

A. I did not get the drift of it there. They have not considered sap a defect.

Q. In what period?

A. For many years, late years.

Q. When you first started in grading northern white pine, was sap considered a defect?

A. Yes, sir.

Q. I see. Now, in inspecting northern white pine, have you found that it varies in its texture?

3528 A. Yes, sir.

Q. Will you explain?

A. Well, it is sometimes hard to tell it from Norway.

By Mr. BURR:

Q. From what?

A. From Norway.

By Mr. WHEAT:

Q. By Norway, you refer to Norway pine?

A. Norway pine.

Examiner SHEPPARD. Does the age of the tree have any effect on the texture?

The WITNESS. I do not know, sir.

By Examiner SHEPPARD:

Q. In other words, a tree that is many years old, does the texture of that differ from a younger tree?

A. I think not. I think it depends on where it grows, the height, high and low altitude, swampy ground or dry ground. That is my opinion.

By Mr. WHEAT:

Q. In that connection, Mr. Hansen, have you found that there is a greater proportion of sapwood in the smaller trees?

A. Yes, sir.

Q. What did lumbermen and millmen call northern white pine when you first started in inspecting this wood?

A. Pine.

3529 Q. Just pine?

A. Pine, yes.

Q. What did they call Norway pine?

A. Norway.

Q. When did the term white pine begin to come into practice, in your work?

A. In later years when they started cutting hemlock and hard wood.

Mr. WHEAT. That is all.

Cross-examination by Mr. BURR:

Q. What is the name of your concern?

A. It was John S. Coman. Now, Mr. Coman died and it is H. L. Coman, his son, continued on.

Q. Coman, how do you spell that?

A. C-o-m-a-n.

Q. Now, when you first went into this business of inspecting, the association did not have an inspector, did they?

A. Not in our territory; no, sir.

Q. Now they have inspectors, don't they?

A. Yes.

Q. Most of the inspection business is going through the association at the present time, is that true?

A. No, sir; not ours, sir.

Q. I beg your pardon?

3530 A. No, sir.

Q. But I mean, of the northern white pine that is cut, most of it goes through the inspectors of the association, does it not?

A. No, sir.

Q. Well, a great deal of it does.

A. Not as much as we ship.

Q. What?

A. Not as much as our concern ships.

Q. I see. How much does your concern inspect every year?

A. Well, in years past we have shipped up to 200,000,000 a year.

Q. How much are you shipping now?

A. Now, perhaps, I would say, about three or four million white pine.

Q. Three or four million?

A. Yes.

Q. How many concerns are there engaged in competing with you in that line of inspecting?

A. Not any, now.

Q. I see. As a matter of fact, would you be willing to swear that the inspector of the association does not inspect considerably more than you do?

A. Well, sir, I would not swear.

Q. You would not swear?

3531 A. In my opinion, he does not. I am personally acquainted with one of the association inspectors and we have talks at times, and I know from his say-so that he does not inspect anywhere near the amount that I do.

Q. I see. Now, how many inspectors are there in connection with the association?

A. There is two that I know of.

Q. Giving their entire time to it?

A. Yes.

Q. How many has your firm?

A. Our firm has right now four.

Q. Four giving their entire time to it?

A. Well, there isn't enough pine to ——

Q. Can't you answer the question whether or not they are giving their entire time to it?

A. Yes; I would say so. Yes, sir.

Q. They are giving it?

A. Yes.

Q. Now, when did the association begin its official inspection of the lumber?

A. I could not say the year, sir.

Q. Well, it has been several years back, has it?

A. Oh, yes.

Q. The inspection by associations is more widely the custom nowadays than by individual firms, isn't it?

3532 A. In our territory, it is not.

Q. Is your firm a licensed inspector for the National Hard Wood Association?

A. Yes, sir.

Q. How long has such been the case?

A. I could not say how many years, sir. Over twenty.

Q. It is association inspection, then, that you do?

A. Not in pine, sir.

Q. Not in pine?

A. Not in pine.

Q. The hardwood inspection that you do is association inspection now?

A. Yes.

Q. How long has that been the case?

A. More than twenty years. I could not say how many years.

Q. Now, in the lumber business, the general status is for one mill to play out and another one to go into business, isn't that true, cutting various territories?

A. Well, there has been very few new ones started in late years.

Q. Well, they have started in Canada during your recollection, haven't they? New mills? In your early days they did not cut any in Canada to speak of, did they?

A. I do not know anything about that. It is about fifteen or sixteen years ago when we started to go to Canada.

3533 Before that time I do not know anything about Canada.

Q. They were not cutting up there at that time?

A. Oh, yes, they were cutting, but we did not get the business.

Q. They were cutting for local business, weren't they?
A. I think their output went east, to Tonawando and Buffalo.
Q. What section of Canada have you visited?
A. I have been to Little Current, Ontario, and Cutler, and St. Joseph's Island.
Q. How long were you at St. Joseph's Island?
A. I was there about ten days.
Q. How long at Cutler?
A. Only a few days.
Q. How long at the other place that you mentioned?
A. Little Current, I was there several times.
Q. How long ago have those trips been made?
A. Well, last year I was at St. Joseph's Island, and about twelve or fourteen years ago I was at Little Current.
Q. Twelve or fourteen years ago?
A. Yes.
Q. Now, the direction the lumber goes has changed during these years, hasn't it? It does not go east by the lake so much nowadays, does it?
A. No, sir.
Q. Even the part that is still being cut goes in a different direction, doesn't it?
3534 A. I think so, sir.
Q. Yes; and that would account in part for the change in the cargo shipments, would it not, that you testified about?
A. Well, not so much.
Q. It would in part, would it?
A. Part, yes, sir.
Q. I see. Your cargo shipments of hardwood have also fallen off during that period, have they not?
A. Yes.
Q. Also of hemlock?
A. Yes, sir.
Q. Are you familiar with the New Mexico northern white pine—I mean the New Brunswick northern white pine?
A. No, sir.
Q. You don't know how much is going out of New Mexico, do you?
A. No, sir.
Q. You don't know anything about how much goes out of Maine or New England, do you?
A. No, sir.
Q. There is still virgin white pine being cut in Minnesota, is there not?
A. I do not know, sir.
Q. How long were you at Cloquet on your visit?
A. I was there several times in 1918.
3535 Q. You have not been there since, is that true?
A. No, sir.

Q. Who is doing the inspecting up in Canada to the extent that you are not doing it?

A. I do not know, sir.

Q. You do not know whether the association is doing it or whether there are other inspectors doing it, is that true?

A. No, sir.

Q. Where is your concern located, at Menominee?

A. Menominee, Michigan.

Q. Now, if clear lumber is asked for, that does not include sap, does it?

A. We have years ago—no, it would not include sap.

Q. It does not now, does it?

A. Clears?

Q. Yes.

A. When you say clear——

Q. There is such a grade, is there not?

A. We don't make it.

Q. What?

A. No, sir; it is not recognized.

Q. It is not recognized?

A. In northern territory.

Q. If clears were asked for, it would be without sap, would it not?

3536 A. No, sir.

By Examiner SHEPPARD:

Q. What is the best grade, B and better?

A. Today, B and better is the best grade.

Q. That was my impression.

A. The upper grades have been dropped.

Q. Yes. What is this association you have referred to? Is that the White Pine Association?

A. It is the Northern Pine Manufacturing Association.

Q. Northern Pine Manufacturers Association?

A. Yes. They maintain two inspectors that go around regardless of the company inspector.

Examiner SHEPPARD. I see.

The WITNESS. They do a lot of inspecting.

Examiner SHEPPARD. Anything else with this gentleman?

By Mr. BURR:

Q. Are you grading now under the Tonawanda rules, or what rules?

A. What?

Q. Do you grade by the Tonowanda rules, or what rules?

A. The Northern Pine Manufacturers Association rules.

Q. Are there any still grading under the Tonawanda rules?

A. No, sir.

Q. Not that you know of?

A. Not that I know of; no.

Mr. BURR. That is all.

3537 Redirect examination by Mr. WHEAT:

Q. Mr. Hansen, when you said that the association inspectors and the inspectors of your firm were giving their entire time to inspection, do you mean that they were giving their entire time to inspecting northern white pine?

A. No, sir.

Q. Will you explain what they do?

A. They inspect hemlock, hardwood, and white pine.

Q. And in your experience at the present time, what proportion of your time today is given to the inspection of northern white pine?

A. I would say about one tenth of my time.

Q. And the rest of your time is given to what wood?

A. Hardwoods mostly.

Q. You give your full time to inspection work, do you?

A. Yes, sir.

Q. During your experience, do you know whether or not the greater proportion of the mills manufacturing northern white pine have or have not belonged to this association?

A. Most of them have belonged of late years.

Q. Yes.

A. Yes, sir.

Q. At the present time, most of them do belong, do they?

A. Yes.

3538 Q. During the earlier period of your inspection, what was the situation?

A. Very few of them belonged to the association.

Q. I see. Now, you were asked on cross-examination whether cargo shipments had decreased because of a difference in the method in the way in which lumber is shipped. May I ask you whether the rail shipments of northern white pine have also decreased?

A. Yes, sir.

Q. To a marked degree, sir?

A. Yes, sir.

Q. You were asked also whether or not cargo shipments of hardwood and hemlock had decreased. I will ask you whether or not the general supply and manufacture of hardwood and hemlock from this region has increased or decreased?

A. Decreased.

Q. What?

A. Decreased.

Q. Decreased. Do those woods also move by rail?

A. Yes, sir.

Q. Has the rail shipment of those woods been increasing or decreasing?

A. Decreasing.

Q. When you originally started to inspect northern white pine, what was the general practice in shipping the highest grade;
3539 what was it called?

A. B and better.

Q. What is the general practice now?

A. C and better.

Q. What is the C grade; what does that include?

A. Includes white sap.

Mr. WHEAT. That is all.

Recross-examination by Mr. BURR:

Q. B and better; does that include white sap?

A. Yes; to a certain extent.

Q. To a certain extent. Sap in B and better would be considerably less than in C?

A. No, sir; it depends on other defects with it.

Q. I beg pardon?

A. It depends on other defects with it.

Q. With it?

A. Yes.

Q. With the sap?

A. Yes.

Q. But sap has an influence to place the piece of lumber into C rather than in B, does it not?

A. If it has other marked defects.

Q. They do consider, then, the amount of sap that a piece of B and better can have; is that true?

3540 A. They what?

Q. They do consider the amount of sap that a piece can have and still be in class B and better?

A. Depends upon the amount of sap.

Q. What?

A. Depends upon the amount of sap if it has other marked defects.

Q. If it has other marked defects?

A. Yes.

Q. And if it does have other marked defects, the amount of sap will be considered; is that true?

A. Considered; yes.

Q. I see. Now, where is the white pine that you inspect, is it in Michigan pretty much now?

A. Michigan and Wisconsin, and I said it has been in Canada the years past.

Q. Yes.

A. I have not been to Canada for some time.

Q. You do not get into Canada for inspecting purposes, do you?

A. Not now, sir.

Q. You do not get into Minnesota for inspecting purposes?

A. Yes, sir.

Q. Does anybody in your firm get into those districts?

A. No, sir.

3541 Q. That is where most of the northern white pine is coming from today, isn't it, Minnesota and Canada?

A. I could not say, sir.

Mr. BURR. I see. That is all.

Examiner SHEPPARD. Anything else, Mr. Wheat?

Mr. WHEAT. No, sir; that is all.

Examiner SHEPPARD. You are excused. Thank you, sir.

(Witness excused.)

Mr. WHEAT. I will call Mr. MacBride.

E. E. MACBRIDE was thereupon called as a witness and, having been duly sworn, testified as follows:

Direct examination by Mr. WHEAT:

Q. State your full name.

A. E. E. MacBride.

Q. Where do you reside, sir.

A. Chicago.

Q. What is your business?

A. Architect.

Q. Are you connected with some firm of architects?

A. Connected with Zimmerman, Saxe & Zimmerman.

Q. At what address, sir.

A. 212 East Superior.

Q. Mr. MacBride, will you state briefly your education and experience in the architectural profession?

3542 A. I have been a practising architect for, roughly, about twenty years, in Chicago. I went to the University of Chicago and I went to the University of Illinois.

Q. Have you been with the same firm of architects for a number of years?

A. I have been with the same firm for about twenty years.

Q. Are you a licensed architect?

A. Yes, sir.

Q. Just what is the general nature of your duties with Zimmerman, Saxe & Zimmerman?

A. My particular phase of the practice is in writing specifications and the general supervision of the buildings after they get under construction.

Q. And in that connection, have you engaged in the writing of specifications and general supervision of construction of residences?

A. Yes, sir.

Q. During what period?

A. During the twenty years of practice.

Q. Does your firm have occasion to prepare plans and specifications for residences continuously each year?

A. Yes, sir.

Q. Do you have occasion to specify pine for both interior and exterior uses?

A. Yes, sir.

3543 Q. How do you specify pine for sash uses?

A. I specify clear soft pine.

Q. Are you familiar with the term California white pine?

A. Yes, sir.

Q. Do you know whether or not the wood known commonly in the trade as California white pine is largely used for sash purposes?

A. Yes, sir.

Q. Do you know whether the wood commonly marketed as California white pine has been classified by botanists as yellow pine?

A. Yes.

Q. I will ask you, Mr. MacBride, whether that fact in itself has any particular significance to you as an architect?

A. No; not particularly. As a matter of fact, I did not know that botanists had called it yellow pine——

Q. When did you ascertain that?

A. Until lately.

Q. Until lately?

A. Yes.

Q. When you ascertained that it was classified by botanists as yellow pine, did that make any change in your practice?

A. No, sir.

Q. Are you interested in the number of needles or cell structure of the lumber which you use?

3544 A. No.

Q. What is your test?

A. I believe in the years I have been looking at these things that I can tell good workable soft pine from the texture and general appearance of the material.

Q. Have you found that California white pine in appearance is similar to the other soft pines which you have used?

A. Yes, sir.

Q. Including northern white pine?

A. Yes, sir.

Q. Sugar pine?

A. Yes, sir.

Q. Idaho white pine?

A. Yes, sir.

Q. As to workability, have you found California white pine to be satisfactory?

A. Yes, sir.

Q. Do you know whether or not the large remanufacturing mills manufacturing sash and doors, use California white pine in that process?

A. Yes, sir.

Q. I will ask you whether in your experience you have ever had a failure of any California white pine because of rotting?

A. Never have known of any.

Q. Have you had any complaints of such failure?

3545 A. No, sir.

Q. I will ask you whether or not you have ever investigated any of the old jobs of your firm?

A. We are continually doing that, alterations, and sometimes the old buildings are completely wrecked, at which time we have occasion to see how our work has stood the time.

Q. Do you receive complaints at times from your clients on grounds other than the rotting of the wood?

A. Yes, sir.

Q. You have, as I understand it, received no complaint on the ground that the California white pine wood in your buildings has rotted?

A. No complaint.

By Examiner SHEPPARD:

Q. Do I understand you right? Have you used California white pine for twenty years for this purpose?

A. No; I did not make that statement.

Examiner SHEPPARD. I did not think so. I just wanted to get that straight.

By Mr. WHEAT:

Q. Your statement——

A. Soft pine, I mentioned.

Q. In that connection, you have excepted California white pine in response to your specifications.

A. Yes, sir.

3546 By Examiner SHEPPARD:

Q. At times?

A. From time to time.

Examiner SHEPPARD. From time to time; yes. All right.

By Mr. WHEAT:

Q. I will ask you whether or not you have been conscious, in architectural practice, of any confusion because of the use of the California white pine?

A. I have not heard of any.

Q. Have you ever heard of any objection on the part of the trade in general, or of architects in general, as to the use of that name?

A. I have not heard any complaint or objection.

Q. Now that you have the botanical relationship of California white pine, will you continue to accept it if it is satisfactory?

Mr. BURR. I think that is objectionable. What he will continue to do is opinion, second removed.

Mr. WHEAT. You have been asking your witnesses that question many times, Mr. Burr.

Mr. BURR. I am objecting.

Mr. WHEAT. In various forms.

Mr. BURR. I am not going to have any further argument. I object to the question.

Examiner SHEPPARD. I will let him answer that, but I do
3547 not want it pursued.

Mr. WHEAT. Let me finish my question.

Examiner SHEPPARD. Yes.

By Mr. WHEAT:

Q. Will you now, now that you know the botanical relationship of California white pine, will you continue to accept it if it satisfactorily meets your requirements as to appearance and workability?

A. Yes, sir.

Q. I will ask whether in your opinion the fact that architects as a group may not be familiar with the various differences in woods constitutes confusion because of trade names?

Mr. BURR. I object to that. That is the thing that the Commission is here to decide, whether there is a confusion.

Examiner SHEPPARD. I think so, Mr. Wheat.

Mr. WHEAT. All right, I will withdraw the question.

Examiner SHEPPARD. That is the pith of this complaint, as I understand it.

Mr. WHEAT. Yes.

Examiner SHEPPARD. Something the Commission has got to answer.

Mr. WHEAT. Yes.

By Mr. WHEAT:

Q. Are architects in general interested in the botany of the woods that they use?

3548 A. Not professionally.

Q. Are they interested more in the quality and utility of the lumber?

A. Yes, sir,

Q. I will ask you whether or not the fact that any architect, any particular architect might not himself be able to tell the difference between one wood and another, would that be important in your mind in connection with the trade name for one of those woods?

Mr. BURR. I object. That is highly speculative.

Mr. WHEAT. I will bring that right down here.

Mr. BURR. The same question.

By Mr. WHEAT:

Q. I will ask you whether the fact that some particular architect might not himself be able to tell the difference between this California white pine, the appearance of it, and the old northern white pine, would that be important in your mind in connection with the use of the name California white pine?

Mr. BURR. I object. What his opinion is is immaterial here.

Examiner SHEPPARD. I will let him answer for himself, but not for other people.

Mr. BURR. We are after facts. What is important in his opinion is not——

Mr. WHEAT. All right; his opinion.

3549 The WITNESS. It is not important to me.

By Mr. WHEAT:

Q. Are architects in general wood technologists?

A. Interpreting that as technologists, I would say no. Do you mean botanists?

Q. The term wood technologists, Mr. McBride, has been defined in this case as a man who is acquainted scientifically with the means of determining one wood from another, its particular characteristics scientifically.

A. The architect is not, except in a very general way.

Q. Are architects in general to be classified as botanists?

A. No.

Q. I will ask you whether the term white pine in the architectural profession today is limited to some particular botanical species, or group of species.

A. I do not think it is thought of botanically at all.

Q. Do you believe that any confusion would be created if wood now marketed as California white pine were to be marketed under any name containing the word "yellow"?

Mr. BURR. I am going to object to this line of questioning. I do not think it is material here what the name constructively is going to be. The Commission has no power to tell them to call it yellow pine or to call it affirmatively anything.

Examiner SHEPPARD. Yes; I think I ruled on that a long

3550 time ago.

Mr. WHEAT. Mr. Examiner, I merely wish to state that all through this case there has been a vast amount of testimony along those lines, not dealing with what name should be used, in the opinion of any witness, but dealing with his opinion as to whether confusion would arise from the use of any particular name. That has been received time and time again throughout the hearing, even in the earlier hearings which Your Honor presided over. I think that is a proper question.

Mr. BURR. It has been received to a certain extent of late, no doubt. I had it ruled out before, but it was received of late over my objection. I think it should be ruled out.

Examiner SHEPPARD. I do not think I will go into that any more, to any extent. The fact is the Commission has got to pass on this matter, and its duty is to pass on the name now used, and it is not going to have anything to say as to any other name, in my judgment. So any testimony along that line I do not believe is applicable to this case.

Mr. WHEAT. I will withdraw this question to this witness.

Examiner SHEPPARD. Yes.

Mr. WHEAT. But I want it understood I do not withdraw my general testimony——

3551 Examiner SHEPPARD. Yes.

Mr. WHEAT. Which has been introduced in the record on this matter.

Examiner SHEPPARD. All right.

Mr. BURR. Oh, no.

By Mr. WHEAT:

Q. Mr. McBride, in your opinion as an architect, is it more important for the name of lumber in trade to disclose the quality and utility and the mechanical characteristics of the wood than its botanical relationship?

Mr. BURR. I think that is a question for the Commission, what the name should disclose.

Mr. WHEAT. You are becoming most captious. The question has been asked and answered a dozen times in this case by you personally in connection with other portions of the lumber world.

Examiner SHEPPARD. I think I will let him answer that, Mr. Wheat.

Mr. WHEAT. Just read the question, please.

(Question read.)

A. Yes.

Mr. WHEAT. You may cross-examine.

Cross-examination by Mr. BURR:

Q. If you specify a material other than wood, you expect and
3552 demand that you get that kind of wood that you have specified, do you not—I mean the material other than wood?

A. Yes; but sometimes the field is among several rather than a single one.

Q. Yes.

A. Yes; we expect to get what we specify.

Q. If you specify in the alternative you expect to get one of the varieties that you specify in the option?

A. That is it; yes, sir.

Q. That is in accordance with the option?

A. Yes, sir.

Q. If you specify one material rather than an optional choice of materials, then you expect to get the one thing that you specify?

A. Yes, sir.

Q. Now, do I understand you, until very recently you did not know California white pine was not a true white pine?

A. No; I did not know about the name.

Q. You did not know about the name?

A. Pinus, whatever it is.

Q. Pinus ponderosa?

A. Yes.

Q. You did not know that was not a genuine white pine, is that it?

3553 Mr. WHEAT. Mr. McBride, let me say this to you, the witness said he did not know it was yellow pine. Quite different.

By Mr. BURR:

Q. Now, you regarded that as white pine botanically, didn't you?

A. Mechanically.

Q. You better say "yes" and not nod.

A. Yes.

Q. You did not know that belonged to the yellow-pine group until you were consulted in this case, is that true?

A. That is correct.

Q. Now, how do your specifications read for pine lumber that you buy for exterior purposes, sash, for example?

A. Clear, soft pine.

Q. Clear, soft pine. You do not specify white at all, is that true?

A. No.

Q. How long has that been the case?

A. For many years. I do not know just how long.

Q. You never were in the habit of specifying white pine in writing your specifications?

A. I did before, for fifteen to twenty years ago we had to use the term white pine.

Q. White pine?

A. Yes. There was no other soft pine in those days, but
3554 what we called white pine, that was marketed.

Q. Any soft workable pine would meet the specifications that you make for sash and exterior trim; is that true?

A. Generally, yes.

Q. Now, you say you are not interested in the cell structure of the various varieties of wood, but that you think appearance is all you are interested in. Do I understand you correctly?

A. We can generally tell the characteristics of the cell structure by its appearance.

Q. You can tell the durability of the wood by its appearance?

A. Yes; pretty close.

Q. You can tell the durability of the wood?

A. Yes; pretty close.

Q. Now, if the cell structure of the white pine is so different from that of the yellow-pine group, that that is really the way by which wood technologists distinguish between the yellow pines and the white pines, would you be interested in the cell structure in view of the long durability reputation of the white-pine group?

A. Read that over for me, please; I cannot follow that.

(Question read.)

Mr. WHEAT. Just a minute.

Examiner SHEPPARD. Don't answer that until you understand it.

3555 Mr. WHEAT. Mr. Examiner, I wish to object to that question that there is not any evidence here as to any definite longer durability of any one wood. As stated in Madison by the expert of the Government, called by the Government, there is no test which he knew about, no scientific test by which the relative durability of these woods could be ascertained scientifically. I object to the question on the ground that there is no such.

Mr. BURR. If the examiner please, about a half a dozen of the respondents' own witnesses have testified to the high reputation of genuine white pine for durability.

Examiner SHEPPARD. I remember that.

Mr. BURR. Have done that very thing. I did not say actual durability, I said reputation for durability. So I think counsel's objections are not sustainable.

Examiner SHEPPARD. What I am interested in is to get the witness to understand the question.

The WITNESS. I will have to ask to have the question read again. It is too long for me to understand.

Mr. BURR. I will withdraw that question.

The WITNESS. Put it over; I will try and answer.

By Mr. BURR:

Q. If cell structure has anything to do with durability, you certainly would be interested in it?

A. Yes.

3556 Q. As an architect?

A. Yes; except that I could not attempt to go into the technicalities of those things. We cannot.

Q. No. You are not a wood technologist, you are not competent to testify on the technicalities of the wood, is that true?

A. That is right.

Q. In other words, you have to rely on the good faith of the men that you buy from with regard to what the wood is, to a large extent?

A. No; not entirely.

Q. Not entirely?

A. Except to a small degree.

Q. You do the inspecting for your firm, do you not?

A. Yes.

Q. You decide whether the wood delivered on the job is up to specification, do you?

A. Yes.

Q. And you so report to your firm?

A. Yes.

Q. By the way, are you a member of the firm?

A. Yes.

Q. How long have you been a member of it?

A. About twelve years.

Q. Now, are you able to say, for example, whether wood
3557 that is delivered on the job is Idaho white pine or northern white pine?

A. Generally, yes.

Q. Generally?

A. Not always. I cannot always tell.

Q. Would you be able to tell whether it was California white pine or Idaho?

A. Sometimes difficult to tell. Not always.

Q. You have to rely—if you are anxious to get one or the other variety of the so-called "white pines", you would have to rely upon your dealer, wouldn't you?

A. I do not think I would rely entirely on him.

Q. I see.

A. It is so hard to tell. I think I can confuse anybody with it.

Q. Have you ever sent samples to the Madison laboratory to find out whether it was white pine or not that was delivered to you?

A. No.

Q. Then you do have to rely upon your experience?

A. Our experience.

Q. And upon the dealer?

A. Our experience and the experience of the dealer.

Q. Yes; and his good faith.

A. Yes.

3558 Q. So that you are not able to tell really whether you are getting California white pine or Idaho white pine or northern white pine?

A. Not 100 percent, no, sir; nor can anyone else.

Q. Do your clients ever want white pine exterior trim?

A. I never heard any particular demand expressed for it that I can remember of.

Q. Yo do not remember any particular case where the client said he wanted white pine?

A. No.

Q. What?

A. No. It is unusual.

Mr. WHEAT. You mean for exterior?

Mr. BURR. For exterior trim or for any purpose, is that true? Did they ask for Idaho white pine or northern white pine?

A. I do not remember any client expressing any particular desire either way. If a man happens to be a lumberman, he may make some particular reference to a kind of lumber which he might want to use; otherwise that is left entirely to the architect.

By Mr. BURR:

Q. Left to the architect. You just specify pine, is that it?

A. Clear soft pine.

3559 Q. Clear soft pine?

A. Yes.

Q. Now, when you buy sash and doors, what do you ask for—exterior doors?

A. The same thing goes for exterior doors, if they are pine doors.

Q. If they are pine doors?

A. Yes.

Q. You just ask for soft clear pine, is that right?

A. That is it.

Q. And take the chances on what kind of soft clear pine you get?

A. Yes; take a chance on it.

Q. Now, where did you say you got your education along architectural lines?

A. The University of Illinois. However, I was there only two years.

Q. I see. Now, do you have clients ask you for something that will be exceptionally durable for exterior work?

A. Not particularly. I think their assumption is that we will give them the exceptional durability.

Q. I see. Now, the northern white pine has a high reputation for durability where it is exposed to the weather, hasn't it?

A. Yes.

3560 Q. Rather more than other varieties of pine, isn't that true?

A. I think maybe its reputation is that, or was that.

Examiner SHEPPARD. Why do you say "was"?

A. Very little, so little of it used now you never hear it discussed one way or the other. So I do not know what general reputation is only except as I hear it.

By Mr. BURR:

Q. So far as you know, there has been no change in the reputation of northern white pine for durability?

A. No; it has not deteriorated of late years.

Q. You say the matter of classification of pines is nothing to you and that the cell structure is nothing to you as an architect; is that correct?

A. It has meant nothing to me because I have never understood that cell structure made any particular difference in these soft pines.

Q. I see. If, however, they do have any effect upon durability, you, of course, as an architect would be interested?

A. If I found it did, I would be interested, if it were to any marked degree.

Q. Yes. Now, complaints as to the failure or falling down of material, they would come back to the contractor more than the architect, wouldn't they?

A. That is a hard question to answer. If your job, your building, were, say, a year or less in age, the contractor would
3561 probably be called in through the action of the architect. Any time after that, if the same owner still owned the building, he would probably call in Mr. Architect. Further than that, I do not know what would happen.

Q. You have used northern white pine in building work in times past, have you?

A. Yes, sir.

Q. Up until about what time did you use it, do you think?

A. Oh, I imagine—we are using it now.

Q. You use it now?

A. Yes; there is some on the market, I understand, a little used to make door cores and things of that kind.

Q. It is a matter of paying an extra price to get it, isn't it, rather than anything else?

A. I imagine that is just exactly what it amounts to.

Q. Yes. Now, as between Idaho white pine and northern white pine you would not make any particular choice as to which you would use; is that true?

A. I do not believe so, for our general interior work.

Q. You are more apt to use northern or Idaho white pine for exterior than you are for interior yes; is that true?

A. No; not particularly, except we pick on the soft woods for exterior work.

Q. There is plenty of Idaho white pine on the market, isn't there?

3562 A. I understand so.

Q. But it is higher priced than California white pine?

A. I understand it is a little bit.

Q. The reason you use California white pine, that is a question of price, isn't it?

A. To a certain degree.

Q. So far as the two woods are concerned, you did not recognize any difference in characteristics between them until you were consulted in this case; is that true? California and northern white pine?

A. California and northern, you are mentioning?

Q. Or Idaho.

A. California and northern?

Q. Yes.

A. No; I did not.

Q. You recognized no distinction between California white pine and Idaho until you were called in this case; is that true?

A. No.

Mr. BURR. That is all.

Examiner SHEPPARD. Anything else, Mr. Wheat?

Mr. WHEAT. That is all.

Examiner SHEPPARD. You are excused, Mr. McBride.

(Witness excused.)

Examiner SHEPPARD. We will take an adjournment until two o'clock.

(Whereupon a recess was taken until 2:00 p.m. of the same day, February 19, 1930.)

3563 Before the Federal Trade Commission

In the matter of White Pine cases

Dockets Nos. 1620–1629, incl.

WEDNESDAY, *February 19, 1930.*

Met pursuant to recess, 2:00 o'clock p.m.

Present: Same as before.

Examiner SHEPPARD. I am ready, gentlemen, to go ahead.

Mr. WHEAT. I will call Professor Jepson.

W. L. JEPSON was thereupon called as a witness and, having been duly sworn, testified as follows:

Direct examination by Mr. WHEAT:

Q. What is your full name?

A. W. L. Jepson.

Q. Where do you reside?

A. Berkeley, California.

Q. What is your profession?

A. Botanist.

Q. Throughout what period have you been engaged in the
3564 profession or in the practice of the profession of botany?

A. From 1890 to the present time.

Q. Will you please relate your academic background?

A. I became associated with Mr. Green in the department of botany in August 1890, and have continued in an official capacity with that institution ever since, of course having occasional years off for study or for research.

Q. What is your scholastic background? Where did you study your botany?

A. I studied botany in the University of California, and later as a graduate student at Cornell University, and later still at Harvard University. With, of course, research years at later times.

Q. Where have you done any botanical research?

A. I have been at Harvard, at Washington, at New York, at the Royal Botanical Gardens at Berlin, the Royal Botanical Garden at Kew near London.

Q. What has been the nature of your research at these other points?

A. I have been concerned in research work upon the native vegetation of California. Limited to seed plants, what are known as flowering plants, generally speaking.

Q. I would like to have you review briefly the positions you have held and the work you have been engaged in throughout the
3565 entire term of your identification with the University of California.

A. Well, I was first assistant in botany, then instructor in botany, then through various grades of professorial rank to the rank of full professor which I have held for many years.

Q. In addition to that, Professor Jepson, have you ever engaged in any research for the United States Government?

A. Yes. I have been connected with the United States Forestry Service at certain times as an expert in research of special character.

Q. Just relate briefly what that has consisted of.

A. Well, I was engaged upon the research upon the tan oak of California, and later upon the tree known as Rhamnus purshiana, which yields the bark of which yields cascara sagrada.

Q. The exterior bark is known as——

A. The bark of the tree is known as cascara sagrada.

Q. That is produced in the western regions of the United States only, is it?

A. Produced almost exclusively in Oregon and Washington in commercial quantities.

Q. Professor Jepson, are you the author of any treatise on the trees of California?

A. Yes. I am the author of a work called "The Silva of California."

Q. Silva of California. When was that published, sir?

A. 1910.

3566 Q. When was the work upon it done by you?

A. Well, in my previous years as a working botanist, but the writing of it was chiefly done in the previous ten years.

Q. Are you the author of any other works of a botanical character? If so, please name the most important among them.

A. Well, there is the "Flora of California", a critical work upon the seed plants of California. Also a manual of the flowering plants of California, which is an illustrated work designed to serve as a technical handbook for the use of people interested in the native vegetation of California.

Q. Is that a large book, sir?

A. Oh, 1,250 pages.

Q. A number of illustrations?

A. Over 1,000 illustrations.

Q. Are there any other books of a critical nature of that type available?

A. No; none other of that kind.

Q. Have you also published a volume known as "Flora of Western-Middle California"?

A. Yes.

Q. When was that published?

A. 1901.

Q. Has that been republished?

A. In 1911.

Q. You mentioned, I believe, a critical work on the flora of
3567 California. Is that completed as yet? If not, how is it being published?

A. Well, that is being published in parts as the research work upon it is finished. It began in 1909, and about two thirds of the first two volumes is now done, now in print.

Q. How many parts are now published?

A. Some eight parts.

Q. Does this represent a methodical research over long periods of time?

A. Yes. This work is a work for professional botanists, for technical men.

Q. Have you completed as yet the manuscript on this complete work?

A. Well, very largely but not entirely.

Q. That is to be published in the future, is it?

A. Yes; it is going along now.

Q. Professor Jepson, are you familiar with a tree known to botanists as Pinus ponderosa?

A. Yes.

Q. Throughout what period have you been familiar with it?

A. Well, during the whole period of my life as a working botanist.

Q. What is the extent of your knowledge of this tree and under what circumstances was that knowledge gained? Just relate that in some detail, sir.

3568 A. Well, I have studied it for many years in the field, more particularly since 1890, though I had seen it before, carried on field studies of it, and have also studied it in the laboratory in connection with other members of the same family.

Q. Have you been interested in the logging and milling of the tree also?

A. Well, incidental to my field work as a botanist.

Q. When you first went into the Sierra region and saw this tree in its native habitat, was the lumber from this tree being used by persons in the vicinity?

A. Well, it was used by the hill men, mountaineers, woodsmen, men of the mines.

Q. For what purpose was it being used?

A. Well, it was being used for structural purposes, for the interior finish of their houses or cabins, or such things as wagon boxes, or buggy boxes, or the repair of such.

Q. What did you find that these people on the ground called this lumber?

A. Those men who were from the north, these pioneers whose origin was from the north, spoke of the lumber not the tree, spoke of the product as white pine. They spoke of a "white pine wagon box" that they had made.

Q. What did they call the tree in the forest?

A. They called the tree, the people in general called the tree yellow pine.

3569 Q. Can you state whether that name was given to it because of the color of its bark or because of any botanical consideration?

A. Oh, wholly on account of the color of the bark.

Q. When did you first know of this wood being sold at retail in California?

A. Well, my first direct experience with it would be in the years 1893 on, at various times.

Q. How was it sold at retail in California; under what name?

A. At those places I knew about it was sold as white pine.

Q. Did you have occasion to know about it?

A. Yes; because I knew the retailers personally. In certain cases I knew the retailers.

Q. Was there any eastern white pine or Pinus strobus on the market in California at that time?

A. No; not of which I had any knowledge. I think there was not.

Q. Do you know of it having been on the market at retail in California at any time during your experience?

A. No.

Q. Are you familiar with the botanical nomenclature of the pine trees, including Pinus ponderosa?

A. Yes; I think I am.

Q. In the classification of pine trees, is Pinus ponderosa placed within the group which includes the so-called yellow pines of the Southern States?

3570 A. Oh, yes.

Q. When and by whom did Pinus ponderosa receive its botanical name and classification?

A. Well, it received its botanical name from the botanical explorer David Douglas who found it in Oregon, and on account of its, to him, amazing size, he named it, "ponderosa", in order to emphasize to the people at home its utterly colossal nature, because he believed they would not credit his story of the size of this western forest tree that he first had discovered.

Q. At about what period did David Douglas give it that name?

A. 1825. Perhaps a year or so earlier or later, but I think not. I think it was 1825.

Q. Did he then describe the tree botanically?

A. Not in the sense of the botanical diagnosis of a botanist. He was killed not many years afterwards while on a botanical exploration in the field, and the botanical diagnosis, the proper botanical diagnosis, was published in England ten years later.

Q. What were the principal characteristics which determined the placing of Pinus ponderosa in the same botanical group with the so-called yellow pines of the South?

A. The characters of the cones, the form of the scales, the number of needles, the burr in the sheath or boot, and the characteristics of the flowers.

3571 Q. Did the cellular structure of the wood have anything to do with this original placing of Pinus ponderosa in that group?

A. No.

Q. Did Pinus ponderosa receive its botanical name and become allocated to that group of pine trees before it became the practice to make microscopic studies of the cellular structure of wood?

A. Well, that time the investigation or research upon the minute anatomy of pines and their allies had not proceeded very far. It was not until about the year 1875 that the minute anatomy of the pines began to be fairly well established. Of course that research is still going on, it is not yet completed.

Q. Am I to understand you, Professor Jepson, to say that Pinus ponderosa received its botanical classification prior to the general practice of making microscopic studies of wood cellular structure?

A. I should say that its relationships to the so-called yellow pines of the South, and their allies, was shown before that date.

Q. Now, in the determination of the botanical classification of Pinus ponderosa, did the scientist who made this classification give any consideration to the mechanical properties of the wood yielded by that tree, or to its industrial utility as lumber?

3572 A. No.

Q. If they had done so, what, in your opinion, would they have done with its classification?

Mr. BURR. I object to that as wholly hypothetical, conjectural, it has nothing to do with the issues in this case, and is immaterial.

Mr. WHEAT. This witness is the greatest botanical expert that has been in this country for years.

Examiner SHEPPARD. That is all true, Mr. Wheat, but for this gentleman to say what another bunch of gentlemen would do under certain circumstances, I think is going a little too far for any practical testimony or good that it may do me in this case. I will let you ask him.

Mr. WHEAT. Perhaps I better put it in another form.

Examiner SHEPPARD. I will let you ask him what he thinks about it without trying to get from him what another bunch of people might do.

By Mr. WHEAT:

Q. I will ask you, then, Professor Jepson, whether if you were to consider the mechanical properties of this wood and its industrial utility, it would properly fall within the group in which you say botanists have placed it.

A. Would you please repeat that question?

Mr. WHEAT. Read it.

By Examiner SHEPPARD:

3573 Q. Suppose you right now, Mr. Witness, were making a classification of this lumber, and having in mind its utility, its qualifications, its color, its texture, where would you put it?

Mr. BURR. Wait a minute. It does not seem this man is an expert on that branch of the subject, the mechanical properties. That is for the practical man who is familiar with the manufacture of this wood. This gentleman has not qualified along such lines of examination as that.

Mr. WHEAT. May I just make this observation? It seems to me the examiner has put this question precisely as it should be put in this case. I do not think it could have been worded better.

Examiner SHEPPARD. I am going to let him answer that and I will give it probative value.

Mr. BURR. It seems to me that after we have qualified this gentleman as a technical botanical expert, he is qualified to answer questions along that line; but so far as the classification of the wood for mechanical purposes, I submit he has not yet been qualified along that line. I do not think he has the experience, and he has not been shown to have had the experience as yet to answer that question as an expert, because his expert character is in a different field of human knowledge.

3574 Mr. WHEAT. Oh, I think he can be and will be qualified——

Mr. BURR. All right.

Mr. WHEAT. To answer that question before we are through.

Mr. BURR. Suppose you qualify him before he answers.

Mr. ANDREWS. That question relates to his botanical qualifications.

Mr. WHEAT. The question which has been put relates to what he, as a botanist, would do if the mechanical properties of the wood yielded by the tree, and its industrial utility, which he says botanists have not taken into consideration in their classification, were to be considered. If he knows.

Mr. BURR. If the examiner please, that is hypothetical because botanists do not leave out of consideration all these other things and consider solely mechanical properties; and if they did, they would ask someone who was competent from a mechanical standpoint, and the utility standpoint of the lumber, rather than rely upon their own information, that has not been shown this witness is in possession of.

Mr. WHEAT. Your very objection was that my first question was too broad, and I placed it down to this man himself. Now, the

examiner has asked the question in the form precisely that I think would definitely bring out this point in another way.

Examiner SHEPPARD. You understand the question now, do
3575 you?

Mr. WHEAT. Read the question, please, Mr. Reporter.

(Question read.)

A. I would put that particular species, ponderosa, in the white-pine group.

By Mr. WHEAT:

Q. Now, Professor Jepson, on examining the wood of the pine trees with the microscope, did botanists encounter any microscopic phenomena which tended to separate them into groups?

Mr. BURR. In the classification?

Mr. WHEAT. Read the question.

(Question read.)

A. On the basis of certain microscopic features of certain tissues, pines may be separated into two groups of very unequal size. One a white-pine group, the other we might call the yellow-pine group, though including other than yellow pine within it; and those marks, those diagnostic marks, are more nearly invariable than any other cellular markings or tissue features than we have in the tissue system of pines.

By Mr. WHEAT:

Q. Will you describe what these microscopic diagnostic marks are?

A. In white pines we have certain structures called the rays, the medullary rays. Those medullary rays consist of tissue system;
that is, not one type of cells but of more than one
3576 type of cells. One of those types of cell is called the ray tracheids. There may be a thickening of the upper and lower walls of the cells of those ray tracheids, but where there is a thickening, that thickening is smooth, not irregular. In the case of this other group, which colloquially we are speaking of as the yellow-pine group, we have also this system of medullary rays, and the medullary rays here again form the tissue system that is composed not of one kind of cells but more than one kind; and here again we find the ray tracheids. Here the ray tracheids on either the upper and lower walls are also thickened, but they are thickened unequally so as to make dentations or teeth. These dentations or teeth are not the same in all species. They may become so marked that the teeth will meet across the cavity of the cell and form a radiculum or neck. But in any case these pines that we are speaking of that form the yellow-pine group always have this particular kind of ray tracheids, and it is the diagnostic mark by which microscopically we determine whether a particular species by its wood belongs to this group.

By Examiner SHEPPARD:

Q. In other words, your white pine group do not have that marking.

A. The white pine do not have that particular marking.

Q. Exactly.

A. They have ray tracheids.

3577 Q. I understand that, but I mean teeth.

A. They do not have these particular teeth.

Examiner SHEPPARD. I get that. Go on.

By Mr. WHEAT:

Q. Now, when you use the term white pine group, do you use the term as a scientific or botanical term, or as a colloquial?

A. I use it in the colloquial. If I were talking to students or botanists, I would not use the word white or yellow pine.

Q. What would you use?

A. I would say the strobus section of pines or the pinaster section of pines.

Q. I will ask you this, What is the tree known as Pinus pinaster?

A. It is called colloquially the maritime pine.

Q. Where is it located?

A. In the Mediterranean regions, particularly in southern France.

By Examiner SHEPPARD:

Q. Don't they have it in this country?

A. No; except as it is planted as specimen trees.

By Mr. WHEAT:

Q. Now, are the microscopic diagnostic markings that you have mentioned invariable in the sense that they can be found in any part of the wood structure, regardless of its usability in commerce?

3578 A. Oh, yes; they are found in all parts, in all parts of the tissue system of the tree which represents wood. Botanical wood, I mean.

Q. Have the microscopic markings of identification any relation to the economic or industrial utility of the wood?

A. They have not.

Q. Have they any relation to its strength, density, specific gravity, capacity to shrink or not to shrink, or any other mechanical characteristic of the wood cut from the tree?

A. No.

Q. Is there any necessary relation between the botanical name of a tree and the industrial or commercial utility of the lumber obtained from that tree?

A. No.

Mr. BURR. I think these are rather leading questions. Why not let the witness tell his own story? He is very able to tell it.

Mr. WHEAT. He has told it very well.

Mr. BURR. I know he has up to the last two or three questions, where you leave nothing for him to do.

Examiner SHEPPARD. Here is a question I would like to ask myself right here. I gather, Doctor, from what you have said, that botanists have in numerous cases classified trees into one class or another prior to the time when the microscope became the
3579 agent of detection of certain things in one or the other of the pines; is that correct?

A. Yes.

Q. Now, has subsequent examination by the microscope of trees made any reallocation or reclassification of any of these trees by botanists in subsequent years, taking from one group and putting into another, or vice versa? In other words, has the microscope been able to change the classification of any tree that was classified prior to the use of the microscope? You get me?

A. Yes. I can give you a little illustration right from the pines. The white pines, in the sense in which I am speaking of white pines, have this even thickening of the walls of the tracheids I spoke about; and the yellow pines, the yellow pines proper, have this dentate thickening. There is, however, a group of pines which belongs, according to botanists and the traditional classification, with the yellow pine group, which, if this marking must be considered, will now be thrown over into the white pine group. Those are the foxtail pine and the nut pine of the desert. They are hard white pines.

Q. That reclassification was brought about by new information obtained by the microscope?

A. That was determinable only by the much larger powers of the microscope, particularly the compound microscope.

Examiner SHEPPARD. Go on.

3580 By Mr. WHEAT:

Q. I would like to ask whether these microscopic diagnostic marks are considered to be primary botanical factors? Are they the primary botanical factors in the classification?

A. The factors cannot be determined in advance. A botanist studies a plant as a whole, and he determines from his study what are to be the natural groups. And by natural groups we mean groups based upon relationship by community of descent, the test of ancestry, and by that test the botanist would keep to this former classification based upon the reproductive organs mainly.

Q. Has it been your experience in the study of botany that the mechanical characteristics of various woods run—and I will add also the industrial uses; run parallel to the botanical classification of the trees from which they are cut?

A. No; in general that is not test; the botanical classification is no test. We cannot, by determining the botanical position of the species, say what its mechanical character will be, either by its grown character or its minute character.

Q. Have you any illustration?

A. We cannot determine. We can determine its botanical position most reliably by consideration of its reproductive organs, that

is to say, the flowers, the fruits, or both together in the main. If you take other characteristics, you get a classification that
3581 is not natural, you bring together things which are, from the standpoint of natural classification, unlike.

For example, probably it would be agreed that there is no pine tree, no other pine tree in the United States, which is so valuable a pine for structural uses, having a combination of strength and stiffness and other desirable mechanical qualification, where a very strong timber was desired, as the so-called yellow pine of the South, Pinus palustris.

By Mr. ANDREWS:

Q. That is the longleaf you are referring to?

A. The longleaf pine of the southern pineries. There is another pine that is really and truly comparable with it. And we have another conifer that is comparable with the so-called Oregon pine or the California tree, which is not a pine at all.

Mr. BURR. Wait a minute. I move to strike out "which is not a pine at all", under the ruling of the Commission, that other misnomers are not to be gone into.

Mr. WHEAT. I am not trying any misnomer; I am asking what the name of the tree is.

Mr. BURR. If counsel wishes to make that——

Examiner SHEPPARD. I don't care, Mr. Wheat, to go into those other trees at all.

Mr. BURR. I move to strike out the answer, "which is not a pine at all."

3582 Examiner SHEPPARD. Strike the last part of the witness' answer where he made mention of the Oregon pine.

Mr. WHEAT. I will ask the witness to mention it in some other way. He mentions it as a comparison which he wants to make.

The WITNESS. May I ask Mr. Examiner a question?

Examiner SHEPPARD. Yes.

The WITNESS. By what other name shall I call this tree I am thinking of?

Examiner SHEPPARD. You mean——

The WITNESS. I mean the Pseudotsuga, and the specific name is taxifolia. Now, Mr. Examiner——

Examiner SHEPPARD. That is the Douglas fir, isn't it?

The WITNESS. But, Mr. Examiner, it is not a fir.

Mr. BURR. If the examiner please, I move to strike that.

Examiner SHEPPARD. Yes.

Mr. BURR. This has nothing to do with this case, this misnomer. We are not trying these other matters.

Examiner SHEPPARD. That has nothing to do with it.

Mr. WHEAT. May I suggest this, and you will see the materiality of the answer the witness is making. He is not using that as a

misnomer, he is just trying to find some way of telling what this wood is. He is trying to show——

Mr. BURR. He is not——

Mr. WHEAT. May I finish my statement?

3583 Mr. BURR. We are not interested in that.

Mr. WHEAT. I will certainly appreciate the courtesy of being allowed to proceed.

Mr. BURR. You interrupted——

Mr. WHEAT. Mr. Examiner, may I finish my statement now?

Examiner SHEPPARD. Go ahead.

Mr. WHEAT. My question was as to places where industrial utility and mechanical utility of the wood did not run parallel to botanical classification, and the witness is making an illustration. Now I am perfectly willing to have this wood called "X", so we will know that I am not in any sense trying to try any other wood.

Examiner SHEPPARD. Yes; I understand.

Mr. WHEAT. All we want now is for him to finish his answer, which I think will be important in this case.

Examiner SHEPPARD. I want you to finish your statement.

The WITNESS. This wood X, Mr. Examiner, is that it?

Examiner SHEPPARD. What?

The WITNESS. This wood X?

Examiner SHEPPARD. Exactly.

Mr. ANDREWS. What do you refer to, what is its botanical name?

Examiner SHEPPARD. That is already in, I think. He has already stated that botanically.

3584 The WITNESS. This wood I have referred to now, this example, and this species of the southern pinery to which I specifically referred, those two trees on a classification of mechanics of the timber, would inevitably be placed together. And they belong to different botanical genera. One belongs botanically to the genus Pinus and the other belongs botanically to the genus Pseudo.

Examiner SHEPPARD. Go ahead.

By Mr. WHEAT:

Q. Professor Jepson, following that up, can a botanist tell in advance what the mechanical characteristics of a wood will be by examining a piece of wood with the microscope?

A. They cannot. That is not possible because the mechanical characteristics of a tree depend upon certain qualities which are not determinable by the microscope. If we could determine in advance the mechanical quality of the timber by the microscope, we would inevitably do so, because we are now forced to do it by trial, experiment, observation, and where we do it with refinement we use exceedingly costly and expensive wood-testing machines.

Examiner SHEPPARD. Yes, I know that.

By Mr. WHEAT:

Q. Now, Professor Jepson, reading from the transcript of these cases at pages 2206 in the testimony of Colonel W. B. Greeley, at the hearing in Portland, Oregon, I am going to read a question and answer and then I ask your opinion as to the state-
3585 ment made in that answer.

Mr. BURR. I object to that method of examination. I do not think it is the proper way to proceed. Why not ask the witness such matters as he desires him to testify about without reading from the record.

Examiner SHEPPARD. Read the question, but I do not want it copied in the record again.

Mr. WHEAT. I will read the statement.

Examiner SHEPPARD. Yes.

Mr. WHEAT. And then ask a question about it.

Examiner SHEPPARD. Just ask him the question.

Mr. WHEAT. This is the statement as follows, this is my question, I will make the statement and then I am going to ask a question about it.

The structure of the wood, the formation of the cells, the typical wood structure forms, which in turn affect the character of the lumber, those things have entered extensively into botanical classifications.

By Mr. WHEAT:

Q. I would like to ask you what comment you have to make upon that statement.

The WITNESS. Will you please read that again?

(Question read.)

Examiner SHEPPARD. Now, Professor, before you answer, do yourself the justice of thoroughly understanding the ques-
3586 tion. If you want it read again, I will so order it. If you have got it, if you understand it and have it in your mind all right, why you may proceed.

The WITNESS. Yes, Mr. Examiner, I think I would like to have it read again.

Examiner SHEPPARD. Read it slowly.

(Question read.)

The WITNESS: A. I should like to separate those matters into two categories. The structure of the wood, the nature of the fibres, undoubtedly do affect the mechanical virtues of the wood, or lack of such. But the features of the wood which are of botanical importance, have no known relation to mechanical qualities. That is, those features which relate to botanical classification have no known mechanical significance as distinguishing timbers.

Examiner SHEPPARD. All right.

By Mr. WHEAT:

Q. Is there any necessary relation, in your opinion, between the popular name of a tree in the forest and the industrial or commercial utility of the lumber yielded by the tree?

A. No.

Q. I will ask whether the common or colloquial names, as you have expressed it, for trees possess any definite scientific meaning?

A. They have no scientific meaning to botanists. They do
3587 not fall under botanical laws. They do not mean anything precise to botanists, because botanists have their own nomenclature when they propose to give precision to natural species genera.

Q. How do they do that?

A. Botanists, first of all, initial a species, find the easiest writing to take, and give to a new species, a species when discovered, a Latin name consisting of two parts; the generic name first and the specific name second. That name is always in Latin for the reason that Latin is the common-term language of scientific men, and especially botanists, in all countries.

To further insure that there shall be a definite assignment of this binomial, the author of the binomial enters into the record. His name is placed after that binomial invariably when precise distinction is determined upon. In connection with the binomial there is always written a diagnosis of the species to distinguish it from all other known species. This diagnosis is what its name implies; it is diagnostic. And that must be published.

There may be other matters added by way of botanical information, matters of a great variety of kinds may be added to this diagnosis, matters that are purely scientific, purely distributional, purely ecological, relating to life history economic matters,
3588 relating to the species in question.

Q. Now, Professor Jepson, can anything accurate or scientific be associated with the common or colloquial terms for plants?

A. Not in the minds of botanists. Botanists would not use colloquial terms when they were publishing scientific papers.

Q. Are the terms "white pine" or "yellow pine" scientific or botanical terms?

A. Not in the eyes of botanists.

Q. Are you familiar with the common commercial name of the lumber yielded by Pinus ponderosa tree as cut in the forests of California and southern Oregon?

A. Well, yes; I know that such lumber is made.

Q. Are you familiar with the common commercial name of that lumber?

A. Yes.

Q. If so, what is it?

A. California white pine.

Q. Throughout what period have you been personally familiar with that term?

A. The term California white pine?

Q. Yes.

A. Well, since about 1903.

Q. Under what circumstances did you become familiar with that commercial name?

A. Well, one heard the mill men, the woodsmen, the log-
3589 gers use it. I also, in building a house, had occasion to buy window sash, which was billed to me as California white pine.

Q. From whom did you buy that sash?

A. The California Door Factory.

Q. The California Door Company?

A. California Door Factory—California Door Company; yes. That is the Oakland factor, is where I got it.

Q. Has this commercial term "California white pine" been dominant throughout the entire period of your familiarity with this lumber, as lumber?

A. As lumber; yes.

Q. Considering the wood of Pinus ponderosa as lumber, and that is with respect—that is without respect to its botany, and with respect to its essential mechanical properties and the industrial uses to which it is best adapted, will you state whether that lumber in your opinion falls more appropriately within the so-called "white pine group" or the so-called "yellow pine group", and why?

Mr. BURR. I object on the ground that this witness is not an expert with regard to the mechanical utility of various different types of lumber. We are now getting away from botany where he is an expert and into a field where he is not an expert. He has not been qualified and cannot give competent testimony.

Mr. WHEAT. This is a form of the particular question
3590 which the examiner himself put, and I am asking him now why, which is another matter.

Mr. BURR. I have a right to object, and I object twice.

Mr. WHEAT. Absolutely.

Examiner SHEPPARD. Let him answer.

Mr. BURR. Exception.

A. If you draw a hard and fast line between the lumbers that are called white pine and the lumbers produced from the yellow pines, then this particular product would, in my opinion, fall much nearer the white-pine group than it would the yellow-pine group, on account of the softness of the wood, its general freedom from resin, its smooth easy-working qualities.

By Mr. WHEAT:

Q. And on the basis of color?

A. Pardon me?

Q. Would the basis of color be one of those points also?

A. Color of the wood?

Q. Yes.

A. I mentioned the color of the wood.

Examiner SHEPPARD. Yes; he said color.

Mr. WHEAT. Excuse me. You may cross-examine.

Cross-examination by Mr. BURR:

Q. Now, referring to the color feature last referred to, the hardwood of the Pinus ponderosa is considerably darker than the
3591 sapwood, isn't it?

A. Yes.

Q. It is considerably darker than the hardwood of the white pines in the main, is it not?

A. It is sometimes difficult to distinguish them.

Q. Pardon?

A. It is sometimes difficult to distinguish them.

Q. I am talking about the average now. It is darker than the hardwood of the northern white pine, for example, the strobus?

A. It depends upon what you are talking about. You take the best quality from the Sierra Nevada, and that best quality is indistinguishable by color from the white pine.

Q. But as an average throughout the range of the Pinus ponderosa, the hardwood is considerably darker than the hardwood of the East?

A. The Pinus strobus——

Q. Answer my question now. Take the average now, the hardwood is unquestionably harder than the hardwood of the genuine white pine?

A. What do you mean by average? Geographical average?

Q. I mean the average as governed by output, lumber output.

A. But the lumber output in the Sierra Nevada is from the region where the tree has its best development, where the qualities I speak of are shown to the best advantage.

3592 Q. Yes; perhaps so. How about down in Arizona; that is still whiter down there?

A. I am not familiar with Arizona.

Q. Not familiar with Arizona Pinus ponderosa?

A. No.

Q. How about the inland empire; are you familiar up there?

A. No.

Q. What you testified to is based solely on the California Pinus ponderosa?

A. Southern Oregon and California.

Q. How far north into Oregon?

A. Well, I mean by southern Oregon, I mean well down in the south Clamath Falls region.

Q. Even in that region of the Pinus ponderosa there is a great deal of variability in the wood, is there not?

A. Yes; there is a certain range of variability.

Q. Are you familiar with what they call locally bull pine there?

A. Bull pine is a thing which is at the open edges of the range of the species, of its ecology.

Q. In its ecology?

A. That represents the habits of the tree, its importance in the production of the tree.

Q. Now, Pinus ponderosa has a much greater variety in soil and elevation and climate than the white pine, does it not?

A. Not as wide as the Pinus flexilis.

3593 Q. It has a greater range in those respects than Pinus ponderosa or Pinus lambertiana, does it not?

A. What has?

Q. Ponderosa.

A. I understood you to say ponderosa.

Q. Yes; Pinus ponderosa. Pinus ponderosa has a greater range as to elevation, type of soil it grows in, altitude and climate, than the genuine white pine, as the strobus and lambertiana, does it not?

A. It has greater range than lambertiana. It does not have a greater range in extremes of condition than does Pinus flexilis.

Q. But I did not have flexilis in my question. I said strobus and lambertiana. It has greater range in altitude and in differing conditions of climate and soil than strobus, does it not?

A. Yes; it does, but where it is producing the kind of timber that lumbermen must use, conditions are very uniform in the area, generally speaking.

Q. Do you know whether there is not more Pinus ponderosa shipped from the inland empire as far south as the northern extremity of the Klamath Falls district than there is in the Klamath Falls and in California taken together; do you know that?

A. I am not familiar with the lumber trade.

Q. Yes.

3594 A. With lumber sales.

Q. You are not familiar with the mechanical differences that there may be between these pines at all, are you?

A. My knowledge is limited to California.

Q. Well, it is limited to the botanical rather than the mechanical end of it, is it not?

A. I have some knowledge of the mechanical end.

Q. You are not a practical lumber manufacturer?

A. I am not.

Q. You have never worked in saw mills?

A. No.

Q. You have merely visited them as a casual spectator?

A. Yes.

Mr. BURR. I now move to strike the evidence to which I objected before of this witness where he testified as an expert with regard to the mechanical properties and utility of these various woods.

Examiner SHEPPARD. I think I will eliminate, Mr. Reporter, from consideration of the testimony of this witness any reference that he made to mechanical properties, but giving consideration to all that he stated with reference to botanical properties and considerations.

Mr. WHEAT. And particularly, Mr. Examiner, whatever you may do on this, I want it understood that his testimony as to whether or not botanists take into consideration the mechanics——

3595 Mr. BURR. That is not in——

Mr. WHEAT. Just a minute.

Mr. BURR. That is not within the scope of my objection.

Examiner SHEPPARD. Go ahead.

Mr. WHEAT. Mechanical properties or economics or industrial uses of the woods in their classification. Of course, that statement is not to be in any sense disregarded.

Mr. BURR. That is not in my motion.

Mr. WHEAT. I see.

Examiner SHEPPARD. All right.

By Mr. BURR:

Q. Now, the testimony on the part of a number of experts indicated that by the inspection of a small piece of pine wood it would be feasible for them to determine whether the piece of wood belonged to the white-pine group or whether it did not. What is your experience and your information on that subject?

A. That question apparently relates to the testimony which I gave as to the distinction between the——

Q. Yes.

A. White pines and the yellow pines, as to the ray tracheids.

Examiner SHEPPARD. Yes; that is what it means.

By Mr. BURR:

3596 Q. Yes; I think that is a fair answer. Would you say, Professor Jepson, it is feasible to determine that a given piece of lumber belongs to the white pines or the yellow pines by the ray tracheids, is that true?

A. Yes, sir.

Q. Now, is it possible for you to determine by the ray tracheids whether it is a piece of sugar pine, a piece of Idaho white pine or Monticola, or whether it is a piece of strobus? Can you tell invariably by the ray tracheids which of those three it belongs to?

A. You cannot.

Q. Now, is it possible for you to determine by a sample, by microscopic analysis, whether a given piece of wood belongs to Pinus ponderosa, Pinus taeda, or Pinus palustris?

A. Each of those species has certain histological characteristics of the wood.

Q. Histological?

A. Yes.

Mr. WHEAT. Will you explain?

The WITNESS. Histological means anatomical.

By Mr. BURR:

Q. Yes.

A. But those characteristics are not mutually exclusive.

Q. So that your answer is you would not be able invariably to pick out a small piece of wood and say that is taeda or

3597 this is palustris.

A. You could ordinarily, but there would be cases when you could not.

Q. I see.

A. Because the characters would cover each other.

Q. In other words, you would have to say this looks like palustris, but it may possibly be one of the other yellow pines, is that true?

A. One would say this has the characters of palustris, but those characters are not necessarily exclusive of certain characters of taeda.

Q. You would have to say, I think it is palustris, or I think it is Pinus ponderosa, but it might be possibly one or the other.

A. So far as these particular characters are concerned.

Q. Suppose I offer you a small sample of wood about two or three inches long and an inch wide, would it be possible for you invariably to say whether it is palustris, taeda, or ponderosa?

A. If one is handling those woods as a wood technologist, he would be able to distinguish them ordinarily, but there will be cases come up where he will be unable to distinguish them.

Q. Now, you are a wood technologist yourself, you handle the microscope.

A. I am a botanist.

3598 Q. Oh. What is the difference between a wood technologist and a botanist?

A. A wood technologist is one of the numerous special fields in botany.

Q. Is that one of the special fields that you have studied particularly?

A. I have studied it, the minute anatomy of plants. I have taken a course in minute anatomy in the field, using histology, but we don't call that wood technology in that situation. I might say I am a mathematician, not an adding machine. A wood technologist may not have the fundamental training in plant tissues which will enable him to meet any particular case. He may be a technologist in some particular narrow field of tropical wood, but he will be lost outside of that, because he has not the underlying fundamental botanical training in histology.

Q. What is the situation with yourself; have you the underlying training to determine that?

A. I have the underlying training, yes; but I am not a wood technologist.

Q. You have the underlying training, but you have not followed it up by the study of wood technology?

A. That has not been my special field.

Q. Wood technologists do recognize that there are certain groups that are so nearly alike in cell structure that small

3599 pieces cannot be determined apart, and they have determined upon the common course of referring to that group as white pine; isn't that true?

A. Read that question.

Q. Maybe my question is not any good. I will withdraw that question. Now, the botanists, wood technologists, know that there is a group—do I understand your testimony correctly—that it is impossible to tell and distinguish between so that it will infallibly apply, namely, the cell structure of the wood is such as to draw three types of commercial wood together, so that it is impossible for them to tell and distinguish which is which; those being strobus, Monticola, and lambertiana. Isn't that true?

A. I would not put it that way.

Q. Well, is it true or not, whether you put it in that way or some other way?

A. Botanists make this investigation without any reference to economic character.

Q. Yes; but I am not talking about the economic character. It is true botanists do find that there are three types, strobus, Monticola, and lambertiana, which it is impossible to distinguish infallibly as a matter of microscopic analysis, isn't that true?

A. There are others of the same group.

Q. But they are commercial; flexilis is not being used commercially?

3600 A. Yes.

Q. Add flexilis to the group. They are unable to tell the difference microscopically between those four woods; isn't that true?

A. They are ordinarily.

Q. Yes.

A. But there might be certain woods coming in——

Q. They could not be sure of telling the difference, isn't that true?

A. They do tell the difference for practical purposes.

Q. In carload lots you can tell the difference?

A. Yes.

Q. But you cannot tell the difference by a small sample, is that true?

A. A small sample isolated from its context, so to speak.

Q. Botanists use the words "white pine" for that group, don't they?

A. They do not.

Q. They do not?

A. They use the word "strobus."

Q. The strobus group?

A. Yes.

Q. These four woods belong to the strobus group, is that true?

A. Yes.

Q. As a matter of fact, botanists, when they write books
3601 for the general public, do refer to this as the white pine group, don't they?

A. When botanists write for the public—of course there are many botanists, technical botanists who never write for the public.

Q. I wish you would answer the question. Such botanists as do write for the public, they refer to the group as the white pine group, don't they?

A. But that——

Q. Wait a minute; you may answer yes or no and then explain afterwards. I don't object to the explanation, but I want an answer.

A. I should say that foresters use the term white pine group.

Q. Well, don't botanists?

A. Botanists will occasionally.

Q. Haven't you used that phrase yourself, Professor?

A. I might use it conversationally, yes.

Q. Haven't you used it in your book for the public that you wrote on California woods?

A. In a purely popular treatise.

Q. Yes; a purely popular treatise. Then there is another group that it is impossible for technologists to distinguish in the case of small pieces, on account of the similarity of their cell structure as a group, which they have referred to as the yellow pine group
3602 in popular treatises and for convenience sake; isn't that true?

A. Well, there are certain species in that group that cannot be told by their minute characters.

Q. But you cannot tell strobus or pilustris or Pinus ponderosa infallibly by small samples?

A. Yes, sir; you cannot, but I insist there are others that you can.

Q. Now, this foxtail and nut pine group, these Pinous, these two, they are frequently classified in neither one of these two groups, either yellow pine or the white pine, isn't that true?

A. They are classified by botanists in the yellow-pine group.

Q. They are?

A. Yes.

Q. Both the foxtail and the nut pines?

A. Foxtail and nut pines; yes.

Q. Aren't there a number of botanists who say there ought to be more than two families of pines and give it a separate designation?

A. Most of the authoritative botanists in the United States have made two groups. You take Sargent's Silva of North America, a twenty-five volume work with magnificent plates, that is considered to be the work of last resort on the classification of the pines.

Q. Yes.

3603 A. A whole volume is given to pines. He makes two groups, the strobus group and the pinaster group, and only two.

Q. Doesn't he refer to them as white pine and yellow pine in that book also as well as strobus?

A. He does not refer to the second group as yellow pines. He refers to them as hard pines or pitch pines.

Q. Doesn't he refer to the first group as white pines?

A. He refers to the first group as white pines.

Q. He is a botanist, would you say?

A. He is undeniably a botanist. Director of Arnold Arboretum at Harvard University.

Q. Where does he place Pinus ponderosa, do you know?

A. He places it in the usual place botanists place it, in the pinaster group.

Q. Do botanists consider the presence or absence of pitch as one of the things which they give weight to in connection with the classification of species in this group, in this pine group?

A. No; do not.

Q. Do not pay any attention whether more or less pitch is there, or the character or quality of it?

A. Because it varies too much. There are pines of one species growing probably very close to each other, one tree will be very largely free from pitch and the other will be quite pitchy.

3604 Q. Pitch has a great deal to do with the hardness or softness, doesn't it?

A. I do not know what it has to do with hardness or softness.

Q. Isn't the density of the wood, of pine wood, almost in the ratio of the amount of resinous substance in the wood?

A. Densities of the wood are due to the rate of growth.

Q. Not due to pitch at all, you would say?

A. Not due to pitch at all. Pitch is an ancestral character.

Q. Are you prepared to say that the difference in cell structure, character of the cell, has nothing to do with the mechanical characteristics of the wood?

A. I should say that the fibres have everything to do with the mechanical characteristics of the wood.

Q. But doesn't the cell have something to do with the fibre?

A. Fibres are cells.

Q. Then the cell structure has a reflection in the mechanical characteristics of the wood.

A. The cell structure in this sense is the fibre of every wood. We have to go back to the fibres of every wood to get our mechanical characteristics, but these peculiarities of the cell have nothing to do with mechanical qualities because in two woods of one species, possibly even growing side by side, we have wood, for example, of great durability, and we have in the other tree a wood which perishes rapidly. Yet the cellular structure is the same. The most

3605 striking, the most spectacular example we could give in California would be in the case of our unexampled tree, the redwood. The redwood has a structure of its cells which is uniform from tree to tree. That is, there are certain kinds of cellular struc-

tures in that tree which mark that tree which are found throughout every individual. But certain trees within my own experience will have great durability in contact with the soil. There are posts upon my father's place in California, redwood posts, that have been there now for sixty years. There are other posts that have been there only two or three years before rotting. Both redwood.

Q. Yes.

A. As to mechanical quality, there is the similar diversity. We find it even in the pines, not merely in other than those pines but very notably in the pines. The wood from two pine trees, either from the same district or different districts, will vary greatly in mechanical quality, but their cellular structure is the same throughout.

Q. Nevertheless, the redwood is known as a wood of long durability, isn't that true?

A. In general it is a wood of very long durability, but there are certain trees which produce wood that is exceedingly short lived.

Q. Yes. Science has not been able yet to discover the reason for one tree having great durability and another lacking it,

3606 is that true?

A. That is true; we do not know the principles which govern durability. We do not know the underlying principles which govern the various mechanical qualities that we prize, that is tensile strength or breaking strength, or elasticity or resilience.

Q. At present science would not be able to say whether the kind of ray tracheids is entirely irrelevant to the subject of durability, would it?

A. I think we should.

Q. You think you should?

A. Yes.

Q. You think its presence has nothing to do—the cell structure hasn't anything on earth to do with durability, is that true?

A. That is certainly true. That is true for the reason that we have infallible evidence that in the case of the two trees growing side by side of the same species, and having without any peradventure of a doubt the same botanical characteristics of the wood, those two woods will differ markedly in some mechanical peculiarity or in some character of durability.

Q. That does not affect the possibility that as an average proposition the shape of the cell in one class of wood might have a certain effect, as contrasted with another species or another cell shape, isn't that true?

3607 A. Oh, we could not distinguish the yellow pine fibres from the white pine fibres.

Q. Suppose one cell type was more impervious to moisture than another cell type, it might still be true, might it not, the individual specimen might have other characteristics which would affect the matter of durability while at the same time the shape of the cells might have its influence; isn't that true?

A. I do not see how I can answer a purely hypothetical question of that kind. That is outside of the range of science.

Q. Science has not at present ascertained what the reason for the different cell structure or what the effect of the different cell structure is, has it?

A. We know that the cell structures, insofar as they are diagnostic, or have any relation to the particular species, that those have no relation to the mechanical qualities which we prize, or to durability.

Q. Now strobus is a remarkably durable pine, is it not?

A. Undoubtedly.

Q. Monticola is also a highly durable pine, isn't it?

A. Yes; that is a fairly durable pine.

Q. And the same is true of lambertiana, is it not?

A. No; it varies a great deal.

Q. You would not recommend Pinus ponderosa for durability, particularly where exposed to weather?

3608 A. I think we have not the scientific evidence to give an answer in that case.

By Examiner SHEPPARD:

Q. Has it been on the market too short a time?

A. But Pinus strobus, which he referred to, has been in use for 300 years here in this country.

By Mr. BURR:

Q. Yes.

A. And I would like to say this, that as regards Pinus strobus, to my own knowledge I have no evidence of my own, my own experience and practice as to durability.

Q. Yes.

A. That tree is in the eastern United States.

Q. Now, the Pinus ponderosa——

A. I have been only speaking of its general reputation.

Q. Yes. Now, Pinus ponderosa is a wood which has a large percentage of sapwood as contrasted with heartwood, isn't it?

A. My experience with that would be simply as I saw the cut logs in the forest.

Q. You do not regard sapwood, generally speaking, as nearly as durable as the heartwood?

Mr. WHEAT. Mr. Examiner, Mr. Burr himself has tried to avoid the question of wood technology with this witness——

Mr. BURR. Technology?

3609 Mr. WHEAT. The relation of durability of sap to heartwood, that is the question on which Mr. Burr made his objection that this witness could not——

Mr. BURR. I have not avoided the subject of technology, I have been working on technology right along.

Examiner SHEPPARD. I take it the doctor here is very broadly competent to go into this subject pretty deeply.

Mr. WHEAT. I want him to.

Examiner SHEPPARD. Go on.

(Question read.)

A. It is not in any tree.

By Mr. BURR:

Q. Now, that is generally speaking true, isn't it?

A. Not in any tree.

Q. Now, these redwood posts that you referred to, do you know whether they are sapwood or heartwood?

A. These were all heartwood.

Q. Those that rotted quickly were heartwood?

A. They were heartwood, they were the duramen, what is technically called the duramen.

Q. Now, the ray tracheids are the same in the sapwood and the heartwood, are they? That distinction does not differ, does it, between sapwood and——

A. Tracheids belong to what we call the rays. That is the tissue which extends from the center of the trunk out towards
3610 the margin, and, of course, necessarily extends through both the heartwood and the sapwood. That, of course, those ray tracheids, if you are referring to their peculiar identification marks——

Q. Yes.

A. That, of course, is only the secondary wood and does not characterize primary wood. But inasmuch as primary wood is of negligible significance in the case of the lumber log, it may be dismissed.

Q. What is the difference in primary and secondary wood? I don't get it.

A. Primary wood is that which is formed when the shoot begins to grow. It forms the central axis of the twig. The moment the twig begins to increase it grows a layer of cambian, and that is secondary wood, and for the purposes of trade, for the purposes of lumber, there is only secondary wood.

Q. I see.

A. Yes.

Q. Now, are there not other numerous distinctions that divide the white pines off as a group by themselves? Liability to disease, or immunity from disease, which are considerations for placing the white pine in one group and the yellow pine in another?

A. You mean one group is more liable to disease than
3611 another?

Q. One group is more liable to one disease and the other group more liable to another. Take as an illustration the blister rust. Are you familiar with blister rust as a disease?

A. I am familiar with its life history. I am not working upon it.

Q. It attacks only white pine, doesn't it?

A. It attacks so far only white pines.

Q. And yellow pines have been exposed to it without being able to get them to take the disease at all, isn't that true?

A. I think that the yellow pines probably will not be found susceptible to it.

Q. In other words, the division of white pine and yellow pine is a division which is not purely a technical matter. It is a very practical matter in various respects, isn't it?

A. Well, that is as to disease.

Q. I wish you would answer the question and then make an explanation if you like. It is a very practical division, isn't it, for various purposes?

A. You use certain terms——

Q. Won't you answer yes or no and then make your explanation?

Mr. WHEAT. If the witness does not understand the question, he is entitled to have it.

3612 Mr. BURR. Yes; certainly; I think so.

By Mr. BURR:

Q. Is the question clear? If not, we will have the question read.

Examiner SHEPPARD. Yes; just read it.

(Question read.)

By Mr. BURR:

Q. I do not think *think* there should be any hesitancy about that, Professor. Can't you answer yes or no?

A. I think there should be, because the most recent wood technologists are dividing the pines into two groups based upon this character of the ray tracheids.

Q. Well, that divides them just about as the old division.

A. Oh, not at all, because it throws into the old group, which includes Pinus strobus, it throws into them these hard pines and nut pines.

Q. Hard pines?

A. They are hard pines, the nut pines and foxtail pines.

Q. Those are not commercial pines, are they?

A. Yes; they are commercial pines in the West, to a certain extent.

Q. Oh, just for fuel purposes, they are not making lumber out of them, are they?

A. Where timber is scarce they use them for mines.

Q. Locally, used to shore up mines and other work of that

3613 kind, is that right?

A. Yes.

Q. In other words, they are not shipped throughout the country in any way, are they?

A. No; probably no.

Q. No. For our purpose those are not of any commercial importance, are they, for interstate commerce?

A. I have once stated that I am no student of the lumber market or lumber sales.

Q. I see. Now, the distinction between the yellow pines and the white pines then has something more than technical significance, doesn't it? It has a pathological consideration to consider in various ways, hasn't it?

A. You are using white pines and yellow pines in the sense of a wood technologist, his division?

Q. Yes. It also has a distinction of a very practical nature with regard to this very matter of blister rust; one group susceptible to attack and the other is not.

A. But there are members of the white-pine group that are susceptible of attack.

Q. If you put the pinons and the foxtails in there, there may be.

A. Yes; they are of equal importance if you consider that blister rust.

Q. What botanists are putting them in the strobus group?

3614 A. Record of Yale, also Penhallow, of McGill University.

Q. You are sure Record puts the foxtail opinions in that group, or does he put them in a separate group, two separate groups?

A. He puts them into this group of the class having no dentations upon the ray tracheids.

Q. Doesn't Professor Record refer to the white-pine group and does he not exclude the pinions and the foxtail from his group, in his book?

A. It is my remembrance that he puts those two under the same heading as opposed to the yellow-pine group.

Q. He does not put them in the white-pine group, does he?

A. He puts them in the soft-pine group.

Q. Does he have a soft-pine group?

A. He has a soft-pine group in the sense of this assemblage having ray tracheids without any dentations.

Q. Well, he refers to the white pines and yellow pines, does he not, in his book?

A. Oh, repeatedly.

Q. Yes. Now, he is a very eminent botanist, isn't he?

A. He is a well-known botanist; yes.

Q. A very eminent botanist?

A. He is an eminent forester. He is in forestry, not in botany.

Q. You have not specialized on trees particularly in your

3615 study; you have specialized on flowers and everything else, have you not?

A. My research has been upon the seed plants of California.

Q. Seed plants?

A. Yes.

Q. That includes practically all the trees, does it not; practically all annuals and perennials, shrubs, and bushes, and everything else?

A. Yes.

Q. You haven't made a specialty, then, of trees particularly more than these other varieties of vegetable growth?

A. Well, I have written several books upon trees and I have not written several books on the others.

Q. In your study of trees you have not particularly specialized on the conifers, have you? You have covered hardwood and everything else?

A. The conifers of course, in the case of the book on California trees are the main motif.

Q. You have a great deal of deciduous trees, do you not, trees of hardwood and everything else, in the State of California?

A. Not as compared with other countries.

Mr. BURR. That is all.

Redirect examination by Mr. WHEAT:

3616 Q. Just two questions, in view of the many questions that have been asked you on cross-examination, Professor Jepson, with reference to these ray tracheids and other botanical considerations. I want to ask you whether or not botanists consider the mechanical characteristics of wood in classifying trees botanically? Do botanists consider the mechanical characteristics of the wood in classifying trees botanically?

A. They do not.

Q. Do they consider the industrial utility of the lumber yielded by the trees in classifying them botanically?

A. They do not. Their character varies too much.

Mr. WHEAT. That is all.

Mr. BURR. That is all.

Examiner SHEPPARD. All right, Doctor, you are excused. I thank you very much.

(Witness excused.)

Examiner SHEPPARD. I will adjourn this hearing until ten o'clock tomorrow morning.

(Whereupon an adjournment was taken until Thursday, February 20, 1930, at 10:00 o'clock a.m.)

3617 Before the Federal Trade Commission

In the matter of White Pine cases

Dockets Nos. 1620–1669, inclusive

CHICAGO, *February 20, 1930.*

Met, pursuant to adjournment, 10:00 o'clock a.m.

Before William W. Sheppard, examiner.

Appearances:

Eugene W. Burr, Washington, D.C., on behalf of the Commission.

Messrs. Carl I. Wheat and Jesse Andrews, on behalf of the respondents.

3618 PROCEEDINGS

Examiner SHEPPARD. You may proceed.

Mr. WHEAT. Mr. Examiner, I would like to take the stand just a moment to identify a few matters.

Examiner SHEPPARD. Have you been sworn?

Mr. WHEAT. I have not.

Examiner SHEPPARD. Be sworn, please.

CARL I. WHEAT was thereupon called as a witness and, having been duly sworn, testified as follows:

Direct examination:

The WITNESS. On February 10th, at the R. A. Long Building in Kansas City, I requested Mr. James Murtha, who has been a witness in this case, to cut for me from sash in that building some small samples; also in my presence in the office of Mr. Flavel Robertson, connected with the law firm of Baker, Botts, Parker & Garwood in that building, another small sample was cut for me from one of the sash in my presence.

On the same day I placed the three small samples which Mr. Murtha furnished me and the one which had been cut in my presence from the sash in Mr. Robertson's office in an envelope addressed to Mr. Arthur Koehler at the United States Forest Products Laboratory, of Madison, Wisconsin, postage prepaid, together with a letter asking him to identify the species of tree from which these samples had been cut.

3619 On February 13th I received a letter from Mr. Koehler, which I will now ask to have marked for identification. You have seen the letter, Mr. Burr?

Mr. BURR. I don't think I have seen it.

Mr. WHEAT. Here it is. That will be respondents' exhibit 71 for identification.

(The document referred to was thereupon marked "Respondents' Exhibit 71" for identification.)

The WITNESS. You may cross-examine.

Mr. BURR. No questions.

(Witness excused.)

Mr. WHEAT. I will call Professor Koehler.

ARTHUR KOEHLER was thereupon recalled as a witness and, having been previously duly sworn, resumed the stand and testified further, as follows:

Direct examination by Mr. WHEAT:

Q. Mr. Koehler, I will ask you whether on or about the 11th day of February in this year you received a letter over my signature ask-

ing you to identify four small samples of wood which were enclosed with the letter?

A. I did.

Q. And did you make such identification?

A. I did.

Q. And did you write a letter to me under date of February
3620 12th, which now appears in this case as respondents' exhibit no. 71 for identification?

A. I did.

Q. I will ask now that this——

Mr. BURR. Wait a minute. I think you might better have him testify now to what he found and leave the letter out.

Mr. WHEAT. I will be glad to do that.

By Mr. WHEAT:

Q. Refreshing your memory from the letter, Mr. Koehler, will you state what you identify these four samples of wood to be?

A. I identify them to belong to the yellow-pine group, and according to their fine texture, one of the western yellow pines, probably Pinus ponderosa.

Q. I will ask you, Professor Koehler, whether this sample of wood marked "Respondents' Exhibit No. 69"—I believe, Mr. Examiner, it should show for identification.

Examiner SHEPPARD. Yes.

By Mr. WHEAT:

Q. (Continuing.) Has been examined by you to ascertain the species from which it was cut.

A. Yes; I remember examining that.

Q. Will you state for the record what you found as to the identity of respondents' exhibit no. 69 for identification?

3621 A. I identify that as sugar pine.

Mr. WHEAT. I will ask, Mr. Examiner, that respondents' exhibit no. 69 for identification be now received as respondents' exhibit no. 69.

Examiner SHEPPARD. Any objection?

Mr. BURR. No.

Examiner SHEPPARD. Let it be accepted and marked.

(The sample heretofore marked "Respondents' Exhibit No. 69" for identification was thereupon received in evidence.)

By Mr. WHEAT:

Q. I hand you now, Mr. Koehler, a portion of a sash marked "Respondents' Exhibit No. 70" for identification and will ask you whether you have examined that wood sample and have identified the species of the tree from which it was cut.

A. I have. I examined that and identify it as one of the yellow pines and undoubtedly of the species of yellow pine.

Q. Would you say it is probably ponderosa?

A. Very likely Pinus ponderosa.

Mr. WHEAT. I will ask now, Mr. Examiner, that respondents' exhibit no. 70 for identification be received as respondents' exhibit no. 70.

Examiner SHEPPARD. Any objection?

Mr. BURR. No; I think not.

Examiner SHEPPARD. Let it go in.

3622 (The sample heretofore marked "Respondents' Exhibit No. 70" for identification was thereupon received in evidence.)

Examiner SHEPPARD. Mr. Wheat, I don't think you offered this letter.

Mr. WHEAT. No, I don't think I will bother with that; it will be covered by the witness' testimony.

Mr. BURR. I object to any duplication. The best evidence is his own testimony rather than the letter.

Examiner SHEPPARD. The witness has already testified to the main feature of it.

Mr. WHEAT. Yes.

Mr. BURR. That is right.

Mr. WHEAT. You may cross-examine.

Cross-examination by Mr. BURR:

Q. Now, the four samples which you refer to in your testimony as having received with Mr. Wheat's letter of February 10th, you identified those as western pine, did you?

A. Yes.

Q. Now, by western pine could you include Arkansas soft pine?

A. No.

Q. What are the distinguishing marks between the samples and the Arkansas soft pine?

A. These samples have very narrow annual rings, with a
3623 very small amount of summer wood such as practically never found in the southern pines.

Q. Then by western pines you mean either of which variety of pine?

A. The two varieties or species that are—there are three varieties that are cut into lumber; western yellow pine, Pinus ponderosa, Jeffrey pine. Do you want the scientific names?

Q. No, I guess not.

Mr. WHEAT. I would like to have it.

A. All right. Pinus jeffreyi; and Lodgepole pine; Pinus contorta.

By Mr. BURR:

Q. And those are the ones to which you referred as western varieties of the so-called yellow pine group?

A. Yes.

Q. You are sure from that examination that these samples were not any one of the white pine group, so-called?

A. Absolutely sure.

Q. Now, then, did you notice whether those samples were heartwood or sapwood?

A. I could not tell from the samples. It was absolutely impossible.

Q. You bore that in mind when you looked at them, did you?

A. No, I did not, because I know it was useless to try to

3624 determine that.

Q. You made these examinations yourself, personally?

A. Yes.

Q. Using the microscope yourself, did you?

A. Let me see. In this case I had an assistant who did microscopic work, and I examined them afterwards visually to check up.

Q. Can you tell anything visually?

A. Yes; I can tell very well that it is not a great many other species. I could not in every case tell whether it was a white pine or a yellow pine.

Q. You could not tell that, could you, whether it was white or yellow?

A. Not in every case, but in this case it was evident that the amount of summer wood was sufficient to be yellow pine, just as in that piece number 70 I could tell without a microscopic examination that that is not a white pine.

Q. Now, referring to respondents' exhibit no. 69, will you state whether that is a piece to which you gave microscopic examination personally?

A. My assistant made the microscopic examination and I checked that visually also, which is in that case just as good as a microscopic examination.

Q. What would you say in regard to that; is that heart or sapwood?

3625 A. It is practically impossible to say, without a closer examination and comparing it with heartwood and sap sugar pine, what that is.

Q. There is a good deal of difference in durability between the heartwood and sapwood, of all varieties of wood, is there not?

A. Not all varieties, but most varieties.

Mr. WHEAT. Mr. Burr, I suppose you are having in mind that I have asked this man only to identify this wood. I have not gone into with him the other matters.

Mr. BURR. That is probably true.

Mr. WHEAT. I do not wish to broaden his examination at this time.

Mr. BURR. That is all right.

By Mr. BURR:

Q. Were you able to ascertain whether this was sugar pine or some other variety of white pine?

A. By the odor, or, rather, lack of odor, I identified that as sugar pine.

Q. What do you know about the odor?

A. The white pines have a characteristic odor. It is not very pronounced, but if one is familiar with them he can recognize them.

Q. You mean you can tell strobus, monticola, and sugar pine apart by odor?

3626 A. If I have a good-sized sample; yes.

Q. And how long does that odor exist?

A. Indefinitely.

Q. You can tell them after many years, can you?

A. Yes.

Q. And you can tell them from the yellow pines by odor, can you?

A. If I have a good-sized sample—I beg your pardon. I didn't understand your question.

Q. You can tell each one of these white mines from any of the yellow-pine group by odor, can you?

A. Yes. I would like to modify that and say if I have a good-sized sample that has not been treated in some way to annihilate the odor.

Q. Creosote or something of that kind would do away with the odor, would it?

A. Yes. High-temperature treatment will do away with the odor.

Q. What do you mean? Kiln-drying?

A. If it is kiln-drying to a high temperature, 200 degrees or so, it practically eliminates the odor.

Q. If this happens to be a kiln-dried piece of strobus or monticola, you would not be able to tell it by odor in that case from sugar pine, could you?

A. The kiln-drying temperature would have to be high
3627 enough so it begins to brown the wood before that is true, and that wood does not seem to have been subjected to that high temperature.

Q. Now, what you testified to as to the character of this as a western pine applies equally to no. 70 as it did with the small samples that you received with Mr. Wheat's letter of February 10th—is that true—that is, that this wood might be either contorta, Jeffreyi, or Pinus ponderosa—is that true—referring still to respondents' exhibit 70?

A. I would like to look at it once more.

Q. Do so.

A. This is not contorta.

Q. No. 70—might that be Arkansas soft, as far as your analysis would go?

A. No; I never saw a piece of Arkansas soft pine with as fine texture.

Mr. BURR. I see. That is all.

Examiner SHEPPARD. Anything further, Mr. Wheat?

Mr. WHEAT. No further questions.

Examiner SHEPPARD. Thank you, Mr. Koehler, very much.

(Witness excused.)

Mr. WHEAT. Mr. Examiner, may I ask now that the photographs marked, respectively, "Respondents' Exhibits 67 and 68", for identification, be received as respondents' exhibit 67 and 68, respectively?

3628 Examiner SHEPPARD. They were identified yesterday, were they?

Mr. WHEAT. They were; yes, sir.

Examiner SHEPPARD. Any objection, Mr. Burr?

Mr. BURR. That is all right.

Examiner SHEPPARD. They will be received in evidence and marked, respectively, "Exhibits 67 and 68."

(The photographs heretofore marked "Respondents' Exhibits Nos. 67 and 68", respectively, for identification, were thereupon received in evidence.)

Mr. WHEAT. I forget whether respondents' exhibit 66 was also received. In case it was not, I want the record to show it has been received. I believe it was.

Mr. BURR. That is agreeable.

Examiner SHEPPARD. All right; let that be received and shown by its exhibit number.

(Said document heretofore marked "Respondents' Exhibit No. 66", for identification, was thereupon received in evidence.)

Mr. WHEAT. The respondents now rest.

Examiner SHEPPARD. Any rebuttal?

Mr. BURR. Let the record show that this is now rebuttal testimony on the part of the Government.

Examiner SHEPPARD. Show this witness as being recalled,

3629 already sworn, appearing in rebuttal testimony on behalf of the complainant.

R. E. DANAHER was thereupon recalled as a witness and, having been previously duly sworn, resumed the stand and testified further as follows:

Direct examination by Mr. BURR:

Q. Give your name again, please, Mr. Danaher.

A. R. E. Danaher.

Q. Mr. Danaher, I want to invite your attention to a few points in the record that was made in your testimony, for the reason I think that on some of the points the reporter, or someone, has blundered.

A. Yes, sir.

Q. Referring to page 599 of the record, without reading too much of the testimony relating to the drying-out process in sugar pine as contrasted with Pinus ponderosa, and particularly the liability or lack of liability to warp and twist in the two species, the question is:

"Is the same thing true of lumber of the two species referred to in the process of kiln-drying?"

Your answer was: "I would not be qualified to answer that, because it is not usual to dry sugar pine to any great extent, or it has not been until the last year or two."

Is that answer correct?

3630 A. No; it should have been "kiln-dry."

Q. The word "kiln" should have been inserted before the word "dry", should it?

A. Yes, sir.

Mr. WHEAT. What line is that, sir?

Mr. BURR. That is on line 18 of the page mentioned.

Q. (By Mr. BURR.) Now, the testimony with regard to the presence of sugar in the sugar-pine lumber rather than the sugar-pine tree seems not to be particularly well cleared up here. Just what is the sugar that appears in the lumber?

Mr. WHEAT. What page are you mentioning now?

Mr. BURR. Well, particularly referring to page 593.

A. The question being, Just what is sugar that appears in sugar-pine lumber?

By Mr. BURR:

Q. Yes.

A. Well, sugar, as it comes out of sugar pine, what we call sugar, is a rather thin—when it first comes out—kind of watery substance. As it dries on the lumber it forms either a crystal or a powder, or something that looks a little white, and you could wet your finger and put it on it and taste it, and it tastes sweet. It is not a pitch as pitch is generally known to the public. I would call it a pitch, personally, a sugar pitch; but pitch to the general public, I under-

3631 stand, means thick, sticky mass of stuff. Now, this is not a pitch. It comes out of the sugar-pine lumber, particularly out of the sap part of sugar pine when it is green.

Q. Now, does that occur in the seasoned lumber after it is sold?

A. In seasoned lumber this sugar dries in the board. It shows up sugar or it shows in little pin-point flecks of a dark hue through the board; yes, sir.

By Examiner SHEPPARD:

Q. What you refer to are little pitch pockets?

A. On pitch pockets you have to get back to grading rules. A pitch pocket, according to grading rules, is something that has a thick pitch in what might be called a pitch pocket, because it is a little pocket, just a little separating of the grain with this material

in it, but it is not what you would call in the grading rules really a pitch pocket.

Q. Those little dots?

A. Those little dots. You will find it in strobus, and I think that was introduced in New York samples of ponderosa, of which one of the men down there told me, "Here is sugar pine cut from a white-pine tree"; and you will find it once in a while in a ponderosa, that little fleck. I could illustrate it better. A lot of these questions are awfully hard to illustrate unless you have a blackboard.

Mr. WHEAT. Let me interrupt there, Mr. Burr. This matter
3632 of these little flecks in sugar pine has been gone into very fully. I do not know that we need to go into that again here.

Examiner SHEPPARD. Yes; I understand that. I remember seeing it on the samples.

The WITNESS. Yes.

By Mr. BURR:

Q. How far is that a defect in the lumber?

A. That is not a defect in sugar pine.

Q. Pardon me?

A. That is not a defect in the grading of the lumber.

Q. (By Examiner SHEPPARD.) Just a characteristic of the wood?

A. Just a characteristic of the wood; yes, sir. It is a characteristic of a great many soft pines. We used to have that in strobus once in a while.

By Mr. BURR:

Q. How does sugar pine compare with Pinus ponderosa with regard to the presence of what is known to the grading rules as "pitch pockets"?

A. In the lumber?

Q. Yes.

A. I don't know that I could tell you. Probably——

Mr. WHEAT. If the witness cannot tell, I object to him going on and saying it probably is.

Mr. BURR. This witness knows.

3633 Mr. WHEAT. The witness has said that he cannot tell, Mr. Burr, and I submit that that is his statement on the part of the witness.

Examiner SHEPPARD. Yes; we don't want anything that is not precise.

Mr. BURR. If the examiner please, the witness' introductory comment was rather unfortunate.

By Mr. BURR:

Q. Is it not a fact that you are familiar with the Pinus ponderosa lumber?

A. Yes, sir.

Q. From your cutting of it in your own mills?

A. Yes, sir.

Q. And you have been familiar with it for twenty or thirty years, haven't you?

A. Not Pinus ponderosa; no, sir.

Q. How long have you been familiar with it? Your boyhood was in the East, was it not?

A. Yes; in Michigan.

Q. Yes.

A. I have been familiar with Pinus ponderosa for fourteen or fifteen years.

Q. I think you testified you have been in the woods ever since you were fifteen.

A. No; I testified I had been in the wood since about 1901
3634 or 1902.

Q. Was it not your testimony that you were in the strobus wood as a boy of thirteen?

A. Oh, as a boy; yes.

Q. Yes; not in the western woods, but in the East.

A. Yes; I have been them but not working them at thirteen. I worked in a lumber mill at thirteen, in a strobus mill.

Q. You have had occasion to observe these defects in both these types of lumber, haven't you?

A. Yes, sir.

Q. I wish you would tell us whether Pinus ponderosa or sugar pine are more pitchy in their character as lumber.

A. Well, now, when you say "pitchy," I would like to know just what you mean by "pitchy," because pitch consists of so many things. It consists of pitch pockets, from a very small, little pitch pocket to a large pitch pocket. It consists of streaked pitch and mass pitch. Pitch, I think, is a defect in all soft pines, or all pines that I know of, even southern pines, and so forth. If you will tell me just what kind of pitch defects you are talking about now, I could tell you what my opinion is.

Q. You have mentioned four different varieties, haven't you?

A. Yes.

Q. Will you take the first one and make a comparison of the first one?

3635 A. It is my opinion that there are more pitch pockets—that is, from the little, small pitch pocket to the fairly good-sized pitch pocket—in sugar pine than there is in ponderosa.

Q. Are they taken into account in connection with the grading of the lumber?

A. Absolutely. Pitch is a defect, a pitchy board or pitch pockets. Those defects are counted like a knot or any other defect in the grade.

Q. You refer to mass pitch, did you?

A. Yes.

Q. How about that? Which has the more mass pitch?

A. I think ponderosa has more mass pitch.

Q. Then what were the other varieties that you referred to?

A. There is streak pitch. You get a piece of board with a streak of pitch down one side of it.

Q. Which is the more subject to that?

A. Again I think ponderosa is.

Q. Then you mentioned a fourth variety of pitch, did you?

A. I don't think so. I think I said "pitch pockets from the small to the good size."

Q. Those were the three?

A. Yes.

Q. There were only three?

A. Yes.

Q. Testimony has been given in this case on the defense,
3636 interposed by respondents, to the effect that it was a certainty that the manufacturers of sugar pine would adopt—that is, if the manufacturers of ponderosa desist from the use of the term "California white pine"—it is a certainty that the sugar-pine manufacturers would adopt the term "white pine" or "California white pine" for their products. Have you ever had any consultation with other manufacturers of sugar pine looking toward such a plan?

A. I have had a good many consultations with practically all the manufacturers of sugar pine, and I have never yet heard that suggestion made. I think I testified on direct testimony in New York—or maybe it was redirect, I don't know—but I testified, I am sure, in New York, that I would be opposed to any such move. I think it would be very foolish. The thing tended to confusion in the trade. I do not think that any sugar-pine manufacturers in California who have really thought the matter out would consider such a move. It would be foolish. I certainly would oppose that move to the best of my ability if it were proposed.

Q. No such suggestion, you say, has ever been made you?

A. Not to my knowledge.

Q. Have you ever talked with other manufacturers of sugar pine with regard to this pending case at any time?

A. Yes; I have talked to them several years ago. I don't think I have talked to anybody particularly about this case—
3637 oh, I have, just in general conversation, but we have never gone into details since the case has been on. I have talked to two or three people.

Q. Who are manufacturers of sugar pine?

A. Yes.

Q. Now, on page 642 the following occurs, referring to a sales organization which was formed in 1926 or 1927 by sugar-pine manufacturers. Reading at the top of the page:

"Were any changes in prices of sugar-pine lumber made after the company was formed?

"Yes. I think immediately after the company was formed we got about $2 a thousand less for sugar pine than it was before.

"Did the market price advance or fall upon the formation of the company?

"I think it remained stationary."

Now, those two answers do not strike me as consistent. Will you explain what the situation was at that point?

A. Yes, sir; I was speaking of our own experience. Before the formation of that sugar-pine sales company we used to sell sugar pine and ponderosa pine, delivered, either rough or surfaced, at the same price. That was not the usual custom in the trade. And when the sales company was formed they made a different price on rough and surfaced delivered lumber. In making the differential
3638 in price it reduced our average price $2 a thousand. Now, that came about in a great many ways. There is about 300 pounds' difference in weight between surfaced and rough sugar pine. On a 90-cent rate that amounted to $2.70 a thousand saving in freight on surfaced lumber over a delivered rough lumber. We had to, for that saving in freight, pay the cost of surfacing the lumber; and as we did not surface very much at that time, and we tried to avoid surfacing as much as possible, our per thousand cost of surfacing was very high. We also had to stand the down grades that come through surfacing. That is, when you put a pressure bar on and surface, you have a certain amount of splits also, regardless of how closely you sort the rough stock.

Mr. WHEAT. Now, Mr. Burr, I don't understand the relevancy of all this detail about it.

Mr. BURR. I don't think it is necessary to go into so much detail.

The WITNESS. I was just trying to show you what my testimony meant. What I meant by that $2 was our own company's experience.

By Mr. BURR:

Q. Then when you said the price was cut $2 you did not regard that as a price advance, but, rather, as the result of the operation of a freight charge in connection with the loss of weight through planing; is that true?

A. No, sir. What is true in that, if you will read the ques-
3639 tions again at the top of the page that refer to that; when I said there was a reduction of $2, I was referring to our own net on lumber, on sugar-pine lumber. When I said that the price remained stationary, I don't think there was any advance over the general market at that time, any advance or reduction in sugar-pine prices over the general market at that time.

Q. You mean no change in the sales price to your customer?

A. No.

Q. I see. Now, what is the average weight of sugar pine for shipping purposes in the form of lumber?

Mr. WHEAT. Average weight is that?

Mr. BURR. Shipping weight.

A. On surfaced lumber it is about 2,000 average, of all thicknesses.

By Mr. BURR:

Q. 2,000?

A. Yes, sir; 2,000 pounds to the thousand feet of lumber.

Q. How does it run on Pinus ponderosa?

A. I would say from 250 to 300 pounds heavier. That, I think, is shown by the association weights on which they figure their price statistics, on the California.

Q. The record shows that the logs of sugar pine, some, at least, of them, have a greater tendency to sink in the pond than is the case with Pinus ponderosa. What is your explanation of that?

A. I think practically all the butt logs of sugar pine sink.
3640 That is because they contain more water, sap, or whatever you want to call it, than the butt logs of ponderosa.

Q. How about the higher cuts?

A. Sometimes a second log sinks, but beyond that we do not have sinkers; and you do not have them in ponderosa, although it is my opinion that the ponderosa logs do not float as high in the water, the upper parts, as the sugar pine, but I am not——

Mr. WHEAT. The witness has not quite finished his answer.

The WITNESS. I said "that is my opinion."

Mr. WHEAT. You started to say "I am not."

The WITNESS. All right, sir. I am not qualified to give an expert opinion on it.

By Mr. BURR:

Q. Does the heartwood of both of these two species turn a darker shade in the form of lumber during the process of time?

A. Yes, sir.

Q. Which turns darker, the sugar-pine heartwood or the ponderosa heartwood?

A. Ordinarily the ponderosa heart turns a reddish color. The sugar pine turns a light golden brownish color.

Q. There has been some testimony on defense on the prevalence of stump rot in sugar pine as contrasted with ponderosa. What is your experience with regard to that?

A. That depends on the locality in which the ponderosa
3641 grows. Sugar pine has stump rot; stump rot and rink rot both; but particularly stump rot is an old-age disease, I might call it. A mature tree very often has stump rot. That is so in all of the conifers.

Q. In all the what?

A. All the conifers; the evergreen trees.

Q. Yes.

A. That means the tree is mature and on the down grade. It generally means that when you find that in timber you are getting the

best timber, most surfaces and more clears out of the tree, and so forth. In California, in the inland empire, stump rot is not so prevalent in ponderosa. In New Mexico, the Zuni Mountains, stump rot is prevalent. Practically every tree down there has stump rot or ring rot.

Q. You mean in the Pinus ponderosa tree?

A. Pinus ponderosa. There is no sugar pine that I have ever seen in that territory.

Q. That is a disease of mature trees, is it?

A. I am not a technologist now. That is my opinion, that that is a disease of mature trees.

Q. The stump rot and ring rot are eliminated, are they, in the grading rules?

A. Defects in a tree have nothing to do with the grading of lumber. Whatever kind of defects there are in a tree when the lumber is cut and graded, these defects are taken into account,
3642 and, of course, a defect will likely grade the lumber, but the grades are comparable, to a certain extent, between different classes of lumber.

Q. Yes.

A. Or different species of lumber.

Q. They are defects which would place a given of lumber in a lower grade?

A. A lower grade; yes, sir.

Q. That is true equally of Pinus ponderosa and sugar pine, is it not?

A. Yes.

Q. And that is true equally of stump rot and ring rot, is it?

A. Yes.

Q. Do you regard Pinus ponderosa as wholly unsuitable for shop uses, where the product is to be exposed to the weather?

A. No, sir. I would like to explain that if I may.

Examiner SHEPPARD. Go ahead.

By Mr. BURR:

Q. I wish you would.

A. I think that there is a market for every class and quality of lumber, just as I think there is a market for different qualities in clothing or shoes or anything else. If your market won't stand the test, or if you are satisfied with a poorer equality, you are entitled to use it. I think ponderosa makes a wonderfully good shop
3643 lumber for certain uses, but I think it should be confined mostly to interior finish, for interior uses.

Q. What is the percentage of heartwood in sugar pine?

A. I could not tell you.

Q. Is the percentage of heartwood in sugar pine greater or less than the percentage of heartwood in Pinus ponderosa?

Mr. WHEAT. If the witness has made any investigation of that in percentages—you ask for percentages.

Q. (By Mr. BURR.) As the result of your experience, sir. I am not asking percentages.

Mr. WHEAT. Mr. Burr, may I have the question read?

Mr. BURR. Certainly.

(Question read as above recorded.)

Mr. BURR. I am not asking for percentages.

Mr. WHEAT. Then may I ask that you reframe your question?

Mr. BURR. No, sir.

Mr. WHEAT. You asked whether the percent is greater or not.

Mr. BURR. I want to know whether it is greater or less. That is all I want to know. That is all the question calls for, and that is all you have got a right to demand.

The WITNESS. Am I allowed to answer the question?

Examiner SHEPPARD. Yes; go on.

3644 The WITNESS. My observation is that there is more or a larger proportion of heartwood in sugar pine than there is in ponderosa.

By Mr. BURR:

Q. Now, is the typical so-called "California white-pine lumber" a heartwood or a sapwood, bearing in mind the change of color to which you just testified?

A. The upper grades of the ponderosa, California white pine, run very heavy to sapwood. There is some heartwood, but the big percentage of the upper grades of ordinary white pine are sapwood. When you get into the heart you generally get into the common grades. It is either box lumber or two, three, or four common.

Q. The ponderosa lumber that is closely similar to the genuine white pines, is it sap or heartwood?

A. I would like to ask that that question be read. I did not get it.

Examiner SHEPPARD. Read it.

(Question read as above recorded.)

By Mr. BURR:

Q. In appearance. I want to insert "in appearance", closely similar in appearance.

A. You said ponderosa or California white pine?

Mr. BURR. Just read the question again as I modified it.

(Question read as follows: "The ponderosa lumber
3645 that is closely similar in appearance to the genuine white pines, is it sap or heartwood"?)

By the WITNESS:

A. The sapwood of ponderosa looks a great deal like the heartwood of the Pinus strobus. It is in appearance a great deal similar, although it is a little lighter in color than the heartwood; a little whiter, you might say.

Q. Does it resemble the sapwood of Pinus strobus also?

A. Yes; to a great extent.

Q. Now, the white-pine lumber, so-called, made from Pinus ponderosa, then, is sapwood rather than heartwood, is it?

Mr. WHEAT. Now, may I ask whether you refer in that question to California white pine or to what? We have admitted the general use in the trade of the term "California white pine."

Mr. BURR. Yes.

Mr. WHEAT. Now, you have said white-pine lumber cut from Pinus ponderosa.

Mr. BURR. I said so-called "white-pine lumber", didn't I?

Mr. WHEAT. I am asking you whether you refer to California white pine.

Mr. BURR. Yes; I am referring to California white pine; certainly.

Mr. WHEAT. I think there is a very important distinction there.

3646 The WITNESS. May I have the question now, please?

Examiner SHEPPARD. Read it.

(Question read as above recorded.)

Mr. WHEAT. I am asking that the word "California" be added before the term "white pine."

Mr. BURR. All right.

A. (By the WITNESS.) The upper grades; yes.

By Mr. BURR:

Q. And the same would be true of the Arizona and New Mexico white pine, wouldn't it, so-called?

A. Yes, sir.

Q. To how great an extent does the sapwood of sugar pine enter into the selected grades of lumber?

Mr. WHEAT. May I ask what you refer to by "selected grades"?

Mr. BURR. Select grades, then.

Mr. WHEAT. Select grades; yes.

Mr. BURR. Yes; I am referring to D select, C select, and B select and better. Perhaps you better describe each one of those in turn. Would that be the best way to answer that, Mr. Danaher?

Mr. WHEAT. I think the details of the grading rules have been ruled out here.

Mr. BURR. This is not the details of the grading rules.

3647 This is the question of the heart and sap, sir.

A. (By the WITNESS.) That depends a great deal on the thickness of the lumber of which you are speaking. In inch, sap is predominant, I would say. By predominant, I mean there is a larger proportion of sap than there is of heartwood in all of the C select and better grades. When you get down to the D select I am not so certain. It is a rather new grade. But the general practice of cutting sugar-pine logs is to cut inch boards until you have reached a heart face. You go in from one side of the log and cut, and you find sap, until you reach a heart face that runs the entire length of the board. When you have done that you have got a fairly wide

board. Then you can go in and take thicker boards. Some of that sap is lost in the edgings of the board—possibly split on the edger—so that one piece may be almost entirely sap and the other otherwise. It is very hard to determine. But sap is predominant in inch thickness. In thicker lumber I think heart would predominate, but when you get up to the higher sizes, two-, three-, four-inch lumber, it is practically all heart grade. Sometimes we do have a little sap on the edge, but very little.

By Mr. BURR:

Q. What are shop grades? No. 1. 2, 3 shop, and then you have another, haven't you, no. 3 clear?

A. No. 3 clear; yes.

3648 Q. When you get into those, is that almost entirely heart or is there sap still remaining?

A. It is practically all heart, except when you get a very small tree, and sometimes you do get a heart grade with some sap on the edging, but by far the greater proportion of that lumber is heart.

Q. In the cutting of the wood for the D select and the no. 3 clear, are they taken adjoining one another in the tree?

A. Now you are going into grades.

Q. Never mind. I withdraw the question.

A. We can talk forever on that.

Mr. BURR. I think that is possibly true. I withdraw the question.

Examiner SHEPPARD. Yes.

Mr. BURR. That is all.

Examiner SHEPPARD. Anything else?

Mr. WHEAT. Yes; I have a few questions.

Cross-examination by Mr. WHEAT:

Q. I believe you stated, Mr. Danaher, that the so-called "pitch flecks" in sugar pine do not constitute defects in the grading rules of sugar pine.

A. Yes, sir.

Q. Have you ever known any instance where these pitch flecks have affected sugar pine which has been painted?

3649 A. You want personal knowledge or hearsay, Mr. Wheat?

Q. I want your general experience, the same as you have been giving for counsel for the Trade Commission.

Mr. BURR. I should object to hearsay, of course.

Mr. WHEAT. I want your general experience.

Mr. BURR. Yes. All right.

By Mr. WHEAT:

Q. Based upon your general experience, in the same manner that you have been testifying for counsel for the Commission.

A. I want to answer that in this way: that I have not had any experience along those lines. My opinion is, if you want an opinion——

Q. Yes.

A. And I am allowed to answer it——

Mr. BURR. Unless it is based on experience, he does not call for it.

Mr. WHEAT. This gentleman has expressed his opinion on many subjects on direct examination. I believe he should be allowed to express his opinion on this subject.

Mr. BURR. He has expressed no opinion that was not based on experience, so far as I know.

Examiner SHEPPARD. Read the question to me.

(Question read as above recorded.)

Examiner SHEPPARD. Now, if you know of any such instance
3650 which you can tell us about, do so. If you do not, say so, and that will end it.

A. (By the witness.) No personal knowledge.

By Mr. WHEAT:

Q. Then I will ask you, Mr. Danaher, what the reputation of sugar pine is as to this matter on which I have questioned you?

A. The reputation is that in some pieces, and sometimes, those flecks do come through white enamel and show a stain.

Q. Is it also true that it is the reputation that heartwood of sugar pine will at times show through light enamel?

A. The heartwood?

Q. That over the heartwood there will be a discoloration in sugar pine?

A. I never heard of that.

Q. You never heard such reputation?

A. No, sir.

Q. I believe you said that pitch, mass pitch, in your opinion, is slightly more prevalent in Pinus ponderosa than in sugar pine. Is mass pitch a defect in the grading rules?

A. It certainly is a defect in the grading rules.

Q. Now, is streak pitch also a defect in the grading rules?

A. All pitch is a defect in the grading rules.

Q. And the grading rules are the same in all except common grades, aren't they, for both sugar pine and California
3651 white pine?

A. Yes; practically the same, unless there has been some revision that I do not know of. I am not up on these new rules as well as I should be.

Q. So far as you know, the grading rules of sugar pine and California white pine, that is, the Pinus ponderosa, which is marketed as such, are the same in all grades above the commons?

A. Practically the same; yes, sir.

Q. Now, I would like to ask you why in your opinion it would cause a confusion in the trade to change the name of sugar pine to California white pine?

A. I think it would cause a confusion in the trade, because the greater percent of our better grades of sugar pine—and by better grades I mean No. 1 shop and better—are marketed in the East, that

is, the Atlantic Coast States, practically east of the Buffalo-Pittsburgh line. This territory has always demanded quality in lumber. They were the strong users of white pine. That was the original habitat of white pine so far as this country is concerned. Pinus strobus——

Q. I don't want to break in on you, but I am asking you about the one thing, why you believe it would definitely cause confusion, to change the name of sugar pine to California white pine.

A. I am trying to tell you.

3652 Mr. BURR. He is answering that.

Mr. WHEAT. I want him to answer that, but I think he can answer it in a straightforward manner.

Mr. BURR. That is straightforward.

The WITNESS. I thought it was. If I tell you I think so, then I have to give you my reasons for thinking so, don't I?

By Mr. WHEAT:

Q. All right, Mr. Danaher, you go ahead.

A. It is my opinion that the term white pine means to a great many people in that territory just as it means to me, the product of Pinus strobus, and unless you have some qualifying word, they are going to be misled. The addition of the word or the calling of sugar pine California white pine would mislead them, because they are now acquainted with sugar pine and to a certain extent they are acquainted with or have heard of California white pine under that trade name.

Q. Now, the term sugar pine is well known to the trade which uses it, is it not?

A. Yes; I would say it is.

Q. And it has been for many years?

A. Yes, sir.

Q. Do you believe that any change in the name of sugar pine would be advisable for the sugar pine producers?

A. No, sir; I do not.

3653 Q. How long has this name been known or been used generally in marketing that lumber in the eastern markets?

A. That I do not know.

Q. What is your experience on it?

A. Well, until fifteen or sixteen years ago I did not know very much about sugar pine. It was known at that time as it had been sold in the East——

Q. Do you ever remember of Pinus lambertiana being sold under any other name than sugar pine?

A. I do not, sir.

Q. It has been a general commercial practice over a long period of years, hasn't it?

A. Yes, sir; so far as I know.

Q. And a continuous practice, so far as you know?

A. Yes, sir.

Q. By all of the producers of sugar pine, so far as you know?

A. So far as I know; yes, sir.

Q. And the name is well known in the lumber trade, is it?

A. Yes.

Q. When you were discussing the matter of prices in connection with this sugar pine sales company, did I understand you correctly that you now wish to relate all of your prior testimony as to those matters to your own company only?

A. No, sir. I do not remember what my testimony was at that time. I would not want to relate it to my own company only
3654 except as it was brought up to me and I could go back and say that that related to my own company and other stuff related to the general trade.

Q. Well, as to all of the matters which counsel for the Commission has questioned you just now, relating to prices of sugar pine during the existence of this sugar pine sales company or relating to that sugar pine sales company, do you wish to refer your testimony in New York entirely to your own company?

A. No, sir; except the only place I would refer to my own company entirely was the reduction of $2.

Q. Were there any other price changes you had in mind when you were answering Mr. Matthews' question?

A. No, sir; when I answered that question and said there was a reduction of $2, I was referring there to our own experience and our average price. I afterwards testified that I did not think there was any change in price, and that referred to the general market.

Q. Had there been any change in the general sugar pine price in a period, say, of one year prior to the formation of that company? I am referring now to your own company, sir.

A. I could not tell you, because the prices change over night.

Q. Do you recall any general price change?

A. I do not.

Q. Are you familiar with the Pinus ponderosa which is cut
3655 in the Feather River Canyon section, the West Wood section, the Altura and Klamath Falls section?

A. Yes.

Q. Are you prepared to say, Mr. Danaher, that on the average the California white pine shipped from those areas which I have mentioned and considering its shipping weight, is greater than 2,000 pounds to the thousand feet?

A. No, sir; I am not prepared to say, from those districts.

Q. You do not know?

A. I do not know the shipping weight. I am familiar with the timber there to a greater extent than I am the lumber products and the shipping.

Q. Then I will ask you if it is your opinion that it is greater than 2,000 pounds to the thousand?

A. Whether it is my opinion?
Q. Yes.
A. It is my opinion that it is in excess of 2,000 pounds.
Q. Have you any opinion as to the amount?
A. No; I have not any decided opinion as to the amount. I know that that is very much lighter in those districts that you have mentioned and the California white pine or ponderosa in central California, the Sierras, on the west side of the Sierras——
Q. Where your mill is located?
A. Where our mill is located and where a great many other
3656 mills in that district are located.
Q. What color does the heartwood of Pinus strobus turn to after it has been exposed and cut for some time?
A. It turns kind of a golden brown, not quite as dark as sugar pine. What I would describe in my mind as a golden brown; that is Pinus strobus.
Q. Is wood of Pinus ponderosa which is now marketed under the trade name of pondosa produced in shop grades?
A. Is it used in shop grades?
Q. Is it produced in shop grades?
A. Yes.
Q. And is it sold in shop grades?
A. Yes, sir.
Q. And for what uses in general are the shop grades of Pinus ponderosa which is sold as pondosa used?
A. Generally sash and doors. There are other uses, I suppose, but the big percentage of that stuff goes into sash and doors.
Q. Now, from what portion of the tree does shop lumber come, and by shop lumber, in order that our minds may meet, I take it that that is the lumber which has defects, which will allow of clear cuttings between the defects; is that true?
A. Yes, sir.
Q. From what part of the tree does that come? Does it come from the part where the old knots are located?
3657 A. Yes, sir.
Q. It comes from a part of the tree, does it, which is beneath the clear exterior?
A. No, sir; it does not come from outside of the tree. The immediate outside of the tree. Where it comes in the tree depends on the tree and the defects in that tree.
Q. Would you say that it is true that the grades of no. 2 and 3 shop are predominantly used for the sash and door trade?
A. Predominantly used for the sash and door trade?
Q. Yes.
A. By the larger factories that manufacture stock sash and doors.
Q. That is a very large proportion, is it, of the sash and doors manufactured in the United States?
A. Yes, sir.

Mr. WHEAT. I think Mr. Andrews may have some questions.

Mr. ANDREWS. I just want to ask the witness a couple of questions.

By Mr. ANDREWS:

Q. As I understood your testimony, it was to the effect that pitch such as mass pitch or streak pitch was more prevalent in Pinus ponderosa than in sugar pine; is that correct?

A. Yes.

Q. In cutting clears or clear pieces for shop, that pitch is eliminated, whether it be ponderosa or sugar pine?

A. Yes, sir.

3658 Q. So if it is true that ponderosa runs slightly heavier to pitch than sugar pine, the loss comes on the operator in eliminating the pitch in making the clear?

A. Yes; in making the cutting.

Q. In making the cut?

A. Yes.

Examiner SHEPPARD. For shop grades?

By Mr. ANDREWS:

Q. For shop grades?

A. Yes.

Q. So the condition or the characteristics of the tree in that respect are not reflected in the lumber that is shipped?

A. No, sir; the defects in the tree have nothing to do with the grades that are shipped. They are all eliminated through the grading rules.

Q. Just one other thing. You spoke of the relative merits of ponderosa and sugar pine for outside ues.

A. Yes.

Q. I think your testimony was that it was your opinion that sugar pine was preferable for outside use; is that correct?

A. Yes.

Q. The so-called white pines have had a history in this country for several hundred years, haven't they?

A. Yes, sir.

Q. And you have considerable data on which to base an

3659 opinion as to their durability?

A. Yes.

Q. Is that true of ponderosa?

A. Of ponderosa?

Q. Yes.

A. No, sir.

Q. You have not anything like the historical background upon which to base an opinion as to the durability of ponderosa?

A. No, sir.

Q. I wonder if you have any experience upon which to base a judgment as to whether or not the heart of ponderosa for exterior use is as good or not as good as sugar pine?

A. I have no experience; no.

Q. You heard the testimony about the sash taken from the R. A. Long Building, didn't you?

A. Yes, sir.

Mr. ANDREWS. That is all.

The WITNESS. That is, I heard the testimony yesterday.

Mr. ANDREWS. That is what I am referring to.

The WITNESS. Yes, sir.

Mr. ANDREWS. That is all.

Examiner SHEPPARD. Anything else, gentlemen?

Redirect examination by Mr. BURR:

Q. Is there a treatment of sugar pine that is given to re-
3660 move the sugar flecks prior to painting or enameling?

A. Not to remove it. You can give sugar pine a treatment that will prevent those sugar flecks staining through a white enamel.

Q. What treatment is that?

A. Shellac will generally do it, shellac'ing the piece before painting or putting on a priming coat and then shellac'ing.

Q. That is called a deadener, is it?

A. I don't know what it is called.

Mr. BURR. That is all.

Mr. WHEAT. May I ask just one question?

Examiner SHEPPARD. Certainly.

Recross examination by Mr. WHEAT:

Q. In other words, Mr. Danaher, if a special treatment is given to sugar pine, this trouble you mention can be avoided?

A. Can be eliminated. The flecks do not come through in every piece.

Q. No.

A. It is an occasional piece. Sometimes you get it and sometimes you don't. You are not quite sure when it is coming.

Mr. WHEAT. That is all.

Mr. BURR. That is all.

Examiner SHEPPARD. You are excused.

(Witness excused.)

3661 *Colloquy*

Mr. BURR. I would like to talk to Mr. Koehler a minute. I might call him as a witness.

Mr. WHEAT. Well, I have paid him a special fee to come down here today.

Examiner SHEPPARD. This will be off the record.

(Discussion outside the record.)

Mr. BURR. I will waive it.

Examiner SHEPPARD. Is there anything else, gentlemen?

Mr. BURR. Yes; I have here, if the Examiner please, certain weather charts or weather bureau compilations which bear on the climate at the points where testimony with regard to durability has been received. They are respectively from the series of the U.S. Department of Agriculture, Weather Bureau; Summary of the Climatological Data for the United States, by sections, a reprint of section 4, northern Arizona, as one pamphlet. A reprint of section 15, northeastern California as another. A reprint of section 68, southern Indiana as a third, and, finally, a reprint of section 101, New Hampshire, Vermont, Massachusetts, Rhode Island and Connecticut.

I ask that these be received in evidence as Commission's exhibits for the record nos. 53, 54, 55, and 56, and ask that they be received in evidence for the information of the examiner and the Commission and for the use of such parts as opposing counsel or myself
3662 may see fit to refer to your Board.

Examiner SHEPPARD. Any objection?

Mr. WHEAT. Offhand, Mr. Examiner, I do not believe that these documents, whatever they may show, are proper rebuttal in this case. Whatever they might have been as direct, I feel that we are now in the field of rebuttal, and, frankly—perhaps counsel can enlighten me—I see no proper field of rebuttal in which these can be of interest.

Mr. BURR. If it please the Examiner——

Mr. ANDREWS. Just a moment. I will add to that that it seems to me this is hearsay and objectionable on that ground.

Mr. BURR. I think, if the Examiner pleases—are you through for the moment?

Mr. ANDREWS. Yes.

Mr. BURR. With regard to Mr. Wheat's objection, I want to say this: The Commission proved the great longevity of Pinus strobus in the northeastern section of the country, particularly in the environs of Boston, and then, in defense, the opposing counsel put in evidence with regard to longevity in California and also in New Mexico and Arizona.

Examiner SHEPPARD. What?

Mr. BURR. Pinus ponderosa. Then it became encumbent upon the Commission, as a matter solely and exclusively of rebuttal, to show the contrast, if any there be, between the two climates as re-
3663 gards the particular feature, namely, precipitation, which automatically bears upon the longevity of wood. Therefore, it is only a matter of defense to make this material advisable or pertinent.

Now, then, addressing myself to the objection of Mr. Andrews, it seems to me that the question of hearsay is not important here. I might also ask the Commission to take judicial notice of these matters, just as you would of a census or of a population set of data. It is certainly the best evidence that we have of precipitation in any part of the country, this evidence right here, and I think it would

be an absurd rule if the Commission has no right to the information unless we call all of these people who compiled this data in all parts of the United States.

Mr. WHEAT. Mr. Burr, you do not recall——

Mr. BURR. You have got a weather bureau man compiling data at various points throughout the country and it is impossible, impracticable, and, it seems to me, absurd to ask me to call these people from all over the country who compiled this data.

Mr. ANDREWS. Mr. Examiner, I took no exceptions yesterday to Mr. Burr's rather strict insistence upon the rule against hearsay evidence. I thought he was clearly right, but, nevertheless, it necessitated calling Professor Koehler here this morning. I take it from that that Mr. Burr in this hearing—and I inferred it
3664 had been true of the previous hearings—that the rather definite rules of evidence had been adhered to. This is a publication that Mr. Burr characterizes as a reprint. As far as I know, it is not a Government publication. It comes under no seal or certificate from any Department of the Government. It might just as well have been taken from a newspaper. It seems to me it is wholly lacking in those characteristics and qualities which make a Government statistics admissible. There is a way to prove those statistics; not by calling weather bureau employe's, of course. This does not meet the requirements of the rule, as I understand it.

Mr. BURR. If the examiner pleases, we put in the bulletin with regard to the mechanical properties of these various woods without calling anybody.

Mr. WHEAT. Mr. Burr, do you recall that the author of that bulletin was put on the stand?

Mr. BURR. I withdraw that. I guess I am in error on that. But you have several others.

Mr. WHEAT. We have one bulletin and we put it in by stipulation, because both you and I felt it was an utterly impossible thing and both of us felt it could not be proved in any other manner.

Mr. BURR. If the examiner please, I could ask the Commission to take judicial notice of this matter, but I am sure they would
3665 rather have the figures than have me point out the figures. I think it is just as admissible as census matter and I think it would be possible to dig up authorities on that point, if there are authorities on the question of taking judicial notice of the census figures.

Mr. ANDREWS: Mr. Examiner, if Mr. Burr is right, that the Commission can take judicial notice of these figures, it is an answer to the offer to introduce the evidence. If they can take judicial notice of them, then he does not need to introduce them. He can refer to them in his briefs or any other way that he pleases. That is one thing. It is quite a different thing to put a mass of printed matter here in the record which none of us have had an opportunity to examine. We do not know where it comes from, who makes the

reprint, how carefully compiled the data is. It seems to me it is a complete instance or example of hearsay testimony.

Examiner SHEPPARD. Mr. Burr, I am more interested, not so much in whether the matter is a reprint of some Government figures or not, but I am more interested in the real purpose for which they are put in. You stated something about longevity. It appears to me that the question of longevity is not a question of geological situation at all, whether the timber lasts longer in California or the New England States or whether climatic conditions in California or the rainfall in California is greater than in New England. Longevity in timber applies universally all over the country. Timber
3666 that will stand up on the west coast and timber that will stand up on the east coast, that is a matter of longevity; whether climatic conditions on one side are more effective than on the other side of the country, it does not seem to me that is a question. Timber ought to stand up everywhere, no matter what kind of climate it is, and if I get the purpose of the introduction of these things, I do not see that they are going to help me or the Commission at all.

Mr. BURR. If the examiner pleases——

Examiner SHEPPARD. Just point out to me in what respect those things are going to affect the question of longevity in this case.

Mr. BURR. I will be glad to do so. The situation is this: Witnesses for the defense have admitted that the precipitation, rainfall, has a direct bearing upon the life of wood.

Mr. WHEAT. Where was this?

Mr. BURR. This was in California and also in New Mexico and Arizona, witness after witness has admitted that precipitation, the greater or less precipitation, has a direct reflex on the length of life of wood where used for exterior purposes as lumber.

Examiner SHEPPARD. All right. Do you want to show by these papers that lumber used in California, where it rains more than it does in New England, will deteriorate quicker?

3667 Mr. BURR. I want to show this; that the long life of strobus in New England, where there is a great precipitation, great humidity, has a greater showing of longevity than that, for example, in Arizona and New Mexico, where they proved that the old Spanish structures had been built of Pinus ponderosa for a long period of years; that in that part of the country where it is dry, where there is evaporation, where there is sunshine, where there is no precipitation, hardly, in some sections, that that means nothing compared with what is meant by the longevity of strobus under conditions of heavy rainfall.

Now, then, this proposition here, it seems to me, is absolutely competent to show the contrast. Here is northern California, which shows how much importance is to be attached to the showing of longevity as to Pinus ponderosa in certain sections of California, Suisan Bay, for example, where they showed the longevity in that part of the State; and here is Arizona, which shows precipitation in that part of the country; and here is southern Indiana, which

shows precipitation in that part of the country, and here is Boston, showing here, as an example of the precipitation in the part of the country where strobus has a longevity of 300 years, untainted in some instances.

Now, then, it seems to me to contrast here between the longev-
3668 ity in woods is directly in point, and this is the best information to be had anywhere in the country or anywhere in the world. And, furthermore, it seems to me exceedingly captious that these gentlemen object that we are not calling all of these people. If they doubt it is as Government publication, let them check it up, or I will check it up.

Mr. WHEAT. May I ask you a question?

Mr. BURR. Yes.

Mr. WHEAT. You recall in California when I placed on the stand a witness to testify to the longevity of Pinus ponderosa in these mountain regions I asked him questions as to his experience with the climate as to the amount of snowfall, as to all of those questions which you now mention, and I gave you an opportunity to cross-examine upon those matters, which you are not allowing us at the present time.

Mr. BURR. That proves it is proper rebuttal. I am giving better information as to what the rainfall in that country was. That proves the necessity of having accurate figures.

Mr. ANDREWS. Mr. Examiner, I make a suggestion, which has been concurred in by Mr. Wheat, that may solve this. If Mr. Burr wants to put in the Government figures as to rainfall, we have no objection to those figures going in. I think we will have no difficulty in checking those figures with you, Mr. Burr, and stipulating that they are correct figures and may go in, but we have not had
3669 a chance to examine these. We cannot consent to these now.

Examiner SHEPPARD. Mr. Andrews, I was going to suggest that, that you gentlemen look over these papers. The examination you just have given is so cursory that it is impossible for you to know what is in there at all.

Mr. ANDREWS. Yes.

Examiner SHEPPARD. I have great reluctance to allow anything to go into the record where the other side does not have the opportunity to examine.

Mr. BURR. Let us adjourn for a couple of hours and let them look at them.

Examiner SHEPPARD. You gentlemen both remember when I was in Wisconsin I barred something Mr. Burr wanted to put in in that hearing, just because you gentlemen did not have an opportunity to examine it. It is noon hour now, or close to it, and I am going to adjourn this hearing until two o'clock and let you gentlemen have an opportunity to look over these figures, and if you can stipulate the information to go into this record that will do you or either side or the Commission any good, take it up with me at two o'clock and I will see what can be done.

Mr. WHEAT. May I just off the record say something?

Examiner SHEPPARD. Certainly. Off the record, please, Mr. Reporter.

(Discussion outside the record.)

3670 Examiner SHEPPARD. We will take a recess now until two o'clock.

(Whereupon, a recess was taken until 2:00 o'clock p.m. of the same day, February 20, 1930.)

3671 Before the Federal Trade Commission

In the matter of White Pine cases

Docket Nos. 1620–1669, inclusive

CHICAGO, *February 20, 1930.*

Court met, pursuant to recess, 2:00 o'clock p.m.

Before William W. Sheppard, examiner.

Appearances: Same as before.

Examiner SHEPPARD. We will convene the hearing pursuant to the adjournment.

Mr. BURR. I believe my offer is pending, Mr. Examiner.

Examiner SHEPPARD. Yes.

Mr. BURR. If the Examiner please, may I make a little statement off the record?

Examiner SHEPPARD. Certainly.

(Discussion outside the record.)

Mr. BURR. It is hereby stipulated that the four weather documents heretofore described and offered for the record be received, subject to the privilege of counsel for the Commission to mark in ink

3672 such portions of these four documents as he desires to have received as the portion of the pamphlets to be deemed of record, and that copies will be obtained and similarly marked and mailed to the firm of McCutcheon, Olney, Manon & Greene, and that that firm may request that additional portions of these four pamphlets be made of record within fifteen days after receipt of the documents.

Mr. WHEAT. May I ask you whether in that connection you intend in each instance to offer the text which precedes the figures in each one of these pamphlets?

Mr. ANDREWS. If he wants, he can mark it up in either way.

Mr. WHEAT. All right.

Mr. BURR. Then you can mark whatever you want in them.

Mr. WHEAT. Yes.

Examiner SHEPPARD. All right, Mr. Reporter, under the stipulation above, you will introduce those exhibits into the record under the numbers indicated.

(Said documents were thereupon received in evidence and marked "Commission's Exhibits Nos. 53, 54, 55, and 56.")

Mr. BURR. The Government is prepared to rest at this time in rebuttal and on the case.

Mr. WHEAT. I should like to recall Mr. Hornibrook for just two or three questions further.

3673 C. W. HORNIBROOK was thereupon recalled as a witness and, having been previously duly sworn, resumed the stand and testified further, as follows:

Direct examination by Mr. WHEAT:

Q. Mr. Hornibrook, are you familiar with the shipping weight of Pinus ponderosa as produced in the Klamath Falls region?

A. Yes, sir.

Q. I will ask you whether or not that varies with the thicknesses of the boards which are shipped.

A. It varies in surface lumber considerably.

Q. What is the average shipping weight from the Klamath Falls region of four quarters, that is, inch, select surfaced Pinus ponderosa lumber?

A. Surfaced to American lumber extra standards, about 1,800 pounds.

Q. Per thousand feet?

A. Per thousand board feet.

Q. That is dry weight?

A. Yes, sir.

Q. Now, take five quarters surfaced lumber, what would that weigh?

A. Surfaced to American lumber extra standards, just about 2,000 pounds.

3674 Q. Take your shop lumber, five quarters, six quarters, and eight quarters—the examiner will understand those are quarter inches; that is the way the lumber men deal with that—will you tell us what the average shipping weight from that area is?

A. Five quarters surfaced to American lumber extra standards, about 2,025 pounds; six quarters, about 2,050 pounds, and eight quarters, about 2,000 pounds.

Q. Are you familiar with the general average shipping weights of Pinus ponderosa lumber marketed as California white pine from the other portions of its range?

A. Some of it; yes, sir.

Mr. BURR. First let us find out what his knowledge is.

Mr. WHEAT. The record will show his qualifications.

By Mr. WHEAT:

Q. You may state again just where you have been connected with California white pine lumber.

A. My knowledge on the Klamath Falls stuff is based on my present connection with the box company, where we keep very detailed records of the weights of every car, straight items shipped, and I know from knowledge and observation that stock shipped from

the Klamath Falls district is all very similar to ours. There would be no material variation, if any.

Q. Now, take your experience in other portions of the California white pine region.

A. I am familiar with the Pinus ponderosa that was manu-
3675 factured at Oroville, California, by the Hutchinson Lumber Company; which was of as hard texture as I have ever seen in that specie, and that stock averaged, according to my recollection, about 200 pounds higher than the Klamath Falls stock. That heavier textured stock constituted a comparatively small percentage of the total stock sold as California white pine. So that I would say that the average weights for the whole district would be from 50 to possibly 100 pounds higher than those from the Klamath Falls district.

Mr. WHEAT. You may cross-examine.

Cross-examination by Mr. BURR:

Q. You say it varies with the surfaced lumber. That depends on how small the pieces are. If you have got surface on both sides, a narrow width and also edged at both edges, it would run considerably lighter in weight, will it not, if it is two-inch boards surfaced both sides?

A. No; the width on stock surfaced two sides has little, if anything, to do with the weight. In fact, the narrower the stock, the heavier it would average because it is the practice of the mill to cut the lumber overwidth, about the same amount for the different widths. The variation in weight between different thicknesses of surfaced lumber comes because of the varying percentage of actual volume of lumber shipped in the different thicknesses as com-
3676 pared with the basis on which it is measured.

Q. Now, if you are going to take a board that is two inches thick and surface both sides, you lose weight from both operations, don't you?

A. You would lose the weight to whatever thicknesses you dressed the stock to.

Q. Yes; and those thicknesses are all prescribed as a minimum proposition, that is, as a maximum reduction by the rules of the association?

A. The association has rules, or, rather, standard surfacing specifications.

Q. Yes; and you must not bring your surfaced lumber down to a greater degree and take off more than will result in observing the minimum requirements of the rule.

A. It must be exact.

Q. Now, then, if instead of having one two-inch board you have got two one-inch thick boards and then you surface both of those, you have surfaced off part of the weight four times instead of twice, haven't you?

A. Yes.

Q. And that would result in a diminished weight, wouldn't it?

A. Yes, sir.

Q. That is what I am getting at. And that is part of what you mean by saying it varies in surfaced lumber, is not that true?

A. Yes.

3677 Q. Now, the same is true as between a two by four and a four by four?

A. Yes, sir.

Q. There is a pretty wide variation on the width of the board if you are going to edge twice, is not that true?

A. I don't understand.

Q. You have got a six-inch wide board and you edge twice, that makes the same difference there.

A. If you surface four sides; yes.

Q. As contrasted with an inch wide or two feet wide board, you lose more?

A. Yes. The weights I gave you are on what we know as the stock surfaced two sides only.

Q. If you have rough lumber, that is going to run heavier in weight to the thousand?

A. Yes.

Q. And if Mr. Danaher's figures that you heard this morning referred to rough lumber, his figures would be pretty nearly correct, wouldn't they?

A. His statement that rough lumber weighs approximately 300 pounds more than surfaced lumber is true in practically all thicknesses.

Mr. BURR. I see. That is all.

By Mr. ANDREWS:

3678 Q. How about his statement as to the differential between ponderosa and sugar pine, as to weight?

A. I have forgotten just what differential he gave.

Q. 200 pounds.

Mr. BURR. Is he familiar with sugar pine?

The WITNESS. Yes, sir. The average California white pine, in my estimation, will not average 200 pounds more than sugar pine. Some of the hard-textured stockwood.

By Mr. ANDREWS:

Q. What would the average difference be?

A. I would say in surfaced lumber it would not exceed 100 pounds at the most. Possibly not that much.

Q. And in rough lumber?

A. Sir?

Q. And in rough lumber, that is, the difference between the sugar pine and rough ponderosa?

A. The same difference as in surfaced lumber, assuming that both species cut the same thicknesses.

By Mr. BURR:

Q. Is that based upon your experience with sugar pine and ponderosa in your own mills?

A. Yes, sir. My sugar pine knowledge was gained when I was connected with the Hutchinson Lumber Company.

Q. How large a percentage there did they cut of sugar pine?

A. They had about 20 percent sugar pine and 20 percent California white pine.

3679 Q. That is not the best sugar pine belt in Oregon?

A. That is a very excellent sugar pine.

Mr. BURR. That is all.

Examiner SHEPPARD. Is that all?

Mr. WHEAT. Yes.

Examiner SHEPPARD. You are excused.

(Witness excused.)

*Colloquy*

Examiner SHEPPARD. Do the gentlemen on both sides rest?

Mr. BURR. That is correct.

Mr. WHEAT. Yes, sir.

Examiner SHEPPARD. Mr. Wheat and Mr. Burr, have you arrived at any agreement so that you can stipulate as to what shall be our procedure in making findings of fact on all these various matters?

Mr. BURR. Off the record.

(Discussion outside the record.)

Examiner SHEPPARD. Gentlemen, I am going to proceed to close this case and give you instructions on the record.

It is our rule that ten days from the date I receive the record in all cases, this included, findings of fact will be made thereon and a copy served on counsel for the Commission and counsel for the respondent respectively. I believe there are about three appearances in this case on the part of the respondents. Am I right in that, Mr. Wheat?

Mr. WHEAT. Yes.

3680 Mr. BURR. More than that.

Mr. WHEAT. There have been three attorneys or firms of attorneys appearing for various respondents.

Mr. BURR. I don't think that is correct. More than that.

Mr. WHEAT. There may have been others.

Examiner SHEPPARD. Will the record show who they are?

Mr. BURR. Yes; the record shows. There have been five or six.

Examiner SHEPPARD. That is all I need on that. Now, Mr. Wheat and Mr. Andrews, you two being the only ones present, you are

the only ones I can give instructions to, with the request that you inform your associates. After you receive the copy of the findings I have been just speaking of, you have ten days in which to make exceptions, which exceptions raise the question in this case to be decided. A copy of your exceptions will be served upon Mr. Burr and if he has any exceptions a copy of his will be served upon each one of you who makes appearance here. Then, Mr. Burr, as you know, under our rule, you have thirty days from the date you get the findings to make and prepare your brief and the gentlemen of the respondents counsel have thirty days from the time you get Mr. Burr's brief in which to serve yours. If Mr. Burr has a reply brief, that will follow afterwards and is discretionary with him.

3681 With those remarks——

Mr. WHEAT. May I ask you before the record closes; after the filing of these briefs I take it that the Commission sets the matter down for oral argument.

Examiner SHEPPARD. You are right, and the Commission will set a date which will be conveyed to you in sufficient time for you to make appearance.

Mr. WHEAT. And that argument takes place in Washington, D.C.?

Examiner SHEPPARD. In Washington, D.C., before the Commission in full.

Mr. WHEAT. Thank you.

Examiner SHEPPARD. With those remarks I am going to close this case, and I want to express to both of you my appreciation of the manner in which both sides have conducted the proceeding. It has been orderly and a spirit of kindliness and appreciation shown by all of you.

Mr. ANDREWS. Mr. Examiner, before you leave, I think it would be only proper, and justice to my feelings require, that the atotrneys express their appreciation of the very fair manner and very sincere manner in which you have handled the case.

Mr. WHEAT. I was just going to express that sentiment myself.

Mr. BURR. I certainly concur in that thought.

3682 Examiner SHEPPARD. Thank you, gentlemen. This hearing is closed.

(Whereupon, at 2:45 o'clock p.m., February 20, 1930, the hearing in the above-entitled matter was closed.)

3683 In United States Circuit Court of Appeals for the Ninth Circuit

No. 6716

ALGOMA LUMBER COMNANY, BIG LAKES BOX COMPANY, CALIFORNIA Fruit Exchange, Clover Valley Lumber Company, Davies-Johnson Lumber Company, Diamond Match Company, Ewauna Box Company, Feather River Lumber Company, Hobart Estate Company,

Lassen Lumber and Box Company, Pelican Bay Lumber Company, and Red River Lumber Company, petitioners

vs.

FEDERAL TRADE COMMISSION, RESPONDENT

*Order allowing filing of petition for review, etc.,*

Filed Jan. 4, 1932

The petitioners above named having presented to this court a petition for a review of and to set aside certain orders of respondent, Federal Trade Commission, issued on June 8, 1931, in certain proceedings theretofore instituted by respondent against said petitioners, and it appearing that said petitioners are entitled to have said orders reviewed by this court, and for that purpose to file said petition with this court, and to have a transcript of the entire proceedings had therein by and before respondent, Federal Trade Commission, filed in this court,

3684 Now, therefore, it is hereby ordered that petitioners herein be, and they are hereby, allowed and given consent to file said petition with the clerk of this court, and to have said action docketed and placed on the calendar in accordance with the rules and practice of this court for the purpose of a review of said orders of respondent as provided by law, and

It is further ordered that respondent, Federal Trade Commission, shall be, and it is hereby, directed and ordered to prepare, certify, and file with the clerk of this court, within sixty (60) days from this date, a complete transcript of said entire proceedings had by and before respondent, including the several complaints, the several answers, the "Trial examiner's report upon the facts", and the reports and orders of said Commission in such proceedings; and that a certified copy of the said petition for a review of such orders be served forthwith upon respondent, Federal Trade Commission, by the clerk of this court, and

It is hereby further ordered that both petitioners and respondent, Federal Trade Commission, as the respective parties herein, shall be, and they are hereby, accorded the right and privilege of filing briefs and being heard in oral argument by counsel in accordance with the rules of practice and procedure of this court.

Dated this 4th day of January, 1932.

CURTIS D. WILBUR, *Circuit Judge.*

[File endorsement omitted.]

U.S. MARSHAL'S OFFICE,
*Washington, D.C., January 11, 1932.*

Served copy of the within order, together with a copy of the petition and a copy of an order of the United States Circuit Court of Appeals for the Ninth Circuit waiving the printing of the record,

on Otis B. Johnson, secretary of the Federal Trade Commission, in person on January 11, 1932.

EDGAR C. SNYDER,
*U.S. Marshal, District of Columbia.*
By HARRY C. ALLEN,
*Deputy U.S. Marshal.*

3685 In United States Circuit Court of Appeals for the Ninth Circuit

No. 6716

[Title omitted.]

*Petition of above-named petitioners for a review of and to set aside certain orders of the Federal Trade Commission*

Filed Jan. 4, 1932

*To the Honorable the Presiding Judge of the United States Circuit Court of Appeals for the Ninth Circuit and to the Honorable the Circuit Judges of said Court:*

The petition of your petitioners, above named, respectfully shows:

I

That each of your petitioners, Algoma Lumber Company, California Fruit Exchange, Davies-Johnson Lumber Company, Feather River Lumber Company, Hobart Estate Company, and Lassen Lumber and Box Company, is now, and was during all of the times herein mentioned, a corporation organized and existing under the laws of the State of California; that each of your petitioners, Big
3686 Lakes Box Company, Ewauna Box Company, and Pelican Bay Lumber Company, is now, and was during all of the times herein mentioned, a corporation organized and existing under the laws of the State of Oregon; that your petitioner, Diamond Match Company, is now, and was during all of the times herein mentioned, a corporation organized and existing under the laws of the State of Illinois; that your petitioner, Red River Lumber Company, is now, and was during all of the times herein mentioned, a corporation organized and existing under the laws of the State of Minnesota; that your petitioner, Clover Valley Lumber Company, is now, and was during all of the times herein mentioned, a corporation organized and existing under the laws of the State of Nevada; that each of your petitioners owns and operates certain lumber mills, at which, among other things, forest products are manufactured from that certain tree known botanically as Pinus ponderosa; that each of your petitioners now sells, and for many years past continuously has sold, such forest products in interstate and foreign commerce under the commercial name "California white pine."

II

That on the 23rd day of May 1929 respondent, Federal Trade Commission, in certain proceedings entitled severally as follows:

In the matter of Algoma Lumber Company, a corporation, its officers and agents, docket no. 1654.

In the matter of Big Lakes Box Company, a corporation, its officers and agents, docket no. 1647.

In the matter of California Fruit Exchange, a corporation, its officers and agents, docket no. 1626.

In the matter of Clover Valley Lumber Company, a corporation, its officers and agents, docket no. 1621.

3687 In the matter of Davies-Johnson Lumber Co., a corporation, its officers and agents, docket no. 1624.

In the matter of Diamond Match Company, a corporation, its officers and agents, docket no. 1625.

In the matter of Ewauna Box Company, a corporation, its officers and agents, docket no. 1648.

In the matter of Feather River Lumber Company, a corporation, its officers and agents, docket no. 1629.

In the matter of Hobart Estate Company, a corporation, its officers and agents, docket no. 1632.

In the matter of Lassen Lumber and Box Company, a corporation, its officers and agents, docket no. 1643.

In the matter of Pelican Bay Lumber Company, a corporation, its officers and agents, docket no. 1652.

In the matter of Red River Lumber Company, a corporation, its officers and agents, docket no. 1644.

issued its complaints against your petitioners severally, in each of which complaints it was alleged, among other things, that the use by your petitioners of the commercial name "California white pine" for forest products manufactured from Pinus ponderosa constitutes an unfair method of competition in interstate and foreign commerce in violation of the provisions of section 5 of the act of Congress approved September 26, 1914 (38 Stat. 717; 15 U.S.C.A., sec. 41), commonly known as the Federal Trade Commission Act.

III

That thereafter your petitioners severally filed their answers to the said complaints issued against them respectively, by which answers your petitioners severally admitted that they were engaged in the manufacture of forest products from Pinus ponderosa, and in the sale of such forest products in interstate and foreign commerce under the commercial name "California white pine",

3688 alleged that said commercial name has been in general and continuous use for such forest products for more than forty years past, but denied that such practice was or is in violation of

the provisions of section 5 of said Federal Trade Commission Act, and denied other material allegations in said complaints contained.

IV

That thereafter said Federal Trade Commission consolidated the said several proceedings against your petitioners for hearing with certain other proceedings against certain respondents other than your petitioners, and held hearings before a trial examiner appointed by said Federal Trade Commission, and received testimony and other evidence in support of said complaints and in opposition thereto, which said testimony so taken was reduced to writing and filed in the office of said Federal Trade Commission.

V

That thereafter the said trial examiner of the said Federal Trade Commission made and filed his "Trial examiner's report upon the facts" in said proceedings, copies of which said report were served upon your petitioners; that thereafter your petitioners filed with said Federal Trade Commission their exceptions to said "Trial examiner's report upon the facts"; that thereafter briefs were filed with the Commission in said proceedings by the attorney for the Federal Trade Commission and by the attorneys for your petitioners and each of them; that thereafter these several causes came on for oral argument before the said Commission and following such argument were taken under submission by the said Commission.

3689

VI

That thereafter, on the 8th day of June, 1931, said Commission issued in each of said proceedings a purported "Report, findings as to the facts, and conclusions", together with a purported "Order to cease and desist"; that said orders to cease and desist are directed severally against your petitioners, and each of them, their officers, agents, representatives, and employees; that said orders are in identic terms, excepting that each is directed against a specifically named respondent; that the order directed against your petitioner Algoma Lumber Company is in the words and figures following, to-wit:

"It is now ordered that the Algoma Lumber Company, a corporation, its officers, agents, representatives and employees, in connection with the advertising, offering for sale and/or sale, in commerce among the several States of the United States, or with foreign countries, of lumber, logs or other forest products made from the pine species known as Pinus ponderosa, which have been designated by respondent in its trade as 'California white pine' products, do cease and desist from using, either orally or in writing, the word 'white' in connection, combination, or conjunction with the word 'pine', or in connection with other word or words used in combination or conjunction with the word 'pine.'

"And it is further ordered, that the said respondent, within sixty (60) days from the receipt of this order, shall file with the Commission its report in writing, setting forth in detail the manner and form in which it has complied with the order to cease and desist hereinabove set forth."

VII

That the said "Report and findings as to the facts" of said Commission in each of said proceedings are, in material and controlling respects, without support in the evidence received by the said Commission in said proceedings, but are contrary to such evidence; that said "Conclusion" of said Commission in each of said proceedings is not supported by the findings or by the evidence received
3690 by the said Commission; that each of the said several orders entitled "Order to cease and desist", so made by the said Commission against your petitioners severally, is not supported by the record before the said Commission in said proceedings and is beyond the authority and jurisdiction of said Commission.

VIII.

That in making, entering, and publishing its said several "Orders to cease and desist" the said Federal Trade Commission erred in concluding that the use by your petitioners of the commercial name "California white pine" in selling forest products manufactured from said Pinus ponderosa in interstate and foreign commerce is "an unfair method of competition in interstate commerce" in violation of the provisions of section 5 of said Federal Trade Commission Act.

IX

That no proof was adduced in said proceeding before the said Federal Trade Commission showing or tending to show that your petitioners have, or that any of them has, committed any act or acts, or engaged in any practice or practices prohibited by the provisions of section 5 of said Federal Trade Commission Act, or that your petitioners have, or that any of them has, committed any other act or engaged in any other practice cognizable by the said Federal Trade Commission under the said Federal Trade Commission Act, or warranting the issue by said Commission of its said several "Orders to cease and desist"; that under the proofs adduced before said Federal Trade Commission in said proceedings the said Commission was without authority or jurisdiction to enter any order respecting your petitioners, or any of them, other than an order or orders dismissing its said several complaints.

3691 X

That the said Federal Trade Commission erred in taking or purporting to take jurisdiction over your petitioners, or any of them,

by the issuance of its said respective "Orders to cease and desist"; that the said several "Orders to cease and desist" are, and each of them is, erroneous, contrary to law, and wholly void.

Wherefore your petitioners respectfully pray:

1. For a review by this honorable court of the said "Orders to cease and desist" and of each thereof heretofore made and entered by said Federal Trade Commission in said proceedings;

2. For an order of this court directing the Federal Trade Commission, upon being served with a copy of this petition, forthwith to certify and file in this court a transcript of the entire record in the said proceedings heretofore had by and before the Federal Trade Commission, including the said several complaints, the said several answers, the said "Trial examiner's report upon the facts.", and the said several "Reports, findings as to the facts, and conclusions" and "Orders to cease and desist";

3. For an order permitting a brief or briefs to be filed herein on behalf of your petitioners and fixing the time for filing the same;

4. For an order permitting oral argument to be had herein on behalf of your petitioners and fixing the time for the same;

5. For a judgment vacating and setting aside the said orders
3692 of the Federal Trade Commission to cease and desist, and requiring a dismissal of said proceedings, and each of them, by the Federal Trade Commission;

6. For such other orders and relief as may be proper in the premises.

WARREN OLNEY, JR.,
ALLAN P. MATTHEW,
CARL I. WHEAT,
McCUTCHEN, OLNEY, MANNON & GREENE,
*1500 Balfour Building, San Francisco, California,*
*Attorneys for the above-named Petitioners.*

Dated: San Francisco, California, January 2, 1932.

3693 [*Duly sworn to by Willis J. Walker; jurat omitted in printing.*]

[File endorsement omitted.]

3694 In United States Circuit Court of Appeals for the Ninth Circuit

[Title omitted.]

No. 6716

*Order as to record*

Filed Jan. 4, 1932

Good cause appearing therefor,

It is hereby ordered that the petitioners in this proceeding shall not be required to print the record in the proceedings had before the

Federal Trade Commission which are sought to be reviewed in this cause.

CURTIS D. WILBUR,
*Circuit Judge.*

Dated this 4 day of Jan., 1932.
[File endorsement omitted.]

3695 In United States Circuit Court of Appeals for the Ninth Circuit

[Title omitted.]

No. 6716

*Notice of motion to amend the order of court allowing the filing of petition for review*

To Messrs. McCUTCHEN, OLNEY, MANNON & GREENE,
*Balfour Building, San Francisco, California.*

GENTLEMEN: Please take notice that, simultaneously herewith, the undersigned are presenting to the clerk of the above court, a motion to strike a portion of that certain order of court herein dated January 4, 1932, and, together therewith, our supporting memorandum and form of proposed amended order of court, copies of which said motion, memorandum, and proposed order are attached hereto.

With respect,

ROBT. E. HEALY,
*Chief Counsel.*
MARTIN A. MORRISON,
*Assistant Chief Counsel*, and
EUGENE W. BURR,
*Attorneys for Respondent.*

3696 In United States Circuit Court of Appeals for the Ninth Circuit

[Title omitted.]

No. 6716

*Motion to amend order allowing the filing of petition for review and certification of record*

Filed Jan. 25, 1932.

Comes now the Federal Trade Commission, respondent herein, by its attorneys and respectfully moves this honorable court that an order be made and entered amendatory of the order dated the fourth day of January 1932 allowing the petition herein, so as to strike from the said order the requirement that this respondent shall include with the transcript a copy of the "Trial examiner's report upon the facts"; and

The respondent further moves the honorable court that this motion be submitted upon memoranda on the part of the respective counsel without oral argument and that the court cause attor-
3697 neys for the petitioners to know within what period their memorandum in opposition to said motion shall be presented.

ROBT. E. HEALY,
*Chief Counsel,*
MARTIN A. MORRISON,
*Assistant Chief Counsel,* and
EUGENE W. BURR,
*Attorneys for respondent.*

[File endorsement omitted.]

3698–3702 [Stipulation as to transcript of record omitted. Printed side page B, ante.]

3703 In United States Circuit Court of Appeals

[Title omitted.]

*Order submitting motion to strike, etc.*

Feb. 19, 1932

Ordered motion of respondent, filed January 25, 1932, to strike from the order of January 4, 1932, the requirement that respondent shall include with the transcript a copy of "Trial examiner's report upon the facts" submitted to the court for consideration and decision.

3704 In United States Circuit Court of Appeals

[Title omitted.]

*Order directing filing of opinion on motion to strike portion of order allowing filing of petition to review*

March 7, 1932

By direction of the court, ordered that the typewritten opinion this day rendered by this court in above cause be forthwith filed by the clerk and that an order be entered in the minutes of the court in accordance with the opinion filed.

3705 In United States Circuit Court of Appeals for the Ninth Circuit

No. 6716

ALGOMA LUMBER COMPANY, BIG LAKES BOX COMPANY, CALIFORNIA Fruit Exchange, Clover Valley Lumber Company, Davies-Johnson Lumber Company, Diamond Match Company, Ewauna Box Com-

pany, Feather River Lumber Company, Hobart Estate Company, Lassen Lumber and Box Company, Pelican Bay Lumber Company, and Red River Lumber Company, petitioners

vs.

FEDERAL TRADE COMMISSION, RESPONDENT

Upon motion to amend order allowing filing of petition for review, etc.

Before: WILBUR and SAWTELLE, Circuit Judges

*Opinion*

Filed March 7, 1932

WILBUR, Circuit Judge:

An ex parte order was made in this matter for the inclusion in the record to be certified by the Federal Trade Commission of a copy of the trial examiner's report upon the facts, and motion is made to amend the order by striking out the requirement that the report of the examiner should be included in the transcript. The statute upon the subject is in general terms (38 Stat. 717, §5, pp. 720; 15 U.S.C.A. §45) and provides that the Commission shall file with the court "a transcript of the entire record in the proceeding, including all the testimony taken and the report and order of the commission." The statute also provides that the Commission
3706 after its hearing "shall make a report in writing in which it shall state its findings as to the facts" and further provides that the findings of the Commission as to the facts, if supported by the testimony, shall be conclusive, but either party may apply to the court for leave to adduce additional evidence. The Commission states in its application that its uniform practice has been to omit from its transcripts of proceedings the findings of the examiner, and that out of a total of 148 petitions to the various Circuit Court of Appeals in only three have the examiner's reports been accepted by the Circuit Courts. The Commission contends that the findings of the examiner are no proper part of the record and states "In the present case the examiner's findings comprise 58 pages of mimeographed material and the exceptions thereto by the present petitioners cover 105 printed pages, while those by counsel for the Commission occupy 20 (mimeographic) pages." The petitioners who seek to review the order of the Commission maintain that the question as to whether or not the report of the examiner and proceedings with relation thereto shall be included in the record to be certified to the court by the Commission is a matter resting in the sound discretion of the court. This we think is correct and

in accordance with the rulings of the various courts. The petitioners in opposing the application for the amendment of the order so as to omit the requirement that the examiner's report be certified by the Commission frankly state their purpose in insisting upon that inclusion. That purpose, briefly stated, is that the report illustrates the fact that the Commission has neglected to consider matters which are involved as shown by the examiner's report, which have been brought to its attention. In short, although it is conceded that the examiner's report has no binding effect and that the ultimate decision of the facts rests with the Commission it is insisted that the report will be a valuable addition to the record.

We are inclined to agree with the contention of the Federal Trade Commission that in the routine certification of its records to the courts it should not be required to certify the report of the examiner or the exceptions thereto unless such report and exceptions are referred to in the findings of the Commission and thereby adopted by it as its findings. It is stated, and there is no suggestion to the contrary, that in the present proceeding the findings of the Commission did not refer in any wise to the examiner's report. If upon the hearing of the matter before the court it seems desirable
3707 that any part of the record or proceedings before the Federal Trade Commission would be helpful in determining the cause, and such part of the record has not been certified it can be supplied upon the hearing or afterward by stipulation of counsel or certification by the Federal Trade Commission upon a supplemental order requiring that to be done. Usually, in such case there is no disagreement between counsel as to the terms of such an order. In the case at bar the purpose suggested by counsel can be covered by argument and by briefs without the actual presence of the examiner's report. We are not impressed that the report of the examiner would be of any assistance in coming to a conclusion in the matter, particularly where the contention is that it has been disregarded by the Commission.

The order will be amended by striking out the requirement that the Federal Trade Commission certify the report of the examiner or the objections thereto. If, on the hearing and argument, the matter seems to the court to be relevant and counsel cannot agree on the terms of the examiner's report the court will make such supplemental order as seems proper. Congress has provided that "such proceedings in the circuit court of appeals shall be given preference over other cases pending therein, and shall be in every way expedited." It is in the interest of expedition that the uniform course of procedure adopted in the presentation of these records be followed, and we feel that the course usually adopted by the Commission of omitting the examiner's report in the transcript is the better practice to be followed unless upon the hearing of the

matter the inclusion of the report for some reason appears necessary to correct the decision.

Motion granted.

[File endorsement omitted.]

3708 In United States Circuit Court of Appeals

[Title omitted.]

*Order granting motion of respondent to strike from order allowing filing of petition to review the requirement that trial examiner's report be made part of transcript of record*

March 7, 1932

Upon consideration of the motion of respondent filed January 25, 1932, to strike from the order of January 4, 1932, allowing the filing of the petition to review in this cause, the requirement that the respondent Federal Trade Commission shall include with the transcript a copy of the "Trial examiner's report upon the facts" and of the answer of petitioners thereto, filed February 15, 1932, and good cause therefor appearing.

It is ordered that said motion be, and hereby is, granted, and the requirement that the respondent Federal Trade Commission include with the transcript a copy of the "Trial examiner's report upon the facts" be, and hereby is, stricken from the order of January 4, 1932.

3709 In United States Circuit Court of Appeals

[Title omitted.]

*Order of submission*

June 24, 1932

Ordered petition to review argued by Mr. Allan P. Matthew, counsel for the petitioners, and by Mr. Eugene W. Burr and Mr. Martin A. Morrison, attorneys, Federal Trade Commission, counsel for respondent, and submitted to the court for consideration and decision, with leave to counsel for petitioners to file tabulations re testimony of witnesses, and with leave to counsel for the respective parties to file reply brief to brief of amici curiae.

3710 In United States Circuit Court of Appeals

[Title omitted.]

*Order directing filing of opinion and filing and recording of judgment*

April 4, 1933

By direction of the court, ordered that the typewritten opinion this day rendered by this court in above cause be forthwith filed by

the clerk and that a judgment be filed and recorded in the minutes of this court in accordance with the opinion filed.

3711 In United States Circuit Court of Appeals for the Ninth Circuit

No. 6716

[Apr. 4, 1933]

ALGOMA LUMBER COMPANY ET AL., PETITIONERS

vs.

FEDERAL TRADE COMMISSION, RESPONDENT

Petition to review orders of the Federal Trade Commission

Before: WILBUR, Circuit Judge, and JAMES and NORCROSS, District Judges

*Opinion*

Filed April 4, 1933

NORCROSS, District Judge:

The petition presents for consideration a review of orders made by the Federal Trade Commission on June 8, 1931, in the so-called "White Pine cases" requiring the petitioning lumber manufacturers to cease and desist from using the word "white" in conjunction with the word "pine" in connection with the sale in interstate commerce of lumber manufactured from the species of pine tree botanically known as Pinus ponderosa.

Petitioners herein are twelve of a group of fifty manufacturers on the Pacific coast, against which the Commission issued similar complaints on May 23, 1929. Each of these concerns was charged with the interstate sale of lumber under various terms, including the phrase, "white pine", with the alleged result of misleading and deceiving the trade and public to the injury of competitors and the public, and that the same is an "unfair method of competition forbidden by section 5 of the Federal Trade Commission Act." The term employed by each of petitioners here is "California white pine."

"To sustain the orders of the Commission three requisites must exist: (1) That the methods used are unfair; (2) that they are methods of competition in interstate commerce; and (3) that a proceeding by the Commission to prevent the use of the methods appears to be in the interest of the public." Federal Trade
3712 Commission v. Royal Milling Co., — U.S. — (decided February 6, 1933); Fed. Trade Comm. v. Raladam Co., 283 U.S.

643, 646-647. That the use of the expression, "California white pine", is a method of competition, there is no question. The only questions presented are whether requisites (1) and (3), found by the Commission to exist, are supported by the testimony. If so supported, the statute provides that such findings "shall be conclusive." (Fed. Trade Comm. v. Winsted Hosiery Co., 258 U.S. 483, 491.)

In Federal Trade Commission v. Raladam Co., 283 U.S. 643, the Supreme Court said:

"In a case arising under the Trade Commission Act the fundamental questions are, whether the methods complained of are 'unfair', and whether, as in cases under the Sherman Act, they tend to the substantial injury of the public by restricting competition in interstate trade and 'the common liberty to engage therein.' The paramount aim of the act is the protection of the public from the evils likely to result from the destruction of competition or the restriction of it in a substantial degree, * * *."

In Federal Trade Commission v. Sinclair Refining Co., 261 U.S. 463, the Court said:

"The general purpose of both statutes was to advance the public interest by securing fair opportunity for the play of the contending forces ordinarily engendered by an honest desire for gain. And to this end it is essential that those who adventure their time, skill, and capital should have large freedom of action in the conduct of their own affairs."

This Court in Hills Bros. v. Fed. Trade Comm., 9 F. (2d) 481, 484, said:

"The Court is only concerned with the question whether there is any competent testimony to support findings of the Commission."

Pinus ponderosa belongs botanically with the so-called "yellow pine" group. The typical "yellow pine" is the longleaf pine of the South, a hard lumber useful where strength is needed, and classified botanically as Pinus palustris and Pinus taeda. When lumber from the Pinus ponderosa trees came into local use in California it
3713 was given the name "California white pine" in order to distinguish it from the hard "yellow pines" of the South. By 1886 it was so marketed in the States of California, Nevada, and Utah, with occasional shipments further east. By about 1900 it was so marketed in the Middle West sections, and about 1915 shipments extended to the Atlantic coast.

The only species of true botanical white pines of commercial importance are northern white pine, and two Pacific coast varieties—Idaho white pine and sugar pine. The annual production of northern white pine in the United States is 825,000,000 feet b.m., of which 358,000,000 feet is from virgin timber in Minnesota, the remainder, 467,000,000 feet, being in the main second growth from the original forests stretching throughout the northern and eastern sections of the United States from Minnesota to the Atlantic coast. The annual production of Idaho white pine is 500,000,000 feet and of sugar

pine 280,000,000 feet. The annual production of ponderosa is 2,800,000,000 feet, of which more than half has been sold since 1924 as pondosa pine and the remainder as California white pine, Arizona white pine, and New Mexico white pine.

Prior to 1924 the majority of Washington, Idaho, western Montana and northern and central Oregon producers of ponderosa were designating their lumber western white pine. Upon application for complaints against them the Commission investigated this trade term. As a result of an agreement entered into by most of such producers in that year the name pondosa pine was adopted as a substitute. In the brief of counsel appearing as amicus curiae is the statement that following the said orders of the Commission of June 8, 1931, the name was again changed to ponderosa pine.

Statistical Bulletin #21 of United States Department of Agriculture (commission's exhibit 34) gives a statement of the total timber stand in the United States for the year 1920 in board feet as follows:

Pinus ponderosa (California white pine) and Pinus jeffreyi (Jeffrey pine), 249,578,000,000.

Pinus strobus (northern white pine) and Pinus resinosa (norway pine), 23,457,000,000.

Pinus monticola (Idaho white pine) and Pinus lambertiana (sugar pine), 57,071,000,000.

3714 From the foregoing it appears that the available supply of ponderosa and its kindred Jeffrey pine is about three times greater than the total available supply of the botanically true white-pine timber in this country. The record also discloses an estimate of more than 15,000,000,000 board feet of northern white pine (strobus) within the Canadian Provinces. At the rate of consumption given, not considering second growth, the present stand of timber will be practically exhausted within sixty years.

In respondent's exhibit #31—"U.S. Department of Commerce Bureau of Standards—Lumber—Simplified Practice Recommendation R 16-29" (issued December 5, 1929), there appears under the heading "Nomenclature of commercial softwoods" the statement:

"The following standard commercial names for lumber cut from the principal species of softwoods shall be used in the formulation of lumber-grading rules and in the construction of contracts and the terms of purchase and sale of American standard lumber. Preferred commercial names are shown in italic."

Here follows under subheadings of various names of trees such as cedars, firs, hemlocks, etc., the standard commercial name of lumbers produced therefrom. Under the subheading Pines appear sixteen names, the following among others: Arkansas soft pine, California white pine, Idaho white pine, longleaf pine, North Carolina pine, northern white pine, norway pine, pondosa pine, southern pine, sugar pine. Placed opposite each such standard commercial name is the proper botanical name or designation. Of the sixteen names, ten are of the botanical yellow pine. While commercially pine lumber falls within two main groups—the white and the yellow

pines—it may be noted that the Bureau of Standards in the exhibit referred to makes no such groupings as it does in the case of douglas fir and the true firs.

While action taken by the Bureau of Standards is persuasive in a case of this character, it is not necessarily controlling on the Federal Trade Commission or the courts. There may be cases in which the action of the Bureau should be regarded as decisive. As said by the Circuit court of Appeals, Seventh Circuit, in a recent case, Kirk & Co. v. Fed. Trade Comm., 59 F. (2d) 179, 183:

3715 "We deem it quite pertinent and decisive of the question before us. The Government, through its agency, the Bureau of Standards, has thus committed itself to the proposition that castile soap may be made of oily and fatty elements other than olive oil. Being solely a question of fact, we deem it expedient for other departments of the Government, including the judiciary, to accept such construction, if for no other reason than that of consistency."

It would not necessarily follow from this decision that a yellow pine might be sold as a white pine if such sales were unfair to the trade and injurious to the public, notwithstanding the Bureau of Standards had specified a name such as "California white pine" in a list of "Standard commercial names" for pine lumber. It would be different, however, if the particular lumber sold under such name possessed substantially the same qualities possessed by the white pines of commerce as distinguished from certain well-known commercial yellow pines.

As shown by Bulletin 556 of the U.S. Department of Agriculture (respondent's exhibit 21) in the physical properties of weight, stiffness, strength, hardness, and shrinkage, ponderosa compares favorably with strobus. Expert witnesses from the United States Forest Products Laboratory place ponderosa in its mechanical properties with the typical white-pine lumbers. There appears to be no serious question in this respect.

A statement by E. P. Ivory, formerly with the U.S. Forest Service, a witness called by the Commission, succinctly presents certain facts:

"There are 37 pine species in the United States, and just as the oaks are divided into white and red oak groups, so the pines are divided into white and yellow pine groups. Botanically, California white pine falls in the yellow-pine group, chiefly because it has three long needles in each bundle, whereas the white pines have five. The physical properties and uses of the wood cut from this tree, however, align it with the white-pine group and set it apart very distinctively from the yellow-pine group."

From the testimony of this witness there also appears the statement:

"Physical properties of California white pine, as demon-
3716 strated in tests made at the U.S. Government Forest Products Laboratory, Madison, Wisconsin, and its uses, closely align California white pine with the botanical white pines. In fact, in many of its most important qualities and uses California white pine

is more typically a white pine than are some species which botanically are classified as white pines."

The finding of the Commission to which objection is principally directed as not being supported by the evidence reads:

"True white-pine lumber is far more durable than ponderosa lumber when exposed to weather conditions. The ponderosa pine has on an average a far greater amount of sapwood than trees generally used for lumber. The sapwood of the ponderosa is less durable than any other part of the tree—especially when exposed to weather conditions. It is the sapwood of the ponderosa that most closely resembles the heartwood of the true white pines in appearance and softness. It is the sapwood of the ponderosa that is usually sold for uses and purposes for which the heartwood of the true white pines is celebrated. The close resemblance between the heartwood of the true white pines and the sapwood of the ponderosa above noted is one of the greatest causes of the confusion and deception in the marketing of the two species."

The gist of this finding is that true white-pine lumber is far more durable and has a far less percentage of sapwood than ponderosa lumber, and that the close resemblance between the heartwood of true white pines and the sapwood of ponderosa is one of the greatest causes of confusion and deception in the marketing of the two species.

An exhibit in the record discloses that the sapwood of the true white-pine tree appears to be about 1¾ inches in thickness as compared with three inches for the yelllow pine. The relative percentage of sapwood in a particular tree depends largely upon its diameter. The attention of the court is directed to a chart showing a strobus tree 9½ inches in diameter to have 60% sapwood, while a ponderosa tree 18 inches in diameter has 55% sapwood content, and trees of 21 inches in diameter have a sapwood content of 30% and 48%,

3717

respectively. While these figures are interesting as showing the proportion of sapwood and heartwood content of logs, they do not necessarily indicate the relative proportion of sapwood and heartwood content in the lumber produced therefrom. That there is a greater percentage of sapwood content in ponderosa lumber than there is in the true white-pine lumber there is no question. This variation, however, appears to be of importance only as it has a bearing upon the relative durability of the two classes of lumber. It is the sapwood which was found by the Commission to be more subject to decay when applied to exterior uses.

Upon the question of durability of ponderosa as compared with the true white pines the testimony of a number of witnesses appears in the record. A reference to the testimony of a few only will be sufficiently illustrative. Russell F. Whitehead, a New York City architect and editor of an architectural journal, testified that lumber made from ponderosa "is not a satisfactory substitute for genuine white pine to use in exterior of a building, in any way, shape, or form." The witness further testified that he regarded it as reason-

ably satisfactory for interior purposes, "but not if exposed to the weather." W. B. Greeley, for seven years Chief Forester of the United States and now manager of the West Coast Lumberman's Association, Seattle, testified: "The genuine white pines have the reputation for greater durability in uses exposed to the weather. That would not apply to interior uses protected from the weather." George W. Kelham, for twenty-two years an architect in San Francisco, testified as to the use of ponderosa where exposed to the weather: "It is unsatisfactory under those conditions, and that would be the general opinion of the architects that I know. * * * It doesn't, in our opinion, last well. It decays more rapidly than other wood."

Professor C. P. Winslow, Director of the United States Forest Products Laboratory at Madison, Wisconsin, since 1917, to the question, "What is the difference between white pine and Pinus ponderosa as to durability?" answered: "I don't know."

Professor G. M. Hunt, of the same laboratory, testified:

"The general experience with the use of the white pines during the 200 years since they began to be used indicated that these pines had moderately high durability. The general experience with Pinus ponderosa indicated that that wood had low durability in contact with the ground or any place favoring the growth of decay. That is a matter of common knowledge."

3718 To the question, "Have there been tests which will adequately settle the question as to the relative decay-resisting qualities of the heartwood of Pinus ponderosa and the heartwood of Pinus strobus?" Professor Hunt answered: "There have not."

The weight to be given to testimony above outlined upon the question of the relative durability of the two lumbers is not as clear as it might otherwise seem to be, viewed in the light of other facts and circumstances. The expression that ponderosa lumber is not a satisfactory substitute "for use in exterior of a building, in any way, shape, or form" may well be viewed in the light of the fact that buildings erected from lumber from the original northern white-pine forests have withstood the elements for two centuries, while but few, if any, erected with lumber from the ponderosa tree may lay claim to an age in excess of about seventy-five years. Specific instances of decay under ordinary conditions of upkeep are almost wholly lacking in the record. The Director of the Forest Products Laboratory did not know what the difference in durability is. Professor Hunt's testimony was to the effect that it was a matter of common knowledge from general experience that ponderosa "had low durability in contact with the ground or any place favoring the growth of decay." As most of the lumber used even for exterior purposes does not come in contact with the ground, it would not necessarily follow that such lumber might not in other respects have moderately high durability unless the witness meant to say that any exterior use was a "place favoring the growth of decay." The testimony of the wit-

ness does not appear to warrant the latter interpretation. What the testimony appears to establish is that northern white pine has relatively a greater durability for exterior use without establishing any comparative degree of such durability.

Upon the question of public confusion in the matter of lumber nomenclature, the testimony of a number of witnesses appears in the record. Mr. Alfred Busselle, for twenty-five years a practicing architect in New York, specializing in high-grade residential work, testified "In my experience there is a great deal of confusion in the pine market due to the terminology, and some of the confusion is quite honest. * * * I know that California white pine connotes to some people a distinct type of wood, but it connotes to other people white pine in general, and therein lies the confusion." Those
3719 who are confused, generally speaking, the witness testified, were the "millmen and the lumber dealers, as well as the architects." Just why architects and lumber dealers should be confused in view of the aid and assistance furnished by the Government through the Bureau of Standards is not readily apparent. It may properly be assumed that architects have a general knowledge of the qualities of the various materials they specify. If it is deemed important that a particular residence or other building be constructed of so-called true white pine because of its known or claimed superior wearing or other qualities, a reference to the standard commercial names, "northern white pine", "Idaho white pine", or "sugar pine", will enable the architect to so specify and the contractor and dealer to comply with the specifications. The testimony does not support a view that when architects so specify there is any confusion or even any material amount of intentional substitution of some other lumber than that specified. It is clearly established by the testimony that the true white pines are sufficiently well known in the trade to be able to command a higher price over that sold under the trade name of California white pine or pondosa.

The testimony of a number of witnesses engaged in the retail trade in various States is to the effect that orders for white-pine lumber without other designation, would be filled by any lumber using the designation "white", including California white pine. It does not appear, however, from the testimony of these witnesses that in filling such orders with California white pine, or with other lumber using the designation "white", and which was not a botanically true white pine, a practice prevailed of charging a price therefor on a basis of the market price for northern or Idaho white pine.

P. J. Curley, president for five years of a wholesale and retail lumber house at Chicago, testified:

"It is commonly known among the sash and door men if a specification comes in for white pine, they will furnish California white pine or so-called "western pine" or "pondosa pine", without attempting to get the genuine northern white pine or Idaho white pine."

The reason for the substitution, the witness testified, "is the lower price, lower cost to the sash and door men or to the interior men." The amount of such substitution the witness estimated at "about ninety-five percent."

3720 If it be considered that manufacturers of sash and doors and exterior trim use ponderosa lumber principally in such manufacture, and supply the same when the specification calls for white pine, the important question remains of the character of material so supplied, and whether a price is charged therefor based on the difference in cost of the two lumbers. There is no testimony touching the question of price of this particular character of manufactured product. With the exception of the possible question of durability, the materiality of which has not been established, it does not otherwise appear the public is injured by action of such manufacturers. If, as testified by the witness Curley, these manufacturers use ponderosa pine as readily as they do California white pine in filling specifications calling for white pine, it is not apparent that an affirmance of the Commission's orders would afford any relief if injury from such manufacture in fact occurs.

In the finding of the Commission complained of appears the statement: "It is the sapwood of ponderosa that most closely resembles the heartwood of the true white pines in appearance and softness." In respondent's brief appears the statement: "True white pines excel ponderosa in the soft texture of the wood as an average * * *." The court's attention has not been called to any tests made of the relative hardness of heartwood as compared with sapwood. The tests made by the United States Forest Products Laboratory for "hardness (side section)" show ponderosa softer by 2% and "(end section)" softer by more than 6% than strobus. In comparison with the southern yellow pine (longleaf) both woods are softer by more than 50%.

As bearing on the question relative to the contention that the use of the commercial name "California white pine" is unfair to the trade, we quote the following excerpt from the brief of respondent:

"Idaho white pine in 1922 and 1923 had a premium of $16 or $17 per thousand feet. Since the decline of 1927 the premium has been but $5.50 to $8.50. In September 1927 the Weyerhaeuser Sales Company made a drastic cut in Idaho white pine largely for the reason that the Weyerhaeuser concerns 'had come to the conclusion that, because other woods not true white pines were being marketed under the white-pine name, it was no longer possible to get the price preferences that we had previously gotten.'"

3721 It may be noted, however, in connection with the foregoing statement, that the reduction in price did not occur until three years after the commercial name of half of the ponderosa of commerce was changed from western white pine to pondosa.

It may be conceded that if the use of the commercial name California white pine is prohibited in the lumber trade, northern white pine and Idaho white pine will be able to command a higher price

than that which now prevails over lumber produced from the forests of ponderosa pine. If this situation be conceded, and it be further conceded that the increased price of strobus lumber finds a correlative reduction in the price of ponderosa lumber, the further question remains whether such change in commercial methods of sale will be in the interest of the public.

The case of Federal Trade Commission v. Winsted Hosiery Co., 258 U.S. 483, is stressed in the brief of respondent as one presenting a "remarkable parallel" respecting the use of unfair methods, the prevention of which is in the interest of the public. From the opinion we quote the following excerpt:

"A substantial part of the consuming public, and also some buyers for retailers and sales people, understand the words 'merino', 'natural merino', 'gray merino', 'natural wool', 'gray wool', 'Australian wool', and 'natural worsted' as applied to underwear to mean that the underwear is all wool. By means of the labels and brands of the Winsted Company bearing such words, part of the public is misled into selling or into buying as all wool, underwear which in fact is in large part cotton. And these brands and labels tend to aid and encourage the representations of unscrupulous retailers and their salesmen who knowingly sell to their customers, as all wool, underwear which is largely composed of cotton."

The sale or purchase of a material as all wool which in fact is in large part cotton presents a situation which may not be said to be parallel to that presented upon the facts in this case. If a material from a gray wool from some other breed of sheep than a merino were dealt with in commerce under the name of "merino" or "gray merino", then there might be some parallel between the two cases.

In the case at bar we are considering questions as between cer-
3722 tain pine lumbers. The use of the word "white" is here sought to be prohibited in connection with the trade name of a lumber produced from a certain species of pine tree which botanically falls within the yellow-pine group but which in its industrial utility comes within the white-pine group as known to commerce and industry. In the field of commerce and industry there are but two groups of pine lumbers—the white and the yellow. Primarily this grouping reflects the industrial utility of the several lumbers. While botanically Pinus ponderosa falls within the same general classification as Pinus polustris, the lumber from which latter trees first became known to commerce as southern yellow pine, ponderosa in industrial utility possesses more nearly the qualities of Pinus strobus, which as northern white pine was the first of the pines known to commerce using the designation "white."

It may be conceded that the evidence establishes that northern white pine lumber from the forests of Minnesota, and Idaho white pine lumber possess certain qualities which make those lumbers a superior grade to lumber produced and sold as California white pine. When we compare Idaho white pine with northern white pine

we find that the Department of Agriculture (exhibit 21) records the former as possessing greater strength and stiffness, but with all a softer quality. As said in the brief for respondent: "Lumber is a product of growth, not an inorganic, chemical product. Lumber from any given species, even the most uniform, will vary somewhat in quality. Where species are similar in average quality, or where the variations in a species are great there will be some overlapping." In considering California white pine with northern white pine, for example, the fact may not be overlooked that the greater portion of the annual production of such lumber, 467,000,000 board feet, comes from second-growth timber. Concerning this second-growth lumber, in the brief of respondent, we read: "While most of the new growth of strobus is being prematurely cut and used for inferior purposes, yet doubtless many areas are being allowed to stand for their maximum value." This statement is suggestive of the fact that the public interest is not promoted by the premature cutting of second-growth timber.

In considering the fact that certain of the so-called true white pines produce lumber superior in certain respects to that produced from ponderosa, there is also to be considered the fact that
3723 these species of true white pines differ also from each other as the so-called true yellow pines differ from each other. Whatever these differences are, in commerce and industry pine lumber is classified into two groups, white pine and yellow pine, and any lumber falls within one or the other of these two main groupings, largely if not entirely because of its peculiar industrial utility.

In considering the weight to be given to the fact that ponderosa is not only not a botanical true white pine but in certain respects is also inferior in a more or less uncertain degree to certain of the true white pines of commerce, the past history as well as the future of the industry is deserving of consideration. The supply of the botanical true white pine is far more limited than that of ponderosa. The public is not only interested in not being deceived in the material it purchases under a certain nomenclature, but possibly in an even larger sense in the conservation of the forests. In the brief for respondent appears this statement:

"The superiority of true white-pine lumber over ponderosa has been reflected in the fact that northern white pine, Idaho white pine, and sugar pine have all commanded a higher price on the market than ponderosa. The price differentials still continue."

It is manifest from this statement that, notwithstanding the fact that ponderosa has been sold in markets throughout the country under the commercial name "California white pine", and under other names using the word "white", for more than fifteen years prior to the institution of this proceeding, the so-called "true white pine" were able to command a higher price.

It is the conclusion of the court that, viewing the testimony in the light of all the facts of the case, it is insufficient to support findings that petitioners' use of the commercial name "California white pine" is an unfair method of competition or that its prevention would be in the interest of the public.

The orders complained of should be annulled and set aside. It is so ordered.

[File endorsement omitted.]

3724 In United States Circuit Court of Appeals for the Ninth Circuit.

No. 6715

ALGOMA LUMBER COMPANY, ET AL., PETITIONERS

vs.

FEDERAL TRADE COMMISSION, RESPONDENT

*Judgment*

Filed April 4, 1933

Upon petition to review orders of the Federal Trade Commission.

This cause came on to be heard on the transcript of the record from the Federal Trade Commission, and was duly submitted:

On consideration whereof, it is now here ordered and adjudged by this court that the orders of the said Federal Trade Commission in this cause be, and hereby are, annulled and set aside.

[File endorsement omitted.]

3725 [Clerk's certificate to foregoing transcript omitted in printing.]

183595—33——120

U. S. GOVERNMENT PRINTING OFFICE: 1933

Supreme Court of the United States

*Order allowing certiorari*

Filed October 9, 1933

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Ninth Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

16385—33

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183393—33——1

# In the Supreme Court of the United States

OCTOBER TERM, 1933

No.—

FEDERAL TRADE COMMISSION, PETITIONER

*v.*

ALGOMA LUMBER COMPANY, BIG LAKES BOX COMPANY, California Fruit Exchange, Clover Valley Lumber Company, Davies-Johnson Lumber Company, Diamond Match Company, Ewauna Box Company, Feather River Lumber Company, Hobart Estate Company, Lassen Lumber & Box Company, Pelican Bay Lumber Company, and Red River Lumber Company, respondents

**PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT**

The Solicitor General and the Chief Counsel of the Federal Trade Commission, on behalf of the Commission, pray that a writ of certiorari issue to review the decree of the Circuit Court of Appeals

for the Ninth Circuit, entered in this cause on April 4, 1933, which set aside the orders of the Federal Trade Commission requiring the Algoma Lumber Company and the eleven other respondents named above to cease and desist from certain alleged unfair methods of competition.

## OPINION BELOW

The opinion of the Circuit Court of Appeals (R. 1889) is reported in 64 F. (2d) 618.

## JURISDICTION

The decree of the Circuit Court of Appeals was entered April 4, 1933 (R. 1899). The jurisdiction of this Court is invoked under Section 5 of the Federal Trade Commission Act, c. 311, 38 Stat. 717, 719 (U.S.C., Title 15, Sec. 45), and under Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925.

## QUESTIONS PRESENTED

(1) Whether respondents' use of the commercial name "California white pine" is, under the circumstances of this case, an "unfair" method of competition.

(2) Whether the statutory requirement that the proceeding be "to the interest of the public" permits the court or the Commission to consider, or to give dominant consideration to, the probable effect of the Commission's order upon conservation of natural resources.

(3) Whether the court in reviewing an order of the Commission may, without holding that any of the Commission's findings of fact are not supported by testimony, weigh and appraise the evidence for the purpose of independently determining for itself, upon the evidence, whether the method of competition employed is unfair.

## STATUTE INVOLVED

The material portions of Section 5 of the Federal Trade Commission Act are set forth in the Appendix, *infra,* pp. 17–20.

## STATEMENT

Respondents are twelve of a large group of manufacturers on the Pacific Coast against which the Commission issued similar complaints on May 23, 1929, charging that their interstate sale of ponderosa pine under the name "California white pine" was an unfair method of competition (R. 5). After testimony had been taken before an examiner, the Commission entered orders against 39 corporations, including the 12 respondents, directing them to cease and desist from using the word "white" in conjunction with the word "pine" in connection with the interstate sale of lumber manufactured from ponderosa pine. The findings of the Commission upon which these orders were based may be summarized as follows:

Botanists, foresters and the buying public have long known certain pine species and the lumber

made therefrom as "white pines." The commercial "white pines" are the Northern white pine, the Idaho white pine, and the sugar pine. This grouping is confirmed by the cell structure of the wood (pars.[1] 5–7, R. 28–29). Northern white pine is also known by various other trade names, each of which includes the phrase "white pine" (par. 8, R. 29).

Lumber of the white pine species has a high degree of uniformity of qualities as a group and is preeminent for its high average of the following characteristics:

> Durability under exposure to weather and to other conditions of moisture, a great proportion of heartwood content as contrasted with sapwood content, lightness of color, lightness in weight, softness and evenness of texture, closeness and fineness of grain, freedom from resinous content, from shrinkage * * * and warping (par. 9, R. 29).

The public has long associated and still associates with lumber marketed under terms which include the words "white pine" the qualities above mentioned (par. 19, R. 31). In contrast with these qualities, ponderosa (respondents' wood) is not botanically a white pine (par. 26, R. 32), and its lumber has a high degree of variability, so that an order therefor may be filled with lumber of widely divergent qualities (pars. 35–41, R. 34–36). On an

[1] The numbered paragraphs of the Commission's findings will be referred to by the abbreviation "Par."

average, it shrinks and warps more, has greater resinous content, less softness and lightness in color and weight and less workability, than true white pine (pars. 42–44, R. 36). Ponderosa lumber also has a far less proportion of heartwood than that of the true white pines, the heartwood being the more durable portion of lumber (pars. 45–52, R. 36, 37). The public believes that white pine has great durability where exposed to the weather. This reputation is borne out by experience. In contrast with true white pine, ponderosa does not enjoy a reputation for durability where exposed to the weather and in practice becomes unserviceable in comparatively few years (pars. 53–57, R. 37, 38).

Ponderosa lumber, particularly in its sapwood content, resembles true white pine in appearance and is used for purposes for which true white pine is used. It is excellent for inside finish (pars. 58–59, R. 38). Ponderosa lumber was given terms which included the words "white pine" in other than far western trade in 1900 and by 1915 was so designated in national distribution. The original purpose for the adoption of this term was to distinguish this lumber from the hard "yellow pine" of the South. The purpose actuating its continuance is to associate this lumber with the true white pines in the public mind. Since 1924, however, more than half of the ponderosa lumber marketed has been sold as "Pondosa pine" (pars. 30–33, R. 33, 34). The true white pines, on account of

their superiority for certain purposes and their comparative scarcity, have consistently brought higher prices than ponderosa (par. 61, R. 39).

A substantial number of the retailers of lumber do not know that the so-called "California white pine" is not a true white pine and does not possess the true white pine qualities and are confused and misled by the use of that term for ponderosa lumber. Other retailers, who realize the distinctions, are aided in selling ponderosa upon orders for "white pine" by the use of trade terms for ponderosa which include the words "white pine." They are induced to this course by the price differential (pars. 64–69, R. 40, 41). The general public and most architects do not have the technical knowledge to distinguish ponderosa lumber, particularly in its sapwood content, from true white pine. They desire true white pine quality and usually order "white pine" for exterior uses. They actually receive in many instances, and in the regular practice of many retailers, ponderosa as "California white pine", in the belief that it is true white pine. Although the term "California white pine" has long been used for ponderosa lumber, it is still misleading and confusing to almost the entire buying public (pars. 70–74, R. 41, 42).

Use of the words "white pine" for this lumber has a money advantage because it associates the lumber with true white pine. Manufacturers selling white pine are placed at a trade disadvantage

by the use of trade terms which include the phrase "white pine" for the lower priced and, for certain purposes, inferior ponderosa lumber. Manufacturers selling ponderosa under the trade term "pondosa pine" also lose sales. Retailers prefer to stock with ponderosa coming to them under a trade term which includes the words "white pine" because it can be sold more easily as white pine. The public confidence in true white pine is thus lessened and the market for both true white pine and ponderosa is impaired for the respective purposes for which they are best adapted (pars. 73–80, R. 42. 44).

The court below set aside the Commission's orders. It stated that it did so upon the ground that the testimony did not support what it termed the Commission's "findings" that respondents' method of competition was unfair and that the proceeding would be in the interest of the public (R. 1899).

## SPECIFICATION OF ERRORS TO BE URGED

The Circuit Court of Appeals erred—

(1) In reviewing the testimony without reference to the Commission's specific findings of fact, but for the purpose of determining whether the Commission's conclusion that respondents' method of competition is unfair was supported by testimony.

(2) In weighing the evidentiary value of nomenclature approved by the Bureau of Standards.

(3) In holding that the testimony is insufficient to support the Commission's findings that respondents' use of the commercial name California white pine "is an unfair method of competition or that its prevention would be in the interest of the public", without having held that any of the Commission's specific findings were unsupported by substantial evidence, or that the Commission's findings did not support its orders.

(4) In disregarding the provisions of the Federal Trade Commission Act that the Commission's findings of fact shall be conclusive "if supported by testimony."

(5) In holding that the indirect effect of the Commission's order upon the conservation of forests is a relevant consideration in determining whether the proceeding was "to the interest of the public".

(6) In setting aside the cease and desist orders of the Commission.

## REASONS FOR GRANTING THE WRIT

I. This case presents two questions of law of general importance which have not been, but should be, decided by this Court. The first concerns the circumstances under which the use of a commercial name which may and does mislead purchasers, to the detriment of competitors, is an unfair method of competition.

Botanically pine is divided into two general classifications, white pine and yellow pine. Respondents make and sell in interstate commerce lumber from *pinus ponderosa*. This is botanically a yellow pine but, from the standpoint of its industrial uses, is more closely allied with white pine. Ponderosa is inferior to true white pine for some uses, and possibly is superior for other uses. It commonly sells at a lower price than true white pine so that there is a constant incentive to furnish ponderosa rather than true white pine when a contract merely calls for "white pine."

Respondents' product is ordinarily sold by the *producers* as "California white pine." It was marketed under this name in some of the far western States as early as 1886 and about 1915 shipments of ponderosa under this commercial name extended to the Atlantic Coast. Many producers of ponderosa in the so-called "Inland Empire" (Eastern Washington and Oregon, Idaho, and Western Montana) formerly sold their product as "Western white pine" (par. 29, R. 33). In 1924 the majority of them adopted the name "Pondosa pine" and this term is employed by the producers of slightly more than half of the ponderosa marketed (par. 33, R. 34). True white pine was widely known and used in this country many years before ponderosa lumber was first marketed.

Many of the purchasing public believe that any product designated by terms which include the

words "white pine" has the characteristics of true white pine and the use of the name "California white pine" thus causes confusion on the part of the purchasers and detriment both to producers of true white pine and to producers of ponderosa who do not market it under the name of white pine. (*Supra*, pp. 6, 7.)

This case presents the broad question whether, when a commercial name is used for two different products and therefore causes confusion, it is unfair for the producers with the lesser claim of right to the name to continue its use.[2] In other words, does the Federal Trade Commission Act authorize the Commission, where a commercial name was originally adopted without improper motive or purpose,[3] to compel use of more accurate and specific commercial names than those theretofore employed? There is also involved the subsidiary question of what degree of departure from the true meaning of a commercial name makes its use unfair.

We believe that there has been no case where this Court has considered these questions. *Federal Trade Commission* v. *Winsted Hosiery Co.*, 258

[2] It should be noted that the Commission's orders would not prevent respondents from advertising their product as having most of the qualities and characteristics of white pine.

[3] The Commission found that the respondents desire to continue use of trade terms, including the words "white pine", because these words associate ponderosa in the market with true white pine and afford respondents a substantial monetary sales advantage (par. 31, R. 34).

U.S. 483, held that use of the labels "Natural Merino", "Gray Wool", etc., for products which were in large part cotton was an unfair method of competition, although these labels had long been established in the trade and were generally understood by it as indicating goods partly of cotton. But the labels in question were indubitably false. Under these circumstances, as long as any deception resulted, their use was an unfair method of competition.

Cases involving deceptive trade names, commercial names, labels, or trade designations have become among the most important of those presented to the Commission under the Trade Commission Act. While precisely the same combination of circumstances may not arise in any other case, we believe that a review of the decision below by this Court will be of great assistance to the Commission in administering the Act. A review by this Court will tend to chart the authority of the Commission to compel abandonment of commercial names which are not patently false, but which nevertheless cause an important amount of confusion in the trade.

II. The second question of law of general importance is whether the statutory requirement that a proceeding be in the public interest permits the Commission or the court to consider the general social or economic effects which may indirectly result from the Commission's order.

The court below held that the Commission's orders are not in the interest of the public because they tend to stimulate the cutting of true white pine, the supply of which is far more limited than that of the ponderosa, thus promoting "the premature cutting of second growth timber" (R. 1898). It said (R. 1898):

> The public is not only interested in not being deceived in the material it purchases under a certain nomenclature, but possibly in an even larger sense in the conservation of the forests.

We submit that the public interest required by the statute is the interest of the public in being protected against unfair methods of competition. Every aspect of this question is relevant. But the statute does not mean that the public interest in preventing unfair competition is to be balanced against some other social or national interest, such as conservation of natural resources. For example, it does not mean that if a manufacturer is more just than his competitors in his treatment of employees, he may therefore be immune from a proceeding against him by the Commission to prevent him from selling his goods by means of false representations.

The holding by the court below that, in passing upon the public interest of the proceeding, it might consider indirect effects extraneous to those inci-

dent to the question of unfair competition tends to create uncertainty as to the meaning of the law. If the case is followed by other courts, the decision in cases arising under the Trade Commission Act may turn upon the divergent views of different courts upon questions of national policy wholly collateral to the issues directly involved.

III. A further reason for granting a writ of certiorari is that this is a case where large interests are involved and where the court below failed to observe the statutory provisions governing judicial review of orders of the Commission.

This is a test case which affects the entire white pine and ponderosa industries. Not only the respondents but also producers of white pine and producers of ponderosa who do not use a commercial name including the words " white pine ", are concerned with the outcome of this litigation. In the court below a brief in support of the Commission's orders was filed *amicus curiae* on behalf of nearly forty of respondents' competitors.

Under the Trade Commission Act the Commission's findings of fact are conclusive "if supported by testimony ", but what is an unfair method of competition is a conclusion of law which the courts must ultimately decide. Accordingly, the proper function of a reviewing court is to decide whether, upon the basis of the facts found by the Commission which testimony supports, the method of competition under attack is or is not unfair.

We submit that the court below did not observe these limitations upon its jurisdiction. It treated the Commission's ultimate conclusion, that respondents use an unfair method of competition, as a finding of fact. It therefore examined the testimony, not to determine which findings the testimony supported, but to determine whether they supported the Commission's ultimate conclusion. The necessary effect of this kind of a review is to substitute the judgment of the court upon the facts for that of the Commission.

Of the Commission's eighty specific findings of fact, the court discussed only one, and did not state that this one was not supported by testimony. But the court appraised for itself the weight of certain testimony and drew its own inferences concerning the facts. Thus, with reference to testimony that California white pine connotes to certain persons, including architects, white pine in general, the court said (R. 1895):

> Just why architects and lumber dealers should be confused in view of the aid and assistance furnished by the Government through the Bureau of Standards is not readily apparent. It may properly be assumed that architects have a general knowledge of the qualities of the various materials they specify.

The court also said (R. 1894):

> The weight to be given to testimony above outlined upon the question of the relative

> durability of the two lumbers is not as clear as it might otherwise seem to be, viewed in the light of other facts and circumstances.

It said that the inclusion of the name "California white pine" in a Simplified Practice Recommendation of the Bureau of Standards was "persuasive in a case of this character" and might be "decisive" (R. 1892).

The proper limitation upon the function of the court in reviewing an order of the Commission under the Trade Commission Act was stated in *Federal Trade Commission* v. *Pacific States Paper Trade Association*, 273 U.S. 52, 63:

> The weight to be given to the facts and circumstances admitted, as well as the inferences reasonably to be drawn from them, is for the commission.

This Court cannot properly be asked to review every erroneous decision of a Circuit Court of Appeals. But we believe that there has been a recent tendency on the part of these courts to weigh the evidence in Federal Trade Commission cases and to set aside the Commission's orders when their views as to preponderance differ from those of the Commission. This tendency, if it exists, is particularly insidious where the court, as here, does not discuss the evidence from the standpoint of its sufficiency to support the Commission's findings of fact, but from the standpoint of its sufficiency to support the ultimate conclusion that the method of competition

was unfair. When, furthermore, this error occurs in a case affecting substantially all producers in a large group of an industry, a question of sufficient general importance to warrant review by this Court would seem to be presented.

Wherefore, it is respectfully submitted that the petition for writ of certiorari should be granted.

J. CRAWFORD BIGGS,
*Solicitor General.*

ROBERT E. HEALY,
*Chief Counsel,*
*Federal Trade Commission.*

JULY 1933.

## APPENDIX

Section 5 of the Federal Trade Commission Act, c. 311, 38 Stat. 717, 719 (U.S. Code, Title 15, Sec. 45), provides, *inter alia:*

> That unfair methods of competition in commerce are hereby declared unlawful.
>
> The commission is hereby empowered and directed to prevent persons, partnerships, or corporations, except banks, and common carriers subject to the Acts to regulate commerce, from using unfair methods of competition in commerce.
>
> Whenever the commission shall have reason to believe that any such person, partnership, or corporation has been or is using any unfair method of competition in commerce, and if it shall appear to the commission that a proceeding by it in respect thereof would be to the interest of the public, it shall issue and serve upon such person, partnership, or corporation a complaint stating its charges in that respect, and containing a notice of a hearing upon a day and at a place therein fixed at least thirty days after the service of said complaint. The person, partnership, or corporation so complained of shall have the right to appear at the place and time so fixed and show cause why an order should not be entered by the commission requiring such person, partnership, or corporation to cease and desist from the violation of the law so charged in said complaint. Any person, partnership, or corporation may

make application, and upon good cause shown may be allowed by the commission, to intervene and appear in said proceeding by counsel or in person. The testimony in any such proceeding shall be reduced to writing and filed in the office of the commission. If upon such hearing the commission shall be of the opinion that the method of competition in question is prohibited by this Act, it shall make a report in writing in which it shall state its findings as to the facts, and shall issue and cause to be served on such person, partnership, or corporation an order requiring such person, partnership, or corporation to cease and desist from using such method of competition. Until a transcript of the record in such hearing shall have been filed in a circuit court of appeals of the United States, as hereinafter provided, the commission may at any time, upon such notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any report or any order made or issued by it under this section.

If such person, partnership, or corporation fails or neglects to obey such order of the commission while the same is in effect, the commission may apply to the circuit court of appeals of the United States, within any circuit where the method of competition in question was used or where such person, partnership, or corporation resides or carries on business, for the enforcement of its order, and shall certify and file with its application a transcript of the entire record in the proceeding, including all the testimony taken and the report and order of the commission. Upon such filing of the application and transcript the court shall cause notice thereof to be served upon such per-

son, partnership, or corporation and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to make and enter upon the pleadings, testimony, and proceedings set forth in such transcript a decree affirming, modifying, or setting aside the order of the commission. The findings of the commission as to the facts, if supported by testimony, shall be conclusive. If either party shall apply to the court for leave to adduce additional evidence, and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the proceeding before the commission, the court may order such additional evidence to be taken before the commission and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper. The commission may modify its findings as to the facts, or make new findings, by reason of the additional evidence so taken, and it shall file such modified or new findings, which, if supported by testimony, shall be conclusive, and its recommendation, if any, for the modification or setting aside of its original order, with the return of such additional evidence. The judgment and decree of the court shall be final, except that the same shall be subject to review by the Supreme Court upon certiorari as provided in section two hundred and forty of the Judicial Code.

Any party required by such order of the commission to cease and desist from using such method of competition may obtain a review of such order in said circuit court of

appeals by filing in the court a written petition praying that the order of the commission be set aside. A copy of such petition shall be forthwith served upon the commission, and thereupon the commission forthwith shall certify and file in the court a transcript of the record as hereinbefore provided. Upon the filing of the transcript the court shall have the same jurisdiction to affirm, set aside, or modify the order of the commission as in the case of an application by the commission for the enforcement of its order, and the findings of the commission as to the facts, if supported by testimony, shall in like manner be conclusive.

The jurisdiction of the circuit court of appeals of the United States to enforce, set aside, or modify orders of the commission shall be exclusive.

* * * * *

U.S. GOVERNMENT PRINTING OFFICE: 1933

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# In the Supreme Court of the United States

OCTOBER TERM, 1933

No. 240

FEDERAL TRADE COMMISSION, PETITIONER

*v.*

ALGOMA LUMBER COMPANY, BIG LAKES BOX COMPANY, California Fruit Exchange, et al.

*ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT*

## BRIEF FOR THE FEDERAL TRADE COMMISSION

### OPINION BELOW

The opinion of the Circuit Court of Appeals for the Ninth Circuit (R. 1889) is reported in 64 F. (2d) 618. There were also preliminary proceedings with regard to the record on review. (R. 1883–1888; 56 F. (2d) 774.)

### JURISDICTION

The decree of the Circuit Court of Appeals was entered April 4, 1933 (R. 1899). Petition for certiorari was filed July 3, 1933, and was granted October 9, 1933. Jurisdiction of this Court rests

on Section 5 of the Federal Trade Commission Act, c. 311, 38 Stat. 717, 719 (U.S.C., Title 15, Sec. 45), and Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925.

QUESTIONS PRESENTED

1. *Falsity of label and comparative quality of products.*—Whether the labelling of forest products made from Pinus ponderosa (a species of yellow pine), by a term including the words "white pine" and their sale in competition with forest products made from true "white pine" is an unfair method of competition under Section 5 of the Federal Trade Commission Act (assuming the existence of competition and "public interest"); and whether, in addition to a misdescription of the character or kind of products, it must be shown that the misbranded articles were also inferior in quality.

2. *Effect of "simplified practice recommendation" of Bureau of Standards.*—Whether the "simplified practice recommendation" of the Bureau of Standards listing "standard commercial names" may be taken as ousting the Federal Trade Commission from jurisdiction to find, upon testimony, that one of the "standard commercial names" listed is falsely applied by certain manufacturers and constitutes an unfair method of competition; and whether, in considering the effect of misdescription upon consumers and retailers, the "simplified practice recommendation" of the Bu-

reau of Standards can be taken to demonstrate that the trade could not have been misled despite testimony and the finding of the Commission to the contrary.

3. *Usage, intent and desire to avoid identification with third product.*—Whether usage, innocence of purpose to deceive, or the desire to avoid identification with a third type of product may be taken to excuse misdescription which, otherwise, constitutes an unfair method of competition.

4. *Price differences.*—Whether, in determining confusion, as well as misinformation and injury to consumers and the trade in connection with the "unfairness" of the practice or the "public interest" in its suppression, it is material that (1) normally there was a difference in price between the misdescribed product and the true products, or that because of the misdescription (2) the misdescribed products brought a higher price than the same products truthfully branded, or (3) that the true products were forced down in price to meet the competition.

5. *Propriety of considering forest conservation in determining "public interest."*—Whether, in determining whether the "public interest" prerequisite was satisfied and sustained, the Circuit Court of Appeals could properly take account of the so-called public interest "in the conservation of the forests".

6. *Revaluation of the evidence by the lower court.*—Whether, despite testimony and the finding

of the Commission to the contrary, the Circuit Court of Appeals could properly "assume" that the lumber trade and "architects have a general knowledge of the qualities of the various materials they specify"; and whether the Circuit Court of Appeals, in reviewing the order of the Federal Trade Commission, is empowered to make its own independent appraisal of the evidence (regarding the falsity of the description of products and the effect of such misdescription upon both consumers, retailers and architects), draw its own inferences, reject the plain testimony of experts and other evidence in the record, ignore the Commission's findings, and annul the Commission's order based thereon.

## STATUTE INVOLVED

The relevant portion of Section 5 of the Federal Trade Commission Act is set forth in the Appendix, pp. 69–72, *infra*.

## STATEMENT

For a number of years complaints have reached the Federal Trade Commission that certain lumber producers in the West have labelled by terms including the words "white pine" the products manufactured from the species of tree known as Pinus ponderosa, whereas in fact that tree is not one of the "white" pines. Partly as a result of investigations, in 1924 some of the producers, notably those of the "inland empire" (including parts of Oregon, Washington, Idaho and Montana), volun-

tarily abandoned the practice and gave their products the trade name "Pondosa pine"; some California, Arizona and other producers did likewise; and a number of manufacturers, wholesalers and retailers of products made from Pinus ponderosa ceased the use of the phrase "white pine" to describe the lumber products made from Pinus ponderosa.[1] Certain western producers of lumber, however, after 1925 persisted in labelling the products of ponderosa by terms including the words "white pine." During the next five years "California white pine" became an even more important factor in the lumber market,[2] and finally proceedings were undertaken by the Commission which resulted in the orders to desist here involved.

The complaints issued by the Federal Trade Commission charged that respondents (who are

[1] See the finding of the Commission, Par. 32, R. 34. Before 1924 ponderosa from the "inland empire" was called "western white pine." A Michigan lumberman abandoned the term "California white pine" from the necessity of "absolute integrity in grades" which became apparent as a result of meetings called by Secretary of Commerce Hoover. (R. 339–340.) A California manufacturer testified to the same effect (R. 1184–1185) as did a Minnesota (R. 328) and other manufacturers (R. 860, 1019–1022) because it was "misleading to the consuming public" (R. 620). Some of these changes were made at the instance of the Federal Trade Commission. (R. 1753–1754, 1763.)

[2] Architects, retailers and manufacturers testified that "California white pine" had noticeably entered the market only within the "last four or five years." (R. 625, 644, 737, 749, 279, 536, 92, 72, 76.)

twelve of a group of fifty manufacturers on the Pacific Coast against which the Commission issued similar complaints on May 23, 1929) engaged in "unfair methods of competition in interstate commerce in violation of the provisions of Section 5" of the Federal Trade Commission Act in their use of the phrase "white pine" (almost always used with other qualifying words such as "California") in the manufacture and sale of forest products from a species of tree native to the mountainous regions of the Pacific slope, botanically designated "Pinus ponderosa", the latter being neither a true botanical white pine nor its lumber equal in quality or price to the true white pine. The complaints also charged that respondents were competitors of the manufacturers of the true white pine, and that the manufacture and sale of lumber, different in kind, quality and price, under the same or similar name, resulted in confusion and misled and deceived both the trade and consumers in numerous particulars. (R. 5–11.) The respondents answered (R. 12–23), the cases were consolidated (R. 24–26), and the testimony of nearly 200 witnesses was taken before examiners at hearings held in Massachusetts, New York, Michigan, Indiana, Illinois, Wisconsin, Washington, Oregon, California, Arizona, and New Mexico (R. 49–1877). Thirty-nine simultaneous reports of findings of fact and conclusions were filed and cease and desist orders were issued; of these, twelve are the subject of this proceeding. (R. 26, 46, 47.)

The Commission's findings of fact (comprising eighty paragraphs, R. 28–44, plus fifteen paragraphs of summary and conclusions of fact, R. 44–45) may be summarized and grouped as follows:

(1) Certain pine species have long been known to botanists, lumber technologists, and the public as the white-pine group (Par. (b), R. 44), particularly the northern white pine, the lumber products of which for more than 200 years have held a preeminent reputation with the trade and public for their qualities (Par. (c), R. 44; Par. 16, R. 30; Par. 17, R. 31), and as a result of this long and sustained reputation the consuming public understands that "white pine" is not merely a white colored pine but lumber made from a true white pine species. Par. (d), R. 44; Par. 19, R. 31. Not only do producers and dealers in true white pine describe their product as "white pine", but a substantial number of dealers in various species of pines sell only this true white pine upon orders for "white pine." Par. (f), R. 44; Par. 65, R. 40.

(2) Another species of pine, Pinus ponderosa, does not belong either botanically or in public understanding to the white-pine group (Par. (e), R. 44; Par. 26, R. 32), its lumber products being inferior to the true white pine in important qualities and for important uses. Par. (e), R. 44; Par. 10, R. 30; Par. 40, R. 35; Par. 43, R. 36; Par. 44, R. 36; Par. 52, R. 37; Par. 54, R. 37; Par. 55, R. 38; Par. 56, R. 38; Par. 57, R. 38. But ponderosa

products actively compete with true white pine in many uses. Par. 58, R. 38; Par. 59, R. 38. More than half the ponderosa is now marketed without the word "white" (e.g. "Pondosa Pine"). Par. 33, R. 34.

(3) Respondents, among others, are engaged in producing and marketing this latter species, Pinus ponderosa, the products of which they designate, nationally advertise, and sell under a term including the phrase "white pine." Par. (a), R. 44; Par. 3, R. 28; Par. 29, R. 33. The practice of labelling the products of ponderosa as "white pine" for sale beyond the places of production had become increasingly common until 1925; now somewhat less than half the ponderosa is so marketed. Par. (i), R. 45; Par. 30, R. 33; Par. 31, R. 33. A substantial number of retailers, who purchase these ponderosa products under trade names which include the phrase "white pine" (e.g. "California White Pine"), sell ponderosa upon orders for "white pine." Par. (f), R. 44. Some retailers make this substitution knowingly (Par. (f), R. 44; Par. 64, R. 40; Par. 65, R. 40; Par. 66, R. 40; Par. 68, R. 41), others do so without understanding that ponderosa is not white pine, though so labelled by the manufacturer, and differs from white pine in important qualities and uses. Par. (f), R. 44; Par. 65, R. 40; Par. 68, R. 41. These sales of ponderosa are directly promoted by the fact that dealers purchase ponderosa products under trade names which include the phrase "white pine." Par. (f), R. 44;

Par. 65, R. 40; Par. 67, R. 41. A further inducement for the substitution of ponderosa upon orders for "white pine" is the lower prices paid by the dealers for ponderosa lumber than for the true white pine. Par. (g), R. 45; Par. 61, R. 39; Par. 69, R. 41; Par. 76, R. 42. On the other hand, there are substantial numbers of producers and dealers in ponderosa who do not describe it as "white pine" but who use some other name such as "Pondosa Pine." Par. 33, R. 34.

(4) The use of the phrase "white pine" in connection with sales of ponderosa products frequently results in the unintentional purchase by retailers, architects, and consumers of ponderosa under orders for "white pine." Pars. (h) (o), R. 45; Par. 41, R. 36; Par. 62, R. 39; Par. 63, R. 39; Pars. 70–72, R. 41; Par. 74, R. 42. Similarly, some architects unknowingly approve ponderosa products when true white pine and the qualities thereof are sought by the buyer and the architect. Pars. (h) (o), R. 45. Thus, ponderosa is unwittingly secured for uses for which it is comparatively lacking in durability. Pars. (h) (k), R. 45; Par. 74, R. 42. Confusion is increased by the fact that ponderosa lumber frequently resembles that of the true white pine in several of the latter's obvious qualities and uses. Par. (j), R. 45; Par. 40, R. 35. As a result, the confusion tends to lower the public estimation of true white pine products (Par. (1), R. 45; Par. 80, R. 43), trade is diverted from competitors selling true white pine products (Par. (m), R. 45;

Par. 75, R. 42; Par. 77, R. 42) as well as from competitors who sell ponderosa products under trade terms which do not include the deceptive and misleading phrase "white pine." Par. (n), R. 45; Par. 75, R. 42; Pars. 78–79, R. 43.

The Commission concluded that respondents' acts "are to the injury and prejudice of the public and are unfair methods of competition in interstate commerce" in violation of the Federal Trade Commission Act (R. 46), and ordered respondents to cease and desist from using the word "white" in connection with the word "pine" to describe forest products made from Pinus ponderosa. (R. 47–48.)

Respondents filed a petition in the Circuit Court of Appeals for the Ninth Circuit praying that the Commission's orders be set aside. (R. 1879–1883.) There were preliminary proceedings with regard to the record on review. (R. 1883–1888.) The matter was argued and submitted, and the Circuit Court of Appeals concluded that the description of ponderosa as "white pine" was not an unfair method of competition nor its suppression in the public interest. The court, admitting that the lumber products were different in kind, determined that difference in quality was material and refused to accept the evidence and findings as to differences in quality and utility but, instead, relied upon certain statements in pamphlets issued by the Bureau of Standards and the Department of Agriculture. The court seems to have failed to consider the evidence in the record and the findings

of the Commission as to confusion and injury to both consumers and the trade and, in addition, seems to have assumed that injury because of price differences was essential and that there was no sufficient evidence to show such injury. Public interest in "conservation of forests" was held to outweigh the public interest in maintaining fair competition; since the court thought that if the use of white pine were maintained the white pine forests would be exhausted. The orders of the Commission were annulled. (R. 1889–1899; 64 F. (2d) 618.)

SPECIFICATION OF ERRORS TO BE URGED

The Circuit Court of Appeals erred—

(1) In reviewing the testimony without reference to the Commission's specific findings of fact, but for the purpose of determining whether the Commission's conclusion that respondents' method of competition is unfair was supported by testimony.

(2) In weighing the evidentiary value of nomenclature approved by the Bureau of Standards.

(3) In holding that the testimony is insufficient to support the Commission's findings that respondents' use of the commercial name California white pine "is an unfair method of competition or that its prevention would be in the interest of the public", without having held that any of the Commission's specific findings were unsupported by substantial evidence, or that the Commission's findings did not support its orders.

(4) In disregarding the provisions of the Federal Trade Commission Act that the Commission's findings of fact shall be conclusive "if supported by testimony."

(5) In holding that the indirect effect of the Commission's order upon the conservation of forests is a relevant consideration in determining whether the proceeding was "to the interest of the public."

(6) In setting aside the cease and desist orders of the Commission.

## SUMMARY OF ARGUMENT

### I

The term "white pine" applied to the products of Pinus ponderosa, admittedly a species of yellow pine, is false and therefore "unfair" under the Trade Commission Act (*Federal Trade Commission* v. *Winsted Hosiery Co.*, 258 U.S. 483), despite the "Simplified Practice Recommendation" of the Bureau of Standards which is both inapplicable upon its face and immaterial, and regardless of the comparative qualities of ponderosa since the unfairness of the misdescription is not altered by offering "an exactly similar article or one equally as good" (*Federal Trade Commission* v. *Royal Milling Company*, 288 U.S. 212, 216). (It may be noted, however, that there are admitted differences in the properties or character of the two species of pine, and furthermore not only substantial evi-

dence but the weight of the evidence supports the finding that ponderosa is inferior, as compared with the true white pines, for certain purposes—particularly for exterior uses.)

Length of use of untrue terms is immaterial since misdescription and deception are shown; in any event substantial evidence discloses that confusion and demoralization in the industry and injury to the public has increased and has become important only in the last five years. Similarly, deception being shown, intent to mislead is immaterial (*Federal Trade Commission* v. *Winsted, supra*); moreover, there is ample evidence to disclose improper state of mind.

Competition between "California white pine" products and both true white pine and ponderosa products not labelled as "white" pine is established by the evidence, found by the Commission, and its existence admitted by the court below; accordingly, this case does not fall within the rule of the *Raladam* case, where there was not even "evidence as to the existence of competitors." *Federal Trade Commission* v. *Raladam Co.*, 283 U.S. 643, 653.

## II

Misdescription of the product and misuse of the term "white pine", which is shown to have settled significance in the trade and in the minds of consumers, the practice of substitution of ponderosa products upon orders for "white pine", and the

general confusion and demoralization in the pine industry and trade renders the practice (of using the word "white" to describe the products of ponderosa, a yellow pine) both an "unfair method of competition" and within the "public interest" under the Federal Trade Commission Act. *Federal Trade Commission* v. *Winsted Hosiery Co., supra.* Price differences in the two species of lumber are immaterial, but in any event differences in price are established and are shown to aggravate the unfairness of the situation.

III

The "public interest" requirement is amply sustained by the record. *Federal Trade Commission* v. *Winsted Hosiery Co.,* 258 U.S. 483, 493, 494; *Federal Trade Commission* v. *Raladam Co.,* 283 U.S. 643, 649, 651; *Federal Trade Commission* v. *Klesner,* 280 U.S. 19, 28. The matter of conservation of forests is wholly collateral and immaterial, and even if conservation were pertinent, the record supports the finding and order of the Commission.

IV

The Circuit Court of Appeals exceeded its jurisdiction by making its own independent appraisal of the evidence and disregarding substantial and specific evidence in the record as well as ignoring the findings of the Commission which are "supported by testimony." *Federal Trade Commission*

v. *Pacific States Paper Trade Association*, 273 U.S. 52, 61, 63.

## ARGUMENT

### I

### THE USE OF THE TERM "WHITE PINE" APPLIED TO PINUS PONDEROSA IS FALSE AND IS AN "UNFAIR METHOD OF COMPETITION" UNDER THE FEDERAL TRADE COMMISSION ACT AND DECISIONS OF THIS COURT

The evidence discloses that Pinus ponderosa, from which respondents manufacture forest products, is not "white pine" but is, instead, a species of yellow pine. This is well summarized in the testimony of a professor of forest products in Yale University with twenty years' experience and specialization in classification who testified that Pinus ponderosa "is in the pitch-pine group," the "white pines or soft pines being ordinarily softer, much more uniform in texture and growth, and less highly resinous than the pitch pines and hard pines" and given a sample an expert can tell the differences "very definitely" as between the "yellow pine group" and the "white pine group." (R. 152, 154, 155.) The trade, also, generally testified to the distinction in kind between the yellow and white pines; thus, retailers do not consider "California white pine" as a white pine (R. 97, 92) or a "genuine white pine" (R. 485, 277) but regard it as "in the nature of the yellow pine" (R. 88–89) or "hard pine" (R. 96, 104) and not "the equal" of white pine (R. 504), there being a "difference as between day and night" (R. 297); and architects

and builders testified to the same effect (R. 78 and see *infra,* pp. 24–32). Furthermore, the United States Forest Service has been designating ponderosa "in its timber sales and in its publications" as "western yellow pine" while Idaho white pine (a true white pine) has been designated as "western white pine." (R. 1080.) Even in California "where it grows" the residents refer to ponderosa as "yellow pine" (R. 1152, 1164, 1252, 1258, 1326); a California retail lumberman testified that "nearly all of our customers are recently from the East, and their idea of white pine is based on their experience in the eastern markets of the northern white pine" (R. 1221); some California manufacturers and retailers call ponderosa "pondosa" (R. 1184–1185, 1247) and others retail it as "yellow pine" (R. 1232, 1460) but wholesalers more often misdescribe it as "California white pine" (R. 1234).[3]

In Arizona some producers of ponderosa call it "Western yellow pine" or "Arizona soft pine" (R. 1666). Indeed, respondents admit the difference in kind. As one of their counsel said: "Let me state very definitely that we concede, and we have stated right from the start, that Pinus ponderosa has normally been classified in the so-called yellow pine group * * *" (R. 164); it is not respondents' position that "technologists in lumber or lumber experts had graded * * * Pinus

[3] Even as a description of locality the term "California" white pine is untrue because much of it is produced in southern Oregon (R. 169, 1454, 1522).

ponderosa and placed it into a wrong designation or grade" but that "it was rather unfortunate and misleading that ponderosa pine had been classified in the group of pines which are referred to commonly as hard or pitch pines." (R. 165.) The falsity of the description is generally acknowledged by respondents' witnesses (R. 393, 437, 441–442, 1357) particularly when "white pine" is desired (R. 1358), and it is admitted that a retailer who "shipped California white pine on an order that specified white pine" would be "very much in the wrong" (R. 445).[4]

The Circuit Court of Appeals itself stated that "Pinus ponderosa belongs botanically with the so-called 'yellow pine' group" and that "the only species of true botanical 'white pines' of commercial importance are northern white pine, and two Pacific Coast varieties—Idaho white pine and sugar pine"—and also stated that "in the field of commerce and industry there are but two groups of pine lumbers—the white and the yellow"—which grouping "primarily * * * reflects the industrial utility of the several lumbers". The court thought, however, that this difference between the pines was minimized by some testimony to the effect that "California white pine" falls in the yellow pine group because "it has three long needles

[4] An occasional witness for respondents, however, denies the difference as a practical matter (R. 1447, 1457, 448–458) and one expert even denied the validity of the classification into white and yellow pines (R. 1832).

in each bundle, whereas the white pines have five." (R. 1890, 1892; 64 F. (2d) 618, 620.) But the distinction according to the number of "needles in each bundle" is not strictly true since the number of needles does not always determine the classification of the pines (as one of respondents' own witnesses, a forester and teacher, testified). (R. 1367.) A real difference is, instead, the "cell structure" of the wood (R. 699, 1329, 1633–1634), there being certain cells or projections in yellow pine and ponderosa absent from the white pines (R. 669) which may explain the susceptibility of ponderosa to rot and the differences in durability (R. 1331).[5]

*The "simplified practice recommendation" of the Bureau of Standards*

The court below also believed that the effect of the admitted misdescription was altered by a publication of the Bureau of Standards (Respondents' Exhibit No. 31) entitled, "Lumber—Simplified Practice Recommendation", which listed as "standard commercial names" the various kinds

[5] It is, of course, immaterial that other groupings beside the division into white and yellow pines could be devised (as attempted by respondents' expert witness; R. 1826). One expert witness for respondents did attempt to deny the validity of the classification between white and yellow pines (R. 1819–1845) but the same witness testified that the woods could be distinguished on "histological" or "anatomical" examination (R. 1836). It is also significant that all the wood experts testified that the pines could be distinguished upon either casual or microscopic examination of cell structure.

of pines including "California white pine." This was suggested by a decision of the Circuit Court of Appeals for the Seventh Circuit (*Kirk & Co.* v. *Federal Trade Commission,* 59 F. (2d) 179, 183), but it is unsound for the following reasons:

(1) The publication of the Bureau of Standards does not purport to go into the relation of one trade name to another or to determine the fairness of their use. The Bureau of Standards merely "recommends" a "simplified" commercial practice and does not attempt to prevent deception. In this connection it may be noted that the Bureau of Standards is only interested in "eliminating unnecessary sizes and varieties" and "the division's activities are not mandatory." *National Bureau of Standards—Its Functions and Activities,* Department of Commerce, Circular No. 1, Second Edition, pp. 93, 94. "Simplified practice is a method of eliminating superfluous variety through the voluntary action of an industrial group" and not the Government but a representative of the industry is selected to "ascertain" the "current practice." Furthermore, "the department in no case assumes the prerogative of taking final action in connection with a simplified practice recommendation", for "the Department of Commerce has no 'police powers'" or "regulatory powers with respect to Simplified Practice" and hence "it is highly desirable that this recommendation be kept distinct from any plan or method of governmental regulation or control." "The Department cooperates

only when requested to do so * * *" *The Purpose and Application of Simplified Practice,* National Bureau of Standards, Department of Commerce, July 1, 1931, pp. 2, 7, 10, 17. It is also significant that this same Department of Commerce called conferences which resulted in further units of the industry abandoning the word "white" in the description of products made from ponderosa. (R. 339–340.)

(2) The functions of the Bureau in no way overlap or supersede the functions of trade regulation, and the Bureau is not authorized or empowered to perform the functions of the Federal Trade Commission and determine the fairness of trade names. The statutory functions of the Bureau are the "custody", "comparison" and "construction" of standards, the "testing * * * of standard measuring apparatus", "solution of problems", and the "determination of physical contents and the properties of materials, when such data are of great importance to scientific or manufacturing interests and are not to be obtained of sufficient accuracy elsewhere." C. 872, Sec. 2, 31 Stat. 1449; U.S.C., Title 15, Sec. 272.

(3) The determination (such as it was) of the Bureau of Standards was a matter of conference and tacit approval and not a decision upon the merits after hearing. (R. 1361.)

(4) The admitted practice of another department of government, the United States Forest Serv-

ice, designates ponderosa as western "yellow" pine. (R. 1080.)

(5) The testimony preponderates to the effect that the trade and consumers were misled and confused to their injury (see *infra,* divisions II, III), despite the "simplified practice recommendation" of the Bureau of Standards.

(6) And, finally, the decisions of this Court do not permit such effect to be given findings (if the action of the Bureau of Standards may be called such) made in connection with "quite diverse administrative functions", particularly where "neither the administrative nor the statutory classification has * * * been uniform." The action of another administrative agency "in any event is not controlling * * *." *Piedmont & Northern Ry.* v. *Commission,* 286 U.S. 299, 312. In *Brougham* v. *Blanton Manufacturing Company,* 249 U.S. 495, 499, this Court said of the deceptive use of a trade name that "the test of the product is the meat inspection laws, not the trade-mark laws, and therefore we are concerned with the action of the Department of Agriculture and not with that of the Interior Department."[6]

[6] Thus, the action of a Corporation Commission in granting a charter and approving a name therefor is immaterial upon a bill to enjoin the use of the name. *Standard Oil Co. of New Mexico* v. *Standard Oil Co. of California,* 56 F. (2d) 973, 975. So, too, the action of the Patent Office in approving or disapproving a trade mark or name is immaterial upon a bill to enjoin or upon proceedings to enforce a contrary order of another administrative agency. *Brougham* v. *Blanton*

*Differences between ponderosa and white pine and their comparative qualities and uses*

The term "white" being false technically (*supra*, pp. 15–18) and in popular as well as commercial understanding (*infra*, pp. 42–44) when applied to Pinus ponderosa, it is unnecessary to show further that there is material difference in the quality of the products, for this Court has held that the unfairness of the practice is not altered by offering "an exactly similar article or one equally as good." *Federal Trade Commission* v. *Royal Milling Co.*, 288 U.S. 212, 216 (1933). Nevertheless, the court below assumed that if the lumber sold under some such name as "California white pine" did in fact possess "substantially the same qualities possessed by the white pines of commerce" then there was no unfairness. (R. 1892; 64 F. (2d) at 620.) In

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*Manufacturing Co., supra; Straus* v. *Notaseme Company*, 240 U.S. 179; *Federal Trade Commission* v. *Kay*, 35 F. (2d) 160; *Marietta Mfg. Co.* v. *Federal Trade Commission*, 50 F. (2d) 641. The decision of a single Circuit Court of Appeals (relied upon by the lower court in the case at bar) to the effect that the determination of the Commission is binding "were it not for the action of the Bureau of Standards" (*Kirk & Co.* v. *Federal Trade Commission*, 59 F. (2d) 179, 182) is both unsound and contrary to the prior decision of the same court in refusing to give weight to the approval of a trade mark by the Patent Office (*Federal Trade Commission* v. *Kay*, *supra*). Nor can it be said that the decision in *Federal Trade Commission* v. *Kay* illustrates the applicability of determinations by the Bureau of Standards, because there the Commission itself submitted materials to the Bureau for test and, together with other evidence, received and gave credence to the testimony of a witness from the Bureau.

addition to the fact that such inquiry is expressly immaterial under the decision of this Court, the evidence as to quality and durability, while conflicting to some extent, sustains and greatly preponderates in favor of the findings that ponderosa is inferior to white pine for important purposes. The court below selected only parts of the evidence and disregarded the great mass of testimony.[7]

*Differences in character.*—Regardless of whether white pine or ponderosa is superior in quality, it is generally conceded in the testimony that there are material differences in the lumber products. As one witness testified, the products are "different in color, different in texture" and "there is a very distinct difference in * * * winter and summer wood—there are grain differences." (R. 287.) Ponderosa varies more in its character than

[7] The lower court found doubt in the testimony "viewed in the light of other facts and circumstances." (R. 1894; 64 F. (2d) 618, 620–622.) In addition to the paucity of the evidence examined by the lower court in its opinion, it is to be noted that the bulletin of the Department of Agriculture upon which the court relied treats only of the "mechanical" properties of forest products (R. 774–780, 806–812, 1367–1369) and of the "Strength of North American Woods" for which latter there was "no new basic data" (R. 781), whereas the question is not strength of materials but the different utilities of the white and yellow pines, particularly the superior lasting qualities of white pine when exposed to weather. It is also to be noted that there was an insufficiency of data supporting these publications (R. 792–793), and one of respondents' expert witnesses testified that his experience led him "to believe that the Government's statistics were in error on certain points" (R. 1393).

do the true white pines (R. 152), "some grades" of ponderosa "so far as the organic properties are concerned being like the hard pines * * * and some more like the pitch pines" (R. 158); and there is also greater variation in the wood of a single tree "between the portions of the growth layers" than in the true white pines. (R. 152, 153, 154.) In short, ponderosa being less uniform in character than the white pines, the risk of receiving lumber of different characteristics than those desired is greater than where white pine is secured. (R. 108, 267, 341, 342, 543, 834, 876, 1081–1083, 1141, 1145, 1153, 1180, 1321, 1328–1329, 1455, 1696–1697.)

*Differences in quality and utility.*—Not only are there differences in the products, but the evidence supports the Commission's findings that ponderosa is actually inferior for important purposes and "more subject to shrinkage and warping * * * and more difficult to work than any of the members of the white-pine group" (Par. 10, R. 30) and "true white pine lumber is far more durable than ponderosa lumber, especially when exposed to weather conditions" (Par. 40, R. 35).[8] To illustrate, a specialist in wood classification testified that the more uniform white pines, including the western true white pines, are noted for their quality of staying "in place" and do "not shrink much or swell much." (R. 156.) A Detroit manufacturer of doors and screens testified that

[8] See also the findings of the Commission: Par. 8, R. 29; Par. 43, R. 36; Par. 44, R. 36; Par. 54, R. 37; Par. 55, R. 38; Par. 56, R. 38; Par. 57, R. 38.

"California white pine" is regarded as "inferior" in that "it does not stay good, does not mill as well, and does not hold paint so well, does not work up so clear." (R. 515.) A Brooklyn retailer testified that "California white pine", which was "coming into vogue", is not "equal to the Idaho white pine in its quality" since the latter is "softer and it will stand up better; it won't warp and twist, such as California white will." (R. 253.) Another retailer testified that "if a man wants good pine, if he asks for good pine, he does not want California white pine, because it does not work up and it is not as soft a pine, and it does not answer the purposes for a good job" because "it is apt to twist, warp, and it has this heavy grain which is apt to show through paint" and "will not last as genuine white pine." (R. 275–276.) A manufacturer testified that he was induced by "Pacific Coast people" to try ponderosa under the name of "California white pine" but that in following this suggestion he "did not fare so well; it did not stand up so good" but he continued to use it anyway though he knew that true white pine was better "on account of the texture" since "it does not twist or warp as bad as the others" and has greater lasting qualities. (R. 259–263.) Similar testimony was given by numerous wholesalers, retailers, manufacturers, and a lumber grader (R. 572–573, 543, 390, 291–293, 904, 1259, 980, 1250–1251, 1278), by a member of the staff of the United States Forest Products Laboratory (R. 816–817, 821), by the

supervisor of the Sierra National Forest (R. 1264), and by the former chief of the United States Forest Reserves (R. 1081, 1090).[9]

In addition to its greater variation in character and quality, the inferiority of ponderosa in several particulars and for certain purposes is set forth in the testimony in the following respects:

*Sapwood and heartwood.*—The sapwood of any species of tree is inferior in durability to the "heartwood" (R. 156) and ponderosa runs more to sapwood than to heartwood in comparison with the true white pines. (R. 153, 154.) A lumber executive of 40 years' experience testified that ponderosa "runs much heavier to sap than this white pine" and to increase the confusion "the sapwood of pondosa pine is almost equal in appearance" to the heartwood of white pine. (R. 115.) A Minnesota manufacturer testified that "the big reason we prefer" white pine "is that it is obtainable practically free from sap" while it is not "feasible to make frames from the ponderosa tree, confining yourself to heartwood." (R. 326.) A manager of

[9] A wholesaler who was a witness for respondents testified that "for common boards Idaho white pine is superior to California white pine" because "the knot is sounder; the tree produces smaller, sounder knots" and Idaho white pine is recommended "to stay in place rather than California" where "exposed to heat and cold, as any wood would be exposed, no matter what it is used for" (R. 443). Of course, some of respondents' witnesses denied the superiority of the true white pines. (R. 134–135, 1417, 1418, 1444, 1453, 1485, 1490, 1527, 1550, 1573, 1592, 1612, 1809–1810.)

one of the respondent companies identified a piece of lumber from his plant as "all sap" and "a typical specimen of Pinus ponderosa" of "the very highest type" and "the highest grade." (R. 448–449, 450.) It was also shown that in manufacturing sash and frames from white pine the sapwood could be turned in so as not to be exposed to the weather. (R. 175, 199, 200, 215–217. It was also disclosed that inquirers of the Government Forest Products Laboratory are advised that "the heartwood of the white pine has more decay resistance, will give longer service under conditions favoring decay than the heartwood of Pinus ponderosa" and "the mill run of the white pine probably would average higher in durability under decay-producing conditions than the mill run of Pinus ponderosa, because we believe the mill run of the white pine has a lower percentage of sapwood than the mill run of Pinus ponderosa." (R. 821.)[10]

*Hardness.*—Ponderosa was also shown to differ in "hardness and evenness of the grain" (R. 78–79), being "very much harder than the heartwood of

[10] This was the testimony of manufacturers (R. 1003, 1249, 1278, 670), salesmen (R. 412, 1320, 1325), retailers (R. 1230), respondents' witness (R. 1556), lumbermen (R. 986–990), a lumber grader (R. 1211), a United States Forest Service inspector (R. 1153–1157), a supervisor of the Sierra National Forest (R. 1266), and members of the staff of the United States Forest Products Laboratory (R. 763, 795–801, 821). An occasional witness for respondents testified to the contrary. (R. 435, 1375, 1419, 1801.)

white pine" (R. 115), "more apt to check and split" than the clear white pines (R. 97) and "not satisfactory to the customers" because it is "too hard" (R. 51).

*Resin.*—Again, ponderosa was shown to be resinous and more "pitchy" as compared with white pines (R. 1603, 1650, 1210), to such an extent that experiments were conducted to discover whether turpentine could be produced from ponderosa (R. 968). An architect testified that "California white pine discolors." (R. 512.)

*Paintability.*—A Chicago retailer testified that "undoubtedly" white pine stands up better "without paint" than "California white pine." (R. 613.) In addition, ponderosa is inferior in "paintability" according to the testimony of one of the staff of the United States Forest Products Laboratory. (R. 802–805.)

*Susceptibility to rot.*—As a result of these characteristics of ponderosa, it is more susceptible to rot than the white pines. (R. 1168, 1221–1223, 1248, 1258, 1319.) Consequently, the true white pines are much preferable for exterior uses. An architect and architectural editor testified that "California white pine" is not "a satisfactory substitute for genuine white pine to use in exterior of a building, in any way, shape, or form" though it is "reasonably satisfactory for interior purposes" because California white pine "disintegrates and has a life of from three to five to seven years whereas the life of a white pine is still to be noted" and

true white pine lumber, on the other hand, "is still alive in all cases * * * examined" so that among architects "for durability and general utility for exterior finish" true white pine "is the wood preeminent." (R. 307, 308, 311.) A Boston lumber dealer testified that white pine was the "best wood for outside" and California white pine was "never" recommended because it would not "stand so well under the weather" but would "check and split quicker and then it will commence to get a little decayed" and "will rot quicker than the other pines." (R. 104–105.) A Detroit lumber wholesaler and retailer testified that "real white pine" is "most assuredly" better "for exterior purposes" because "it does not rot as soon in this climate" as shown by experience whereas "ponderosa" had "rotted in two or three years." (R. 467.) New York dealers testified that Idaho white pine "would stand the weather better" than California white pine and that either California white pine or "ponderosa" were good for interior work "exclusively." (R. 283, 287.) A Minnesota manufacturer said that "the genuine white pine is less prone to split and warp, which are points in its favor for exposed work" (R. 326), and the testimony of manufacturers (R. 1181–1183, 1276), wholesalers (R. 379–380), architects (R. 206–208, 741), retailers (R. 650–651, 659–660, 733, 750) and of one of respondents' witnesses (R. 406) was to the same effect. The truth of this conclusion is illustrated by

testimony regarding the white pine used in colonial structures which are still standing in the Atlantic States as well as by testimony regarding old structures in California.[11]

*Frequent replacement of ponderosa.*—On the other hand, it was shown that exteriors made from ponderosa soon decayed and had to be replaced. Thus, a lumber dealer testified that his experience had shown that ponderosa "rotted in two or three years and we had to replace it" (R. 467), another testified that when "pondosa" was used for ex-

[11] Thus, Christ Church built in 1761 and the old houses in Cambridge, such as the Longfellow house, are all of white pine and in "excellent condition", with very little replacement if any (R. 58–63). So, too, the Fairbanks house, built in 1636 and said to be the "oldest frame structure now standing in the United States, had not had the exterior replaced until about 40 years ago and had never been painted" (R. 66–67). The same testimony was given as to other structures in New England (R. 69–71, 143–149). The white pine from which these houses were built was said to be "much the same, clear and free from knots" as the Idaho and other white pines of today (R. 65, 182, 648) if indeed the latter were not better than the older eastern white pine (R. 84). Old structures in California built of sugar (white) pine also survive (R. 1165–1167, 1313–1318). On the other hand, more recent structures built of ponderosa or so-called California white pine were found to have begun to rot in a comparatively few years, such as the "Towne house" in Connecticut, built in 1914, and a house in Georgia (R. 222–227).

In rebuttal, respondents offered evidence of the lasting qualities of ponderosa in New Mexico (R. 1693–1781) and in the interiors of the ancient Hopi structures (R. 1688–1692), but evidence of structures in places of altitude and dryness is immaterial because there the lack of humidity "has a tendency to preserve wood" (R. 1710).

teriors, or doors or sash he had to take it out "and replace that with northern pine" whereas "Idaho white pine" and other true pines were "durable for uses where exposed to the weather" (R. 472–475), another testified that in his own house ponderosa "rotted out in five years" but he nevertheless continued to sell "pondosa pine as white pine on orders for white pine" for exterior use because the true white pines were "higher in price" (R. 528–529), and another testified that "pondosa and California white pine" in numerous cases had "rotted out under the paint and siding in cornice lumber" disclosing that Idaho white pine was "undoubtedly" the "more durable" of the western pines (R. 599). A wood technologist testified that of cases of wood sent to him for analysis he had had "more cases of Pinus ponderosa than any other" showing "failure when exposed to the weather" and discoloration. (R. 157.) This was the general line of testimony by dealers and owners. (R. 487–489, 661–662, 700–703, 609–610.) For the same reasons true white pine, such as Idaho white pine, is preferred for sash and trim, as shown by the testimony of dealers (R. 467, 1220, 1229), a staff member of the United States Forest Products Laboratory (R. 761–762), the former chief of the United States Forest Reserves (R. 1084–1085), a San Francisco architect (R. 1158–1160) and others. And white pine, particularly Idaho white pine or sugar (white) pine, is demanded for the exacting uses of pattern work (R. 648–649, 52, 101–102,

347–348, 522–523, 557, 558, 874, 1356, 1359, 1700), as illustrated by the testimony of a sales representative of one of the respondents below (R. 436), the former chief of the United States Forest Reserves (R. 1093), and witnesses for respondents (R. 1425, 1553) though an occasional witness flatly denied the fact (R. 1371, 1057 but see 1065).

*Usage, intent and purpose*

Respondents in these proceedings have insisted that the labelling of ponderosa as "white pine" is innocent and without intent or purpose to injure competitors or mislead the public. Intent to mislead is not enumerated in those decisions of this Court dealing with the essentials in misdescription cases. Furthermore, this proceeding is not brought by private parties but by a governmental agency—it is brought "in the interest of the public", who are unconcerned with respondents' motives. Respondents are presumed to have intended the necessary consequences of their acts, shown to be false, misleading, confusing and injurious.[12] There is, also, ample testimony to show improper motive as

[12] See, for example: *Straus* v. *Notaseme Company*, 240 U.S. 179, 180–182; *Addyston Pipe and Steel Co.* v. *United States*, 175 U.S. 211, 243; *United States* v. *Patten*, 226 U.S. 525, 543.

*Juvenile Shoe Company* v. *Federal Trade Commission*, 289 Fed. 57, 59, certiorari denied, 263 U.S. 705; *Royal Baking Powder Company* v. *Federal Trade Commission*, 281 Fed. 744, 752; *Indiana Quartered Oak* v. *Federal Trade Commission*, 26 F. (2d) 340, 342; *Federal Trade Commission* v. *Balme*, 23 F. (2d) 615, 621, certiorari denied, 277 U.S. 598.

well as deliberate deception. The state of mind of the trade in passing off ponderosa, aided by the various labels including the word "white", is illustrated throughout the record in such statements as that wholesalers are "not in a position to prevent" substitution by retailers (R. 194), that "the lumber dealer is not particularly interested in the durability of the lumber * * * his customers are supposed to know what they want and all that he is in business for is to give them what they want" and the trade is not "particularly interested as to whether it is genuine white pine or not" (R. 282, 283), that the "speculative" trade is "not particularly interested in the longevity of the wood" but is "more interested in a smooth, good-appearing lumber at a low price" (R. 493) and "speculators don't care what it is" (R. 300), and that retailers sell ponderosa since "carpenters, manufacturers and architects" ordinarily "don't know the difference" (R. 234, 235). The wholesaler or manufacturer "cuts out of the bill of lading the name and the origin of the shipping point" and insists that "the Interstate Commerce Commission allows" this, so that retailers "can never establish the fact" (R. 232). In soliciting, the California people "did not use the term 'true' but they called it white pine" (R. 258–259), or represented it as "genuine white pine" (R. 243), and "showed" retailers "inducements" (R. 258–259). Another retailer testified that he ordered white pine "stamped as genuine white pine" only "where it goes up in its original board" and can

be seen. (R. 552.) The president of one of the respondent companies having the largest production of "California white pine" admitted that the use of the term "has a monetary advantage" to respondents "because it classifies our woods with the other woods that have been known to the trade, including itself, as white pine." (R. 1551–1552, 918–919.) It is also represented in selling ponderosa that "genuine white pine was gone" (R. 499, 563), whereas supply in commercial quantities is established both by statistics and the testimony of experts (see *infra*, page 66); and the desire of retailers to stock with only one kind of pine served "to build up the myth that there was no more white pine" (R. 305). Regardless of original purpose, present intent is demonstrated in the record (R. 1457–1458, 1542).

The court below did not consider intent an essential factor but it did mention that ponderosa was called "white pine" in order to avoid identification with the "yellow pines" of the South. However, California manufacturers cannot, in avoiding classification with southern yellow pine, falsely assume identity with northern white pine. Ponderosa, in addition to being a yellow pine, may be said to be more nearly like Arkansas soft (yellow) pine than anything else, as disclosed, for example, in the testimony of the former Chief of the United States Forest Reserves (R. 1082; see also 124–125, 155, 116); it is an intermediate wood between the true white pine and southern yellow pine (R. 104, 1082).

The court also mentioned that since 1915 ponderosa has been marketed nationally as "white pine." However, California "white" pine has been in general use just long enough to disclose the differences in quality and utility. As a Detroit architect testified, the "market condition of pine is one that we are just beginning to appreciate" (R. 525). Despite the fact that, upon earlier investigation by the Commission, about half the ponderosa producers agreed in 1924 to call their product "pondosa pine", the confused market condition has become pronounced since that time.[13] In any event, this Court has determined that "the fact

[13] For example, an architect testified that the trouble in terminology arose "three years ago" (R. 536), another said that "lately" there was "great confusion as to what white pine is" (R. 644), a Minnesota manufacturer had used California white pine "four years", and a Wisconsin retailer had handled California white pine "just in the past two or three years" (R. 737) and another "about five years" (R. 749), a New York retailer testified that California white pine had been on the market as such "about five or six years" (R. 237) and another said "not over five years" (R. 279), a Chicago retailer testified that substitutions of California white pine upon orders for "white pine" had been a practice "within the last four or five years" (R. 625) and another witness said that it had been a practice only during the last five or ten years (R. 72, 76), and it was said that California white pine had been known in New England for "five or six years" (R. 92), while a distributor of lumber products throughout the region from the Great Lakes eastward testified that he had only known California white pine for "probably ten years" (R. 440), and one of the largest retailers in Chicago testified that the billing and labelling of pine by western manufacturers "has changed so in the past five years" that it is impossible to say generally just how shipments are represented (R. 621).

that misrepresentation and misdescription have become * * * common" is immaterial, because "a method inherently unfair does not cease to be so because those competed against have become aware of the wrongful practice." *Federal Trade Commission* v. *Winsted Hosiery Co.*, 258 U.S. 483, 493–494. This Court will recall that long usage was argued in the *Royal Milling* case, but the argument did not prevail there any more than it did ten years earlier in the *Winsted* case, or in other cases.[14]

*The element of competition*

The testimony discloses keen competition. Not only do the producers of true white pine lumber products lose business to the producers of "California white pine" but also those producers of ponderosa who, instead of misdescribing their products, use some trade name such as "pondosa pine" find themselves at a disadvantage in competition when the same lumber is offered by competitors as California "white" pine. The testimony in this respect is substantial and specific, and is illustrated under II and III, and in note 17, as well as by the following: A lumber salesman representing a marketing company for the products of a large group of producers testified that, among the

[14] The length of use of the term "Creamo" was held not to be determinative of the company's right to continue it, nor was the large investment in the name determinative. *Brougham* v. *Blanton Manufacturing Company*, 249 U.S. 495. Mere lapse of time is no defense. *Heger Products Co.* v. *Polk Miller Products Corp.*, 47 F. (2d) 966, 967; *Harvey* v. *American Coal Co.*, 50 F. (2d) 832, 834–6.

reasons why he lost sales "to manufacturers of California white pine", were the following:

> * * * In some cases price. Other cases we have some of the dealers who feel that the California white pine is better than our pondosa pine; we also have cases where some other dealers demand it because it is called white pine and they feel that they can pass it on to their customers with clear conscience as a white pine.

"* * * Some absolutely demand it over pondosa. They think * * * that it is better, and others on account of its being called white pine." (R. 201.) A sales agent in New York, New Jersey, and New England who handled both ponderosa and white pine, selling the former as "pondosa" pine only, though other dealers sold it as "white pine", testified that—

> there is another class of dealers that tell me that they know that California white pine is not a true white pine, but it is invoiced to them as white pine and they sell it to the trade requiring white pine as white pine and because it is invoiced to them as white pine, they can pass it on as white pine and do it with just a little safer feeling than they would if it was invoiced as something else besides white pine, and buy it at considerable less than they would have to pay for true white pine.

(R. 178, 179, 180.) A large manufacturer of sash testified that California white pine was furnished

for exterior trim "only just when we find that the competition demands that we furnish that." (R. 658.)[15]

Since the evidence and findings establish the existence of competition between "California white pine" products and those made either from true white pine or from ponderosa not labeled as "white" pine, this case does not fall within the *Raladam* case where there was not even "evidence as to the existence of competitors." *Federal Trade Commission* v. *Raladam Co.*, 283 U.S. 643, 653. The evidence relating to competition is interwoven with the subjects of confusion, substitution or "passing off", and injury to the trade and public, which are treated in the following divisions of this brief.

## II

### THE MISDESCRIPTION IS MISLEADING AND CONFUSING TO BOTH THE CONSUMERS AND THE TRADE, AND THIS RENDERS THE PRACTICE BOTH AN "UNFAIR METHOD OF COMPETITION" AND WITHIN THE "PUBLIC INTEREST" UNDER THE TRADE COMMISSION ACT

Where both consumers and buyers for retailers and sales people are misled by misdescription, "it

[15] To the same effect is the testimony of lumber salesmen (R. 209–210, 984–986), manufacturers and their representatives (R. 348, 399–400, 847, 852–3, 855, 867, 876–877, 882–884, 898, 916, 1187, 1278–1279, 1326–1327), retailers (R. 246, 650), and witnesses for respondents (R. 1107, 1436, 1485, 1525, 1571), though some of respondents' witnesses denied the existence of competition (R. 435–436, 1055, 1099, 1462, 1562, 1566, 1571, 1584, 1612).

is to the interest of the public that a proceeding to stop the practice be brought" and these same facts "show also that the practice constitutes an unfair method of competition * * *" *Federal Trade Commission* v. *Winsted Hosiery Co.*, 258 U.S. 483, 493.

Misdescription in the face of settled and generally accepted nomenclature, substitution or "passing off" of products, and resulting confusion is overwhelmingly shown in the record (*infra*, pp. 42–56); yet the court below sought to dispose of the evidence by arguments in mitigation of selected parts of the testimony of expert witnesses only. An architect of twenty-five years' practice in New York, specializing in high-grade residential work, testified that "there is a great deal of confusion in the pine market due to the terminology, and some of the confusion is quite honest. * * * I know that California white pine connotes to some people a distinct type of wood, but it connotes to other people, white pine in general, and therein lies the confusion." The witness also testified that those who were confused, generally speaking, were the "millmen and the lumber dealers, as well as the architects." The court below, after quoting this testimony, said it could not see "just why architects and lumber dealers should be confused in view of the aid and assistance furnished by the Government through the Bureau of Standards" and the court "assumed that architects have a general knowledge of the qualities of the various materials they

specify." (R. 1895; 64 F. (2d) 622.) The inapplicability of the "simplified practice recommendation" of the Bureau of Standards has been treated above, and the court's "assumption" contrary to the evidence and findings, that the trade has knowledge, is beyond the powers of the court under the Act. Furthermore, "the fact that misrepresentation and misdescription have become so common * * * that most dealers no longer accept labels at their face value, does not prevent their use being an unfair method of competition" and "a method inherently unfair does not cease to be so because those competed against have become aware of the wrongful practice" nor "does it cease to be unfair because the falsity of the manufacturer's representation has become so well known to the trade that dealers * * * are no longer deceived." *Federal Trade Commission* v. *Winsted Hosiery Co.*, 258 U.S. 483, 493–494. Notwithstanding this clear rule, the court below held that the very prevalence of the practice of substituting or "passing off" the lower-priced product demonstrated that "it is not apparent that an affirmance of the Commission's orders would afford any relief if injury from such manufacture in fact occurs."

The court below also concluded that it did "not appear" that "a practice prevailed of charging a price [for "California white pine"] on a basis of the market price for Northern or Idaho White Pine," and therefore, no injury was shown. In answer to testimony that producers of white pine

had to bring their prices down because of the competition by manufacturers who misdescribed ponderosa, the court below said that the reduction "did not occur until three years after the commercial name of half of the Ponderosa of commerce was changed from Western White Pine to Ponderosa", but it later stated that, despite the competition with manufacturers of ponderosa, "for more than fifteen years prior to the institution of this proceeding the so-called true white pines were able to command a higher price." (R. 1895, 1896, 1898; 64 F. (2d) at 623, 622–623, 624.) There are inconsistencies in these statements of the court on relative prices. The court disregarded the admitted and overwhelming evidence of differences in price which were shown to aggravate the situation (see *infra*, pp. 50–52). In any event the matter of price is immaterial in this type of proceeding, for it is the unfair diversion of trade and misrepresentation to consumers that is the gist of the matter. The point is that "if consumers or dealers prefer to purchase a given article * * * they have a right to do so" and "the result of respondents' act is that such purchasers are deceived into purchasing an article which they do not wish or intend to buy, and which they might or might not buy if correctly informed as to its origin" for "the purchasing public is entitled to be protected against that species of deception, and * * * its interest in such protection is specific and substantial." *Federal Trade Commission* v. *Royal*

*Milling Co.*, 288 U.S. 212, 216–217 (1933). (In the *Royal Milling* case it may be noted that the court below "failing to see any * * * financial loss in the methods of competition," found that "no public interest exists" (58 F. (2d) 581 at 583); but this Court reversed the decision).

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The evidence on (1) the generally accepted terminology for lumber products, (2) the substitution of different products for those specified, and (3) the resulting confusion is vital in this type of proceeding; it is more than ample in the case at bar to support the findings of the Commission and may be summarized as follows:

(1) *"White" pine is an accepted and settled term in the building and lumber trades meaning "true" or "genuine" white pine and has similar significance for the consumer as well*

Architects from every part of the country testified that they specified "white pine", expecting to secure the true white pine, and had to rely upon dealers and contractors to get it for them: Thus an architect and architectural publisher and editor testified that the term "white pine" has not "lost its significance" but instead "means everything to the architect who has had any experience in building" (R. 304), and consequently architects specify simply "white pine" (R. 303, 316), of which California white pine is not a species (R. 317), and have no way of checking up on materials actually fur-

nished. (R. 303, 304, 312–313, 314–315.) For exteriors Cass Gilbert specifies "clear white pine" but has no way of checking on the product furnished except by inspection. (R. 238, 239.) Other architects testified that "white pine" has not "lost its significance" and that real meaning is attached to "genuine white pine" (R. 333, 334), that the term "white pine" has peculiar significance and "California white pine" is not a "fulfillment" of orders or specifications (R. 335), that they always "say merely white pine" (R. 499, 500), and "architects don't specify a certain material, they specify a white pine or yellow or spruce." (R. 535, 536.) This was the testimony of other experienced architects. (R. 195–196, 615, 682, 688, 722, 757.) To the same effect is the testimony of wholesalers, retailers and other lumbermen: Thus a dealer testified that the public "as a rule" asks for "white pine" and never for "California white pine" and that while either "pondosa" or "California white pine" could properly be furnished upon orders for ponderosa pine products, these could not properly be substituted for Idaho white pine, and that California white pine has not come to be accepted as a "white pine" among lumber dealers "although there are a class of lumber dealers who do not seem to know the difference and don't care." (R. 292.) Another testified that architects and builders "very often" specify "white pine" and properly are given "strobus, Idaho or sugar" pine but never

"California white pine" or pondosa since the latter are usable only for interiors and "are of less value for making doors and so forth" because "they stain more easily and pull out of shape more easily, and they are of harder texture". (R. 256.) Other dealers testified that the term "white pine" retains significance "in the lumber industry at the present time" (R. 340), that the public "as a rule" asked for "white pine" and should be given Idaho white pine but never pondosa "on that order" (R. 288), that "in the specification for lumber" the "customers on occasion ask for white pine" and the retailers "know the distinction" since "it is easily visible to anyone who knows and has had experience" (R. 293–296), that "builders, contractors, and the like" ordinarily "ask for white pine" because "that is all they know about it * * *" (R. 298), that "when somebody asks for genuine white pine" he "means either Idaho white pine or northern white pine" (R. 213), that "white pine" has not lost its "original specific signification" with the advent of the various trade names (R. 189), and that calls are received "every day" for simply "white pine" and they do not regard "California or Arizona white pine as real white pine" (R. 472.) This was the testimony of other members of the trade (R. 193, 679–680, 691, 731, 732, 749, 1087), though some of respondents' witnesses sought to give evidence to the contrary (R. 375, 387, 414, 417, 430, 1464, 1809).

(2) *As a result of the use of trade names such as California or Arizona "white" pine, ponderosa products are furnished upon orders for "white pine", the substitution being aided by similarity in nomenclature and appearance of the woods and induced by differences in price and the tendency of dealers to stock only one kind of pine*

A wholesaler who purchased lumber throughout the country testified that he sold all of his pine as "white pine" and filled orders for "white pine" with California white pine, though he knew the difference and did "not consider that as white pine" (R. 86, 87, 88); and this was the testimony of producers and their sales representatives. (R. 1001, 1066–1067, 1102, 1184.) Moreover, retailers in purchasing from wholesalers, cannot tell where the lumber comes from because, as already shown above, the wholesaler "cuts out of the bill of lading the name and the origin of the shipping point" and the railroads "say that the Interstate Commerce Commission allows them to erase the name of the company and the shipping point, so we can never establish the fact" (R. 232), the result being that retailers order "white pine" from manufacturers and take what is sent them (R. 589) and pass it on to the trade as "white pine" though they know or suspect it to be California white pine and not satisfactory for exteriors (R. 593, 594). Flagrant substitution was shown to be the practice: Thus, a mill-

man testified that ponderosa is sold "every day" upon orders for "white pine". (R. 487.) Retailers generally testified: that although they did "not think it is white" they would furnish California white pine upon orders for "white pine" and would "regard that as compliance with the specifications" because they "buy it as such" (R. 750); that customers "practically all ask for white pine" and are supplied with "California white pine under any of those orders" because the latter was kept in stock "principally as a matter of price" (R. 577–578); that yards got "a good many orders" for "white pine" and filled them with ponderosa or California white pine as a general practice "within the last four or five years" (R. 625); that lumber yards received "orders calling for white pine without a further specification or description" and felt free to fill them with Idaho white pine or California white pine or pondosa "without necessarily explaining" (R. 633); that "the building trade" asks "for white pine without any specification" and "we give them pondosa" or California white pine (R. 637); that there was "about ninety-five percent" substitution on orders for white pine (R. 650); that California white pine is used "interchangeably with the Idaho" (R. 298–301); that "the average person as a rule orders white pine" and is given Idaho white pine or California white pine as the retailer deems expedient and happens

to have lumber in stock because "carpenters, manufacturers and architects" don't "know the difference as a rule" (R. 234, 235); that the trade is in the habit of "delivering to customers California white pine when the said customer has ordered white pine" (R. 277, 278); that "if anybody comes in and asks for white pine he may receive Idaho white pine or California white pine" (R. 291); and that customers usually ask for "white pine" and are sometimes given "Arizona white pine" purchased from one of respondents (R. 461–464.) Substitution was no less rife among manufacturers, other than producers of lumber: Thus, a grader in a millwork concern testified that upon orders for "just white pine" California white pine was furnished to retailers, builders and consumers. (R. 176.) (Specific instances of substitution also appear in the record.)[16] This is the run of the testimony of other retailers, manufac-

[16] For example, a Detroit architect related an incident of substitution in the "Detroit Community Fund Building". The wood was tested by a man from the United States Forest Products Laboratory who "reported that the sash there were not white pine, and that they were yellow pine, mostly pondosa" though he would not put his report in writing because he said he was "supposed to be 'neutral'" (R. 536–538). In another case, a sash and door manufacturer had ordered "sash white pine" but was given ponderosa by the wholesaler. Architects "would not accept it" and he "had a run-in with the State of New York, and after a six-months' fight" he "took it that Pinus strobus means white pine" and also learned the meaning of ponderosa. (R. 261; see also R. 309–310.)

turers' salesmen, and architects (R. 51, 54, 71–76, 510, 599, 267–268, 272, 679–680, 685, 733, 738, 749–750, 1001, 1184), even of the representatives of respondent companies and of respondents' own witnesses (R. 1066–1067, 1102, 1113–1115). It is interesting to note that one of the largest manufacturers of sash, who was a most positive witness for respondents, admitted that he made all his products from ponderosa though he sold them under the name "*White* Pine Sash Company" (italics ours) (R. 1066–1068). The substitution is, of course, aided directly by the term "white" pine: Thus, an executive officer of one of the larger companies testified that he thought the misdescription "had a tendency to have the products of ponderosa used under a misapprehension that they [customers] are getting white pine" (R. 38) and even an eastern sales representative of one of the respondents admitted upon cross examination that the term "white" as applied to ponderosa products is misleading to some at least (R. 439). Substitution is aided by the following:

*Similarity in appearance.*—The superficial similarity in appearance between some of the products of ponderosa and of true white pine aids in the substitution of the former upon orders for "white pine": The manager of one of the respondent companies testified that "some specimens of these various lumbers" are "so similar in appearance as to make it difficult in some instances to identify

them" (R. 448). Architects generally testified that they could not tell the difference between the woods but had to rely upon the contractors (R. 74, 75, 80–81) and even where they had reason to believe that something else has been furnished they used it anyway "from time to time" because they do "not have time to change." (R. 220.) The owner of a retail lumber chain testified that among architects not "one out of a dozen can tell the difference between pondosa pine, genuine white pine, or Arizona white pine" and "there isn't any of them, half of them can't tell the difference between yellow pine and white pine" and when they ask for "white pine" we "give them what we have" which "might be Arizona or Idaho or northern white pine" or "California white pine if * * * in stock", that this was done, moreover, despite the fact that the "white pines" were "most durable for outside weather" and the California pine "rots out much quicker" and "the sash that is made of pondosa pine frequently comes back to us in six or seven years for new bottom rail, which indicates that they are rotting out" (R. 546–547).

*Lower price of ponderosa.*—The lower price at which so-called California or Arizona "white" pine is sold both aids in the substitution of this lumber upon orders for "white pine" and adds to the injury to competitors who produce genuine white pine or who produce ponderosa but do not misdescribe it. Salesmen and millmen testified that retailers make the substitution "because it is more profit to them" (R. 180, 184), that "in some cases

price" resulted in the loss of sales in favor of "manufacturers of California white pine" (R. 201), and that the species was furnished according to the price the customer was willing to pay (R. 240–241). A wholesaler testified that his customers (retailers) insisted upon ponderosa, though in the name of "white pine", because of the differences in price. (R. 212–213.) The retailers themselves generally admitted that price determined what would be furnished (R. 505), that "it is a question considerably of price" (R. 284), that California white pine had "only been handled by us because of economic necessity of getting the price down" (R. 279), that "to the small trade" it is "a matter of price, which is the cheapest" (R. 295), and that the dealer does not "care as to the durability—all he knows is he pays more for his Idaho pine than he will pay for his California pine". (R. 296.) The "speculative trade" will "accept most anything that is cheap" (R. 250–251, 292). The relation of price differences to competition is specifically shown: Thus, the trade testified that they must furnish "ponderosa pine upon orders that call for white pine" because "competitors do, and we have only to meet the price, we have to buy cheap, cheap lumber, in order to meet the price" (R. 488, 489), that "if I can sell California pine * * * then I buy that because it is four or five dollars a thousand cheaper" (R. 550), that they are "only interested" in pine upon which they "can make the most money" (R. 1461), that ponderosa was labelled to include the word "white" pine "merely for sales purposes—to

get a little better price" (R. 1695), and that the word "white" had a "monetary advantage" (R. 1551) or "a monetary value" and is "worth about two dollars a thousand". (R. 1281.) Even respondents' witnesses testified that the word "white" had a "monetary advantage" (R. 1551), that "it is entirely a question of price" (R. 411), and that California white pine "is a little cheaper" (R. 430). Even the Forest Service prices are higher for sugar (white) pine (R. 1155). This was the run of the testimony of manufacturers (R. 530–532, 325, 847, 848, 867, 877–879, 885, 898, 1005–1007, 1678), retailers (R. 578, 581, 594, 648, 649–650, 686, 735) and architects (R. 306, 682) generally, as well as of manufacturers, retailers, and architects who were witnesses for respondents. (R. 1054, 1109, 1118, 1576, 1724, 1818.) It is to be noted that respondents claimed that the differences in cost of production were immaterial and "not a proper matter of inquiry." (R. 112, 113, 368.)

*Tendency to stock only the cheaper ponderosa.*— "As a matter of price" (R. 577–578, 235) and also because dealers seem to desire to stock only one kind of pine, the cheaper ponderosa (under its various labels) is more often carried by the smaller dealers, and upon orders for "white pine" some brand of ponderosa is supplied. An architect and architectural editor testified that the desire of retailers to stock with only one species "served to build up the myth that there was no more white pine" and moved dealers to pass off California white pine which they "get elsewhere at cheaper

prices"; and because of the press of time and necessity for architects to take what they could get quickly the retailers got far with their substitutions. (R. 305, 313.) Another architect testified that "we are dependent a little bit on the mills" and "we follow the course of least resistance" and "specify and expect what they give us" which "helps us a little bit." (R. 758.) Retailers testified that the stock on hand determines what is given the customer (R. 299, 258, 129, 133, 426, 607), and the representative of one of respondent manufacturers testified that "it is usually a case of what the dealer has is what the fellow gets" as between "Idaho, pondosa, or California." (R. 410.)

(3) *Disregard of the settled term "white pine" and substitution of products has resulted in confusion and demoralization in the building trades*

Demoralization in the pine industry, as a result of the confusion of terms from indiscriminate use of the word "white" to describe ponderosa, is shown in the evidence of architects, manufacturers, and the trade: Thus, architects testified that "there is such confusion on it, the white pine is claimed to be of certain quality, but one branch of the lumber industry denies it and another branch recommends it" that "we are simply at sea on the whole white-pine situation" (R. 499); that there is "a great deal of confusion" (R. 524); that though "white pine" is specified for "exterior work usually" nevertheless "great confusion as to what white pine is" has existed "lately" (R. 644–645);

that there is "a great deal of confusion in the pine market due to the terminology" because an architect deals with three persons—"the lumber producer, the lumber merchant or millman; and the contractor"—and since "especially those in smaller lines of business" say their lumber was sold to them "as white pine" in "this day * * * California white pine connotes to some people a distinct type of wood, * * * it connotes to other people white pine in general and therein lies the confusion" on the part of "the millmen and the lumber dealers as well as architects" (R. 267, 272); that the term "white pine" is becoming "ambiguous" and "at the present time you get a lot of things that we did not use to mean by it" and even upon more technical specifications "very often we don't get it" (R. 231); that "there is confusion in the minds of the architect, as regards" the various pines which "results in the fact that the architect thinks that California white pine is a true white pine and until he is informed of his mistake he is still in ignorance of that" (R. 312). This confusion is increased since architects simply specify "white pine" (R. 511, 534, 546, 597) intending to "secure genuine white pine" (R. 513) and relying "on the contractor" or manufacturers to supply it to them (R. 512, 585). A representative of lumber manufacturers, who took part in some twenty odd lumber industry conferences, called at the instance of Secretary of Commerce Hoover, and who had some 200 interviews with consumers, testified that he had

"been asked repeatedly to explain the differences in the pines" and was "told that the actual differences were not understood" and had "dealers and distributors" tell him "that they did not pass on to their trade the information that so-called California white pine is not a genuine white pine", and that "actual consumers, house builders, etc." had told him that "they did not know the wood they were using and had purchased as white pine, which had come from the species Pinus ponderosa, was not a genuine white pine." (R. 1324.) The service manager for a large manufacturer of western pine said that "the entrance into the trade of California white pine in various localities" has "caused confusion, and by reason of the failure of pondosa pine it has to some extent, in my opinion, caused confusion in the name of white pine." (R. 518.) Dealers testified that "there has been confusion" with California white pine (R. 476), that even upon explanation the consumers would not understand the differences in the pines because of the diverse trade names (R. 192–193). Another dealer was attempting to avoid the use of the term "California white pine" because it is "misleading." (R. 620.) This was the line of testimony of manufacturers (R. 1187, 1278, 660–661, 1006, 1067) and of the former chief of the United States Forest Reserves (R. 1088–1089, 1142). A considerable number of respondents' witnesses flatly contradicted this testimony regarding confusion, but it is to be noted that these witnesses, who were

in many cases manufacturers and wholesalers, did not know how the retailers sold the product (R. 388) or how the contractor or consumer specified it (R. 434) or how architects and the speculative trade treated the matter (R. 441), and some of them admitted that confusion and deception were easier or at least "possible" (R. 393, 446, 395) and that there was no means for the consumer to discover substitutions. (R. 409.). As to the consumers' interest and deception, one of respondents' witnesses testified that "the lumberman cannot control those things" (R. 408).

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The insistence upon misdescription of lumber is a short-sighted policy on the part of that minority of the western pine industry who indulge in the practice. The injury to the lumber industry as a whole is clearly set forth in the testimony of an executive officer of one of the larger companies, who said (R. 349):

> * * * I think the integrity of grades, species, and manufacture of lumber is important to all lumber, because the misuse of lumber or using of the wrong lumber, or lumber in the wrong place or a wrong class of lumber for a certain thing, where the lumber does not stand up, produces a dissatisfied customer and tends to throw the market off of lumber for building material to the lumber's substitute, and I think it is important for all lumber, not only soft pine but all lumber, that each lumber be marketed

> under a name that is not misleading, and that the grades * * * be absolutely true.

Misdescription

> would naturally have the effect of producing suspicion in the mind of the person who built, the builders, architects, and also in the minds of everybody who heard of it that lumber, as such, was not fit building material and that they should use some substitute, such as brick, cement—in order to get durability.

Another leader in the pine industry testified that—

> the most deep-seated source of trouble in the lumber business has been the failure of lumber manufacturers to consider the real interests of the consumer of lumber. * * * The result of a confusion in nomenclature is the failure of a consumer to be able to get exactly what he wants, or get the material which will best suit his needs, and the result of which is, where failures occur, this same consumer naturally will turn to substitutes for lumber, with the result that lumber is gradually losing its volume over the United States. (R. 1280; and see R. 1186–1187.)

Nomenclature in the lumber industry is no less important than in the commercial life of the nation generally. The former chief of the U.S. Forest Reserves testified that nomenclature in the lumber industry—

> is important from a number of respects, among which is that of accurate identifica-

> tion of the product that is being offered to the trade. * * * The ultimate consumer should have assurance in commercial practices that he is actually obtaining the species and grades of lumber which he desires to obtain. (R. 1087.)

He also testified that there was a relation "between the good will of the public toward the lumber industry and the use of proper nomenclature in the sale of lumber." (R. 1093.) "White pine", he testified, "is still standard white pine as established in the public mind. * * * When you go beyond those trees of very similar commercial characteristics you certainly reach a point somewhere where it becomes incorrect, and I think you have reached that when you go beyond the sugar pine and Idaho white pine." (R. 1141.) "I regard the use of the term 'white' as applied to the lumber of Pinus ponderosa as the most serious instance of confusion to the buying public that now exists." (R. 1142.) Architects testified that they regarded "the terminology of the pines as a confused condition" (R. 524) and "one name ought to mean one thing and not to describe several qualities" (R. 273); another witness put the matter succinctly in saying that, although "it is immaterial what the botanical name of a particular tree might be" nevertheless "you should have a name for what you want so that when you name a thing in your specification and when you contract for it you get it by name" (R. 81).

It will not do for respondents to say that, while there is a botanical category of "white pine" which does not include ponderosa, a commercial usage has grown up which establishes ponderosa as a "white" pine—for the evidence and findings of the Commission are to the contrary and, in any event, this Court has determined that "the fact that misrepresentation and misdescription have become * * * common" is immaterial because the practice is "inherently unfair." *Federal Trade Commission* v. *Winsted Hosiery Co.*, 258 U.S. 483, 493–494.

## III

THE PUBLIC INTEREST REQUIREMENT IS AMPLY SUSTAINED BY THE RECORD; AND THE MATTER OF CONSERVATION OF WHITE PINE FORESTS IS COLLATERAL AND IMMATERIAL

This Court has defined the "public interest" requirement; it involves injury to the public and injury to competitors. Not only ample evidence, but the preponderance of the evidence, discloses that the practice of labelling ponderosa as "white" pine is misleading, injurious and confusing to the trade and the consumers of lumber products.[17]

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[17] In addition to the mass of evidence summarized above, the direct injury to producers of true white pine is illustrated in the testimony of a lumberman of long experience who testified that there was difficulty in getting the retailers to handle the true white pines because of competition from other manufacturers who misrepresented their products as "white pine" (R. 111–112). The injury to producers of ponderosa who do not misdescribe their products is illustrated in the testimony of a wholesaler who said that in

Since "a substantial part of the public was still misled by the use of the labels, * * * the public had an interest in stopping the practice as wrongful * * *". *Federal Trade Commission* v. *Winsted Hosiery Co.*, 258 U.S. 483, 493, 494.

So far as injury to competition is concerned, the same evidence applies and is more than ample to show actual injury, although it need only appear that the business of competitors "is *likely* to be lessened or otherwise injured" and "it is not necessary that the facts point to any particular trader or traders" since—

> it is enough that there be present or *potential* substantial competition, which is shown by proof, or appears by necessary inference, to have been injured, or to be clearly *threatened* with injury. (Italics ours.)

*Federal Trade Commission* v. *Raladam Co.*, 283 U.S. 643, 649, 651. In the case at bar, it is shown that the misdescription draws trade from producers of true white pine and that is a matter of public interest "because the unfair method employed

---

attempting to sell "pondosa" he could not make his customers understand that it was the same wood as "California white pine" (R. 192–193, 194)—which confusion is shown in the testimony of other witnesses (R. 649, 675, 733, 750, 1275). Injury to the public is illustrated in the testimony of a lumber dealer who said "the lumber dealer is not particularly interested in the durability of the lumber—his customers are supposed to know what they want and all that he is in business for is to give them what they want" and the trade is not "particularly interested as to whether it is genuine white pine or not" (R. 282, 283).

threatens the existence of present or potential competition", and "the aggregate of the loss entailed * * * [is] so serious and widespread as to make the matter one of public consequence." *Federal Trade Commission* v. *Klesner*, 280 U.S. 19, 28.

Furthermore, it is to be noted that in the case at bar two types of competitors are injured—(1) the manufacturers of true white pine, and (2) the manufacturers of ponderosa who label it truthfully as ponderosa or use some trade name (generally "pondosa") not including the term "white" pine. The situation falls squarely within the rule announced in the *Winsted* case wherein these same facts (that both consumers and two branches of the trade were injured) were held to demonstrate "that it is to the interest of the public that a proceeding to stop the practice be brought" and

> also that the practice constitutes an unfair method of competition as against manufacturers * * * [of the true product] and as against those manufacturers * * * who brand their product truthfully * * *

for "when misbranded goods attract customers by means of the fraud which they perpetrate, trade is diverted from the producer of truthfully marked goods." *Federal Trade Commission* v. *Winsted Hosiery Co.*, 258 U.S. 483, 493.

In attempting to avoid the applicability of the *Winsted* case, the lower court insisted that there "the sale or purchase of a material as all wool which in fact is in large part cotton presents a situa-

tion which may not be said to be parallel to that presented upon the facts in this case" because there the misbranded product was not "from some other breed of sheep". (R. 1897; 64 F. (2d) at 623.) But this is a distinction without a difference, for the finished product in either case is nevertheless misrepresented as to material or kind. The *Winsted* case involved the passing off of mixed wool and cotton as though it were all wool, and both the facts and the rule laid down seem to dispose of the case at bar completely.[18] But this Court went even further in the *Royal Milling* case and determined that, even where the products were made from identical raw materials, misdescription of the method of manufacture or the character of the manufacturer (the manufacturers describing them-

[18] In fact, the *Winsted* case was taken as controlling in the "Philippine mahogany" case which involved the misdescription of forest products as to the species of tree from which they were secured (just as in the case at bar), and this Court denied certiorari. *Indiana Quartered Oak Co.* v. *Federal Trade Commission*, 26 F. (2d) 340, certiorari denied, 278 U.S. 623. The decree in that case was later modified without opposition from the Commission, which had retried the entire character of the term "Philippine mahogany" on the merits and upon a new record in a subsequent proceeding. *Indiana Quartered Oak Co.* v. *Federal Trade Commission*, 58 F. (2d) 182. Of course, the determination of the Commission on a new record does not affect the precedent established and this Court (as said in connection with the Interstate Commerce Commission) is not interested in "the consistency of its conclusion with those reached in similar cases." *Western Paper Makers' Chemical Co.* v. *United States*, 271 U.S. 268, 271.

selves as millers when they did not in fact grind the grain from which their flour was made) was an unfair method of competition, since the unfairness of the misdescription is not altered by the manufacture and sale of "an exactly similar article, or one equally as good." *Federal Trade Commission* v. *Royal Milling Co.*, 288 U.S. 212, 216 (1933).

*The unrelated policy of conservation*

The court below sought to avoid the clearly defined authority of the Commission and the evidence disclosed in the record by adverting to the "public interest" in conservation of forests. Remarking that "the supply of the botanical white pine is far more limited than that of Ponderosa", the lower court determined that "the public is not only interested in not being deceived in the material it purchases under a certain nomenclature, but possibly in an even larger sense in the conservation of the forests." (R. 1898; 64 F. (2d) at 624.) This is immaterial and unsound for the following reasons:

(1) The court below is authorized by the Federal Trade Commission Act to review the record to discover whether the findings and order of the Commission are "supported by testimony." It is not given jurisdiction to consider and weigh some other public policy unrelated to the policy embodied in the statutes for the maintenance of free and fair competition in trade and industry. The Federal Trade Commission Act is not only an expression of

public policy but it is the law of the land which it is the duty of both the executive and judicial arms of government to apply and enforce irrespective of other policies, such as the conservation of natural resources. If other general policies may be used to oust the Commission of jurisdiction, it would be impossible to say what power, if any, remained under the Federal Trade Commission Act in view of the numerous, and perhaps conflicting, policies embodied in legislative and executive acts.

(2) The conservation policy is for the executive and legislative departments to determine. So far as it relates to the forests, it has been determined by the creation of national forests and forest preserves, and neither Congress nor the executive has directed that trade legislation be suspended as to forest products.

(3) Manufacturers of white pine forest products, in many instances, secure their raw material from the national forests and preserves under license from the Forest Service,[19] the use of which is not only duly authorized by the Government but necessary to prevent crowded growth and fire hazard.

(4) "Not considering second growth", the court below finds that in 60 years "the present stand of [white pine] timber will be practically exhausted."

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[19]As indicated in the evidence—under "Government Contracts" (R. 344, 346)—and by references to Forest Service sales (R. 843, 875, 1147, 1151, 1155, 1247, 1251, 1264).

(R. 1891; 64 F. (2d) at 619–620.) This conclusion does not take account of second growth, reforestation and reversion of farm lands. The Commission found that reforestation had, in fact, taken place, which enhanced the commercial importance of white pine. (Par. 18, R. 31.) A forestry expert testified to the adequacy of supply (R. 953 et seq.). It was shown that there is also a "reversion of farm lands" to forest even on the Atlantic Seaboard (R. 953) and an "inevitable" increase "as these immature stands come into maturity" (R. 956), and in general the production of white pine is on the "increase" (R. 970), which was corroborated by the former chief of the United States Forest Reserves (R. 1091, 1092). An architect of note testified that the desire of retailers to stock with only one species "served to build up the myth that there was no more white pine" (R. 305), which is illustrated in the testimony of another architect who related that lumber industry representatives told him "the genuine white pine was gone" (R. 499).

(5) Lastly, it is obvious that this is not even conservation, for the use of inferior woods where they are unsuited (such as the use of ponderosa for exteriors) and where they last but a small fraction of the life of true white pine is far more wasteful than the legitimate uses of the present stands of white pine. (R. 1279).

## IV

THE CIRCUIT COURT OF APPEALS EXCEEDED ITS JURISDICTION BY MAKING ITS OWN INDEPENDENT APPRAISAL OF THE EVIDENCE AND REJECTING ALL OF THE ESSENTIAL FINDINGS MADE BY THE COMMISSION THOUGH THE FINDINGS ARE "SUPPORTED BY TESTIMONY"

The Federal Trade Commission Act, under which this proceeding was initiated and under which the court below is given jurisdiction, provides that "the findings of the commission as to the facts, if supported by testimony, shall * * * be conclusive." *Federal Trade Commission Act,* Sec. 5, c. 311, 38 Stat. 717, 719; U.S.C., Title 15, Sec. 45. This Court has stated that "the weight to be given to the facts and circumstances admitted, as well as the inferences reasonably to be drawn from them, is for the commission." *Federal Trade Commission* v. *Pacific States Paper Trade Association,* 273 U.S. 52, 61, 63. Nevertheless, the court below did not give effect to the findings of the Commission and did not limit itself to determining whether the "inferences" were "reasonably to be drawn" from the testimony or whether the findings were "supported by testimony," but instead rejected the plain statements of witnesses as to the differences between white and ponderosa pine and accepted for far more than its face value the "simplified practice recommendation" of the Bureau of Standards.

Similarly, as to testimony on the misleading and confusing result of the misdescription, the court again referred to the pamphlet of the Bureau of

Standards and "assumed" that architects had a general knowledge "of the qualities of the various materials they specify" and thus could not be misled. (R. 1895; 64 F. (2d) at 622.)

On the question of "public interest", this Court has said that "in determining whether a proposed proceeding will be in the public interest the Commission exercises a broad discretion" and "its preliminary determination that institution of a proceeding will be in the public interest * * * will ordinarily be accepted by the courts." *Federal Trade Commission* v. *Klesner,* 280 U.S. 19, 28, 29–30. However, the court below, relying upon the wholly collateral and inapplicable policy of forest conservation, found that the maintenance of fair competition in the white pine lumber industry would not be consistent with conservation of resources and, therefore, not in the interest of the public.

## CONCLUSION

The following main propositions on the questions of "unfairness", "public interest", and the jurisdiction of the court below are established:

(1) Pinus ponderosa differs from white pine botanically, in character, in quality, and in popular and commercial significance. Trade names such as California "white" pine, when applied to ponderosa, are misleading, and the use of such terms is "unfair" under the Trade Commission Act.

(2) Architects, consumers and the trade generally, in ordering lumber or lumber products, specify "white pine" and expect to receive true or genuine white pine. Many dealers, however, either knowingly or unknowingly, upon such orders substitute ponderosa, which they purchase from manufacturers or wholesalers under trade names such as California "white" pine; this substitution or "passing off" is aided by the superficial similarity of ponderosa and true white pine, and dealers are induced to indulge in the practice because of the lower price of ponderosa and their tendency to stock only one kind of pine; the practice is, finally, facilitated and made safe for the dealer since the lumber is invoiced to him as some form of "white" pine. As a result of this misdescription and substitution, consumers and the trade have become confused and the lumber industry as a whole has suffered. These facts bear both upon the "unfairness" of the practice and the "public interest" in its prevention.

(3) Consumers are injured in not receiving the products they specify in their orders. Manufacturers, wholesalers and dealers in true white pine are injured since the cheaper ponderosa, when labeled with some trade name including the word "white", draws trade from them; in addition, those who manufacture and market ponderosa without using trade names including the misleading word "white" find themselves at a disadvantage in com-

petition with those who market the same product under the deceptive trade names. These facts satisfy the "public interest" requirement of the Federal Trade Commission Act.

(4) The great weight of the testimony supports each of these facts. The Commission found them to be true. Yet the court below set aside the Commission's orders to cease the practice and determined that the misdescription was not an "unfair" method of competition and its suppression not in the "public interest." The court is not given jurisdiction to so reject the order and findings of the Commission which are "supported by testimony".

It is respectfully submitted that the decrees below should be reversed, with directions to affirm the orders of the Commission.

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NOVEMBER 1933.

## APPENDIX

Section 5 of the Federal Trade Commission Act, c. 311, 38 Stat. 717, 719 (U.S. Code, Title 15, Sec. 45), provides, *inter alia:*

> That unfair methods of competition in commerce are hereby declared unlawful.
>
> The commission is hereby empowered and directed to prevent persons, partnerships, or corporations, except banks, and common carriers subject to the Acts to regulate commerce, from using unfair methods of competition in commerce.
>
> Whenever the commission shall have reason to believe that any such person, partnership, or corporation has been or is using any unfair method of competition in commerce, and if it shall appear to the commission that a proceeding by it in respect thereof would be to the interest of the public, it shall issue and serve upon such person, partnership, or corporation a complaint stating its charges in that respect, and containing a notice of a hearing upon a day and at a place therein fixed at least thirty days after the service of said complaint. The person, partnership, or corporation so complained of shall have the right to appear at the place and time so fixed and show cause why an order should not be entered by the commission requiring such person, partnership, or corporation to cease and desist from the violation of the law so charged in said complaint. Any person, partnership, or

corporation may make application, and upon good cause shown may be allowed by the commission, to intervene and appear in said proceeding by counsel or in person. The testimony in any such proceeding shall be reduced to writing and filed in the office of the commission. If upon such hearing the commission shall be of the opinion that the method of competition in question is prohibited by this Act, it shall make a report in writing in which it shall state its findings as to the facts, and shall issue and cause to be served on such person, partnership, or corporation an order requiring such person, partnership, or corporation to cease and desist from using such method of competition. Until a transcript of the record in such hearing shall have been filed in a circuit court of appeals of the United States, as hereinafter provided, the commission may at any time, upon such notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any report or any order made or issued by it under this section.

If such person, partnership, or corporation fails or neglects to obey such order of the commission while the same is in effect, the commission may apply to the circuit court of appeals of the United States, within any circuit where the method of competition in question was used or where such person, partnership, or corporation resides or carries on business, for the enforcement of its order, and shall certify and file with its application a transcript of the entire record in the proceeding, including all the testimony taken and the report and order of the commission. Upon such filing of the application and transcript the court shall cause

notice thereof to be served upon such person, partnership, or corporation and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to make and enter upon the pleadings, testimony, and proceedings set forth in such transcript a decree affirming, modifying, or setting aside the order of the commission. The findings of the commission as to the facts, if supported by testimony, shall be conclusive. If either party shall apply to the court for leave to adduce additional evidence, and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the proceeding before the commission, the court may order such additional evidence to be taken before the commission and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper. The commission may modify its findings as to the facts, or make new findings, by reason of the additional evidence so taken, and it shall file such modified or new findings, which, if supported by testimony, shall be conclusive, and its recommendation, if any, for the modification or setting aside of its original order, with the return of such additional evidence. The judgment and decree of the court shall be final, except that the same shall be subject to review by the Supreme Court upon certiorari as provided in section two hundred and forty of the Judicial Code.

Any party required by such order of the commission to cease and desist from using such method of competition may obtain a review of such order in said circuit court of

appeals by filing in the court a written petition praying that the order of the commission be set aside. A copy of such petition shall be forthwith served upon the commission, and thereupon the commission forthwith shall certify and file in the court a transcript of the record as hereinbefore provided. Upon the filing of the transcript the court shall have the same jurisdiction to affirm, set aside, or modify the order of the commission as in the case of an application by the commission for the enforcement of its order, and the findings of the commission as to the facts, if supported by testimony, shall in like manner be conclusive.

The jurisdiction of the circuit court of appeals of the United States to enforce, set aside, or modify orders of the commission shall be exclusive.

* * * * *

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# In the Supreme Court
OF THE
# United States

OCTOBER TERM, 1933.

FEDERAL TRADE COMMISSION,
*Petitioner,*

vs.

ALGOMA LUMBER COMPANY,
BIG LAKES BOX COMPANY,
CALIFORNIA FRUIT EXCHANGE,
CLOVER VALLEY LUMBER COMPANY,
DAVIES-JOHNSON LUMBER COMPANY,
DIAMOND MATCH COMPANY,
EWAUNA BOX COMPANY,
FEATHER RIVER LUMBER COMPANY,
HOBART ESTATE COMPANY,
LASSEN LUMBER & BOX COMPANY,
PELICAN BAY LUMBER COMPANY, and
RED RIVER LUMBER COMPANY,
*Respondents.*

## Brief for Respondents in Opposition to Petition for Writ of Certiorari.

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No. 240

# In the Supreme Court
OF THE
# United States

October Term, 1933.

Federal Trade Commission,
*Petitioner,*

vs.

Algoma Lumber Company,
Big Lakes Box Company,
California Fruit Exchange,
Clover Valley Lumber Company,
Davies-Johnson Lumber Company,
Diamond Match Company,
Ewauna Box Company,
Feather River Lumber Company,
Hobart Estate Company,
Lassen Lumber & Box Company,
Pelican Bay Lumber Company, and
Red River Lumber Company,
*Respondents.*

**Brief for Respondents in Opposition to Petition for Writ of Certiorari.**

## INTRODUCTORY.

By its petition in this cause the Federal Trade Commission seeks a review of a decision of the United States Circuit Court of Appeals for the Ninth Circuit which annulled orders made by the Commission in a group of related trade nomenclature cases. The Commission's orders condemned the use of "California White Pine" as the commercial name for respondents' lumber. The court concluded that the record in the proceedings before the Commission was insufficient to support the Commission's findings that the use of the commercial name "California White Pine" is "an unfair method of competition or that its prevention would be in the interest of the public." (R. 1899). The sole question now pending is whether such "special and important reasons" have been shown by petitioner as would warrant this Court, in the exercise of its discretion, in granting the writ sought by the petition (Supreme Court, Rule 28 (5)).

Preliminarily attention should be directed to the failure of the petition to state or suggest a case falling within the terms or purpose of the Federal Trade Commission Act. In the case of

> *Federal Trade Commission v. Raladam Co.*, (1931) 283 U. S. 643; 51 Sup. Ct. Rep. 587; 75 L. ed. 1324,

this Court has pointed out that Section 5 of the Federal Trade Commission Act is "supplementary to the Sherman Anti-Trust Act and the Clayton Act" and has declared that

> "the paramount aim of the Act [Federal Trade Commission Act] is the protection of the public from the

> evils likely to result from the destruction of competition or the restriction of it in a substantial degree * * *."

It is significant, therefore, that the pending petition contains no averment or intimation

> (1) that the respondent lumber companies have offended against the Sherman Anti-Trust Act or the Clayton Act; or
>
> (2) that the respondent lumber companies have attempted or conspired to destroy or restrict competition; or
>
> (3) that the name "California White Pine" was adopted for the purpose of misleading or deceiving the trade or the public, or for any other unlawful or improper purpose.

Not only does the pending petition fail in these respects, but the record in the proceedings before the Commission, as well as the Commission's findings, are similarly deficient.

Counsel for the Federal Trade Commission has formally stipulated of record that "no conspiracy among these several respondents being [is] charged or proved herein". (R. 26).

Counsel for the Federal Trade Commission has likewise admitted, upon brief filed before the Commission in these proceedings, that "there is no proof that the practice of designating *ponderosa* products by terms including the word 'white' was adopted for the purpose of misleading or deceiving the trade or the public".

The conclusion is impelled that neither the record before the Commission nor the Commission's findings can suffice to make out a case cognizable by the Commission under the Federal Trade Commission Act. No such case is tendered by the petition herein.

---

## STATEMENT OF FACTS.

Before addressing ourselves to the several questions of law presented by the petition we shall offer a brief analysis of essential and undisputed facts. We shall attempt to state them in terms which cannot be subject to challenge.

1. "California White Pine" is the commercial or trade name under which the lumber yielded by the tree identified botanically as *Pinus ponderosa* has been marketed throughout the United States for more than 32 years last past. (In the Pacific Coast area since 1886 and nationally since 1900.)

2. "California White Pine" was adopted as the commercial name for this lumber in order to distinguish it from the typical "yellow pine" lumbers of the southern states. (It is stated upon page 5 of the petition that "the original purpose for the adoption of this term was to distinguish this lumber from the hard 'yellow pine' of the South".)

3. The *Pinus ponderosa* tree is conventionally assigned by botanists to the so-called "pinaster" or yellow pine group, but the lumber which it yields belongs with the white pine lumbers in mechanical properties and industrial utility. (The following is quoted from page 9 of the petition: "This is botani-

cally a yellow pine but, from the standpoint of its industrial uses, is more closely allied with white pine.")

4. The botanical grouping of pine *trees* has no relation to the commercial nomenclature or industrial utility of pine *lumbers*.

5. The pine lumbers of the United States have been placed by trade and industry in two groups—viz., the white pine group and the yellow pine group. "California White Pine" has always been known to trade and industry as a white pine lumber. It is far removed from typical yellow pine lumbers in mechanical properties and industrial utility.

6. "California White Pine" has been formally adopted and recommended as a "preferred commercial name" for this lumber by the Bureau of Standards of the United States Department of Commerce. This recommendation has been accepted by the major organizations of the lumber industry and by the American Institute of Architects.

Upon the record before the Commission it is indisputable that the name "California White Pine" came naturally and honorably into being; that it has received the considered approval of a Department of the Federal Government, and that it has never been used by respondents for a fraudulent or dishonest purpose throughout the period of more than 30 years during which the name has become firmly established in trade and industry throughout the United States.[1]

(1) The complaints before the Commission contain certain charges of sinister motive and improper practice, but such charges wholly failed of proof. All have been abandoned, either expressly or tacitly.

The pending petition does not allege, nor does the record contain any proof,

(a) that the respondent lumber companies have offended against the Sherman Anti-Trust Act;

(b) that the respondent lumber companies have violated the Clayton Act;

(c) that "California White Pine" was adopted or has been used with intent to deceive, for the purpose of trading upon another's name, for the purpose of destroying or injuring the business of a competitor, or for the purpose of misleading the public.

Neither fraud, intent to deceive, nor dishonesty in any form has been proved or found by the Commission or alleged in the pending petition.

The petition alleges "confusion" through the use of the term "California White Pine" and suggests that the public is misled. There are also averments of relative inferiority. These are offered to justify the intervention of the Commission, and its attempt to compel a change in the commercial name for respondents' lumber. We shall show that these cannot suffice to make out a case cognizable by the Commission or warranting the issue of a writ of review by this Court.

---

**NATURE OF JURISDICTION CLAIMED BY THE COMMISSION.**

The real character of the authority claimed by the Commission and which it attempted to exercise in these pro-

ceedings is disclosed by the following excerpt from page 10 of the pending petition:

> "In other words, does the Federal Trade Commission Act authorize the Commission, where a commercial name was originally adopted without improper motive or purpose, to compel use of more accurate and specific commercial names than those heretofore employed?"

We note the concession that respondents' commercial name "was originally adopted without improper motive or purpose". Nevertheless the Commission claims the right "to compel use of more accurate and specific commercial names". Such is the far-reaching power which the Commission has sought to exercise, and which has repeatedly encountered judicial disapproval. The refusal of the Circuit Court of Appeals in this cause to recognize such authority in the Commission is in conformity with authoritative pronouncements of this Court, which we shall shortly review.

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**DECISION OF UNITED STATES CIRCUIT COURT OF APPEALS.**

The opinion of the Circuit Court of Appeals (R. 1889-1899, incl.) is reproduced for the convenience of the Court in the Appendix to this Brief. Upon consulting the text of the opinion it will be found that the court kept scrupulously within its proper jurisdiction, and expressly refrained from entering the province of the Commission. The third paragraph of the opinion reads as follows (R. 1889-1890):

> " 'To sustain the orders of the Commission three requisites must exist: (1) That the methods used are

unfair; (2) that they are methods of competition in interstate commerce; and (3) that a proceeding by the Commission to prevent the use of the methods appears to be in the interest of the public.' Federal Trade Commission v. Royal Milling Co., ..... U. S. ..... (decided February 6, 1933); Fed. Trade Comm. v. Raladam Co., 283 U. S. 643, 646-647. That the use of the expression, 'California white pine', is a method of competition, there is no question. The only questions presented are whether requisites (1) and (3), found by the Commission to exist, are supported by the testimony. If so supported, the statute provides that such findings 'shall be conclusive.' (Fed. Trade Comm. v. Winsted Hosiery Co., 238 U. S. 483, 491.)"

After reviewing the record and the findings of fact of the Commission, the court reached the following conclusion (R. 1899):

> "It is the conclusion of the court that, viewing the testimony in the light of all the facts of the case, it is insufficient to support findings that petitioners' use of the commercial name 'California White Pine' is an unfair method of competition or that its prevention would be in the interest of the public."

Certainly no excess of jurisdiction on the part of the court is here indicated.[1]

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(1) It is well settled that the ultimate determination of what constitutes "unfair methods of competition" is for the courts and not for the Commission:

*Federal Trade Commission v. Curtis Publishing Co.* (1923), 260 U. S. 568; 43 S. Ct. 210; 67 L. ed. 408.

*Temple Anthracite Coal Co. v. Federal Trade Commission* (1931), 51 Fed. (2d) 656.

Obviously, such a conclusion of ultimate fact cannot be withheld from judicial review by the device of wording it in the language of a finding, for by whatever name it be denoted, it must remain a question for the court.

## REPLY TO REASONS ADVANCED BY PETITIONER FOR GRANTING WRIT OF CERTIORARI.

We shall comment in turn upon the several reasons advanced by petitioner for the review of this decision upon certiorari.

### I.

### AUTHORITY OF THE FEDERAL TRADE COMMISSION OVER COMMERCIAL NOMENCLATURE.

The petitioner suggests that the initial question which it desires to present has not been, but should be, decided by this Court. It is our view that the point has been repeatedly and authoritatively determined by this Court, and adversely to petitioner's contentions.

We have heretofore reproduced the petitioner's claim that it has authority, "where a commercial name was originally adopted without improper motive or purpose, to compel the use of more accurate and specific commercial names than those theretofore employed" (Petition p. 10). The power thus claimed in behalf of the Commission would sanction a general revision of trade nomenclature, whenever the Commission might be moved to devise what in its opinion might be "more accurate and specific commercial names". It matters not that the respondents have not offended against the Sherman Anti-Trust Act or the Clayton Act. It matters not that the respondents are not chargeable with fraud, with intent to deceive, with design to injure a competitor, or with any other improper motive or purpose.

The very terms in which petitioner's contention is phrased will suffice to condemn it. No such far-reaching

censorship over trade names has been conferred upon the Commission. Upon this point the decisions are clear.

In *Federal Trade Commission v. Raladam Co.*, supra, (a decision which has served notably to clarify the law on this subject) this Court said:

> "In a case arising under the Trade Commission Act, the fundamental questions are, whether the methods complained of are 'unfair', and whether, as in cases under the Sherman Act, they tend to the substantial injury of the public by restricting competition in interstate trade and 'the common liberty to engage therein'. The paramount aim of the act is the protection of the public from the evils likely to result from *the destruction of competition or the restriction of it in a substantial degree,* * * * " (Emphasis added.)

The unfair methods mentioned in the Act are

> "those resorted to for the purpose of destroying competition or of eliminating a competitor or of introducing a monopoly—such as tend unfairly to destroy or injure the business of a competitor."

Heretofore the Commission has recognized no such limitation upon its powers, but has assumed the widest range of discretion, attempting to exercise its corrective processes in fields far removed from the terms and purposes of the Trade Commission Act as now authoritatively established by this Court. As was pointed out by the court below, this Court, in the case of

> *Federal Trade Commission v. Sinclair Refining Co.*, (1923) 261 U. S. 463, 43 S. Ct. Rep. 450, 67 L. ed. 746,

declared that

> "The great purpose of both statutes was to advance the public interest by securing fair opportunity for the play of the contending forces ordinarily engendered by an honest desire for gain. And to this end it is essential that those who adventure their time, skill and capital should have large freedom of action in the conduct of their own affairs."

The Circuit Court of Appeals for the Second Circuit has characterized the purpose of the Federal Trade Commission Act as follows:

> "Its purpose is to strike down at their inception practices which are unfair and which, if permitted to run their full course, would result in the creation of a monopoly and an undue restraint of trade." (*Northam Warren Corporation v. Federal Trade Commission*, (1932) 59 F. (2d) 196, 198.)

The petitioner claims "confusion" in the public mind because of the use of this trade name. Upon analysis it will be found that the alleged confusion is little more than ignorance as to the botanical identity of the several trees yielding lumber which is marketed under white pine names. This is not such confusion as will sustain a claim of unfair competition.

The petitioner cites the decision of this Court in

> *Federal Trade Commission v. Winsted Hosiery Company* (1922), 258 U. S. 483; 42 S. Ct. Rep. 183; 66 L. ed. 729.

That case cannot be assimilated to the instant case. There the offending manufacturer had, with express design,

adopted labels for his goods, which were "indubitably false". There was intent to defraud, and the public was in fact defrauded and business competitors were injured. The instant case is in no sense a counterpart, as the court below distinctly recognized. Petitioner admits that respondents' commercial name "was originally adopted without improper motive or purpose". Petitioner admits that the name was not adopted "for the purpose of misleading or deceiving the trade or the public". There is neither fraudulent purpose nor fraud in fact. The Commission has not attempted to make findings to that end.[1]

Unless it appears that the respondent has offended against the terms or purpose of the Anti-Trust Act or the Clayton Act, or that his course of conduct is motivated by intent to deceive or to defraud the public or to injure competitors, no jurisdiction exists to compel revision of trade nomenclature.

It would therefore seem clear that the initial reason advanced by the petitioner is invalid, for the point has already been determined adversely to petitioner's claim. The Circuit Court of Appeals correctly concluded, upon the record before the Commission, that the use of "California White Pine" as the commercial name for respondents' product, is not an unfair method of competition. This conclusion was within the province of the court.

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(1) That fraudulent intent is a necessary ingredient of unfair competition is amply shown by the authorities:
*Elgin National Watch Co. v. Illinois National Watch Co.* (1901), 179 U. S. 665, 674; 45 L. ed. 365.
*Howe Scale Co. v. Wyckoff, Seamans, etc.* (1905), 198 U. S. 118, 140; 49 L. ed. 972.

## II.

### THE INTEREST OF THE PUBLIC

The second issue tendered by the petition is in effect a challenge to the conclusion of the court that the action of the Commission was not in the interest of the public. The point is not so phrased, but such is the purport of petitioner's reasoning. In the language of the petition, the question presented is "whether the statutory requirement that a proceding be in the public interest permits the Commission or the court to consider the general social or economic facts which may indirectly result from the Commission's order" (Petition p. 11).

In this the petition fails aptly to state or fairly to characterize the substance of the opinion of the Circuit Court of Appeals in dealing with the question of the public interest. *That court specifically found, upon a review of the record, that the evidence before the Commission was insufficient to show that action by the Commission to force a change in this long-established trade name was in the public interest.* The court examined the evidence and considered the Commission's findings, and advisedly reached a conclusion adverse to the Commission upon this jurisdictional question.

As a mere incident to this conclusion the court observed that the public is not only interested in not being deceived in the material it purchases under a certain nomenclature, "but possibly in an even larger sense in the conservation of the forests" (R. 1890). It is in this remark that petitioner purports to find the indicia of an excess of jurisdiction on the part of the court.

At the worst, the observation thus made by the court was surplusage, and could not possibly be judicial error. It was enough that the court found that the evidence before the Commission was insufficient to support its findings with respect to unfair methods of competition and with respect to the public interest. These are the jurisdictional prerequisites, and it was immaterial, at most, that the court suggested further considerations militating against the propriety of the Commission's action (4 *Corpus Juris* 1057).

We have pointed out that the generic grant of authority to the Commission to forbid unfair methods of competition in commerce confers no license to traverse the fields of trade and industry and compel the revision of trade names which it may find objectionable for one reason or another. It is not enough that the challenged practice may appear to the Commission to be misleading or confusing. It cannot be stated too emphatically that the prerequisites to action on the part of the Commission comprehend not only (a) the existence of unfair methods of competition in commerce, but also (b) a determination that action on the part of the Commission is "to the interest of the public".

The meaning of these terms has been definitely charted by the decision of this Court in the *Raladam* case supra. It is there held that "unfair methods" are "*those resorted to for the purpose of destroying competition or eliminating a competitor or of introducing a monopoly—such as tend unfairly to destroy or injure the business of a competitor*". It is also there held that the words "to the interest of the public" "*are not substantive words of jurisdiction but*

*complementary words of limitation upon the jurisdiction conferred by the language immediately preceding*". It is not enough "that a given person, partnership or corporation has been or is using any unfair method of competition in commerce". The court declares that "the Commission still may not proceed, unless it further appear that a proceeding would be to the interest of the public, and that such interest is specific and substantial".

Accordingly, the Commission may not insist that its action is "to the interest of the public" in any case wherein the record fails to show a public interest which is "specific and substantial". It was the holding of the Circuit Court of Appeals that no such public interest appears in respect to the practice of these respondents. This was a proper question for judicial determination, and the ruling is not impaired by harmless collateral comment.

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## III.

### ALLEGED EXCESS OF JURISDICTION BY CIRCUIT COURT OF APPEALS.

Petitioner has phrased its third point in the following terms (Petition p. 13):

> "A further reason for granting the writ of certiorari is that this is a case where large interests are involved and where the court below failed to observe the statutory provisions governing judicial review of orders of the Commission."

The fact that "large interests are involved" affords insufficient reason for the review of a decision upon certi-

orari. If it should appear, however, that the court below failed to observe the statutory restraints upon its reviewing authority, the intervention of this Court could properly be invoked. We shall proceed to show that the court below did not exceed the limits of its authority.

It is true, as the petition points out, that the Commission's findings of fact are conclusive "if supported by testimony". We agree also that the weight to be given to the facts, as well as the inferences reasonably to be drawn from them, are matters for the Commission. But the Circuit Court of Appeals expressly recognized these limitations upon its reviewing authority, as the text of its opinion clearly discloses. The court undertook only to determine (a) whether the record before the Commission could support a finding of unfair competition and (b) whether the record and findings sufficed to show that the intervention of the Commission was in the public interest. As we have hitherto pointed out, this Court has expressly ruled that "the ultimate determination of what constitutes unfair competition is for the court, not the Commission".

*Federal Trade Comm. v. Curtis Publ. Co.*, supra.

It is suggested in the concluding portion of the petition that there is a tendency on the part of the courts to weigh evidence and to set aside the Commission's orders when their views as to preponderance differ from those of the Commission (Petition p. 15). If there is such tendency on the part of any court, it is not exemplified by the decision of the Circuit Court of Appeals in this case. There is nothing whatever in its opinion which can support the criticism that it has assumed either "to weigh

the evidence" or to formulate its own "views as to preponderance". It did make passing comments upon the significance of certain of the Commission's findings of fact, but the evidentiary findings of the Commission were not disturbed. Not one such finding was either set aside or modified. Nor did the court make findings of its own, either in substitution for findings of the Commission, or otherwise. Certainly, passing comments upon the findings, and upon the record itself, are entirely appropriate, and do not constitute an invasion of the province of the Commission.[1]

The fact is that the court below reviewed the testimony only for the purpose of ascertaining whether such testimony could be held to support the Commission's conclusions upon the *ultimate questions* involved in these proceedings, (1) whether respondents' practice was unfair, and (2) whether action by the Commission would be in the public interest. The court expressly recognized the finality of the Commission's findings of fact, when supported by testimony, and sought only to determine whether those findings are supported by evidence, and whether they sustain the Commission's conclusions upon these ultimate questions. Such inquiries were within the province of the reviewing court.[2]

Since the petition fails to identify a single specific instance wherein the court set aside or disturbed an evi-

(1) The Commission made no finding in respect to the adoption and recommendation of "California White Pine" as a "preferred commercial name" for this lumber by the United States Bureau of Standards. The court below commented upon this phase of the record, but again refrained from making a finding of its own.

(2) The distinction between "ultimate facts" and "evidentiary facts" is, of course, well understood.

*Temple Anthracite Coal Co. v. Federal Trade Commission*, supra.

dentiary finding upon the ground that it was unsupported by testimony, it would appear that petitioner cannot justly assert or imply that the court failed to observe the accepted limitations upon its jurisdiction.

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## CONCLUSION.

It has been said by a former Chief Justice of this Court that the office of the writ of certiorari is "to secure uniformity of decisions in subordinate courts of appeal and to decide questions of general, public importance which are not well settled" (Volume VIII, *American Bar Association Journal,* 603).

*Hamilton-Brown Shoe Company v. Wolf Bros.,* (1916) 240 U. S. 251; 60 L. ed. 629.

The petition for certiorari herein fails to present a case responding to these requirements.

It presents no conflict between different circuits.

It tenders no questions of "general, public importance which are not well settled". On the contrary, it seeks to reopen questions which have been authoritatively settled by this Court.

The petition does not represent, nor does the record before the Federal Trade Commission in these proceedings show,

(1) That respondents have offended against the Sherman Anti-Trust Act or the Clayton Act; or

(2) That respondents have attempted or conspired to destroy or restrict competition; or

(3) That the commercial name used by respondents for their lumber (established through the United States for more than thirty years) was adopted for the purpose of misleading or deceiving the trade or the public or for any other fraudulent or improper purpose.

The petition for certiorari should be denied.

Respectfully submitted,

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*Attorneys for Respondents.*
1500 Balfour Building,
San Francisco, California.

Dated at San Francisco, California, August 31, 1933.

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ENTRY OF APPEARANCE.

The undersigned hereby enter their appearance in the above entitled cause as counsel for respondents.

Dated at San Francisco, California, August 31, 1933.

WARREN OLNEY, JR.,
ALLAN P. MATTHEW,
CARL I. WHEAT,
*Attorneys for Respondents.*

**(APPENDIX FOLLOWS.)**

# Appendix

**Opinion of the Circuit Court of Appeals (R. 1889-1899.)**

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In the United States Circuit Court of Appeals
for the Ninth Circuit

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No. 6716

[Apr. 4, 1933]

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ALGOMA LUMBER COMPANY ET AL., PETITIONERS

vs.

FEDERAL TRADE COMMISSION, RESPONDENT

Petition to review orders of the Federal Trade Commission
Before: WILBUR, Circuit Judge, and JAMES and NORCROSS, District Judges

*Opinion*

Filed April 4, 1933

NORCROSS, District Judge:

The petition presents for consideration a review of orders made by the Federal Trade Commission on June 8, 1931, in the so-called "White Pine cases" requiring the petitioning lumber manufacturers to cease and desist from using the word "white" in conjunction with the word "pine" in connection with the sale in interstate commerce of lumber manufactured from the species of pine tree botanically known as Pinus ponderosa.

Petitioners herein are twelve of a group of fifty manufacturers on the Pacific coast, against which the Commission issued similar complaints on May 23, 1929. Each of these concerns was charged with the interstate sale of lumber under various terms, including the phrase, "white pine", with the alleged result of misleading and deceiving the trade and public to the injury of competitors and the public, and that the same is an "unfair method of competition forbidden by section 5 of the Federal Trade Commission Act." The term employed by each of petitioners here is "California white pine."

"To sustain the orders of the Commission three requisites must exist: (1) That the methods used are unfair; (2) that they are methods of competition in interstate commerce; and (3) that a proceeding by the Commission to prevent the use of the methods appears to be in the interest of the public." Federal Trade Commission v. Royal Milling Co., ... U. S. .... (decided February 6, 1933); Fed. Trade Comm. v. Raladam Co., 283 U. S. 643, 646-647. That the use of the expression, "California white pine", is a method of competition, there is no question. The only questions presented are whether requisites (1) and (3), found by the Commission to exist, are supported by the testimony. If so supported, the statute provides that such findings "shall be conclusive." (Fed. Trade Comm. v. Winsted Hosiery Co., 258 U. S. 483, 491.).

In Federal Trade Commission v. Raladam Co., 283 U. S. 643, the Supreme Court said:

"In a case arising under the Trade Commission Act the fundamental questions are, whether the methods com-

plained of are 'unfair', and whether, as in cases under the Sherman Act, they tend to the substantial injury of the public by restricting competition in interstate trade and 'the common liberty to engage therein.' The paramount aim of the act is the protection of the public from the evils likely to result from the destruction of competition or the restriction of it in a substantial degree, * * *."

In Federal Trade Commission v. Sinclair Refining Co., 261 U. S. 463, the Court said:

"The general purpose of both statutes was to advance the public interest by securing fair opportunity for the play of the contending forces ordinarily engendered by an honest desire for gain. And to this end it is essential that those who adventure their time, skill, and capital should have large freedom of action in the conduct of their own affairs."

This Court in Hills Bros. v. Fed. Trade Comm., 9 F. (2d) 481, 484, said:

"The Court is only concerned with the question whether there is any competent testimony to support findings of the Commission."

Pinus ponderosa belongs botanically with the so-called "yellow pine" group. The typical "yellow pine" is the longleaf pine of the South, a hard lumber useful where strength is needed, and classified botanically as Pinus palustris and Pinus taeda. When lumber from the Pinus ponderosa trees came into local use in California it was given the name "California white pine" in order to distinguish it from the hard "yellow pines" of the South. By 1886 it was so marketed in the States of California, Nev-

ada, and Utah, with occasional shipments further east. By about 1900 it was so marketed in the Middle West sections, and about 1915 shipments extended to the Atlantic coast.

The only species of true botanical white pines of commercial importance are northern white pine, and two Pacific coast varieties—Idaho white pine and sugar pine. The annual production of northern white pine in the United States is 825,000,000 feet b. m., of which 358,000,000 feet is from virgin timber in Minnesota, the remainder, 467,000,000 feet, being in the main second growth from the original forests stretching throughout the northern and eastern sections of the United States from Minnesota to the Atlantic coast. The annual production of Idaho white pine is 500,000,000 feet and of sugar pine 280,000,000 feet. The annual production of ponderosa is 2,800,000,000 feet, of which more than half has been sold since 1924 as pondosa pine and the remainder as California white pine, Arizona white pine, and New Mexico white pine.

Prior to 1924 the majority of Washington, Idaho, western Montana and northern and central Oregon producers of ponderosa were designating their lumber western white pine. Upon application for complaints against them the Commission investigated this trade term. As a result of an agreement entered into by most of such producers in that year the name pondosa pine was adopted as a substitute. In the brief of counsel appearing as amicus curiae is the statement that following the said orders of the Commission of June 8, 1931, the name was again changed to ponderosa pine.

Statistical Bulletin #21 of United States Department of Agriculture (commission's exhibit 34) gives a statement of the total timber stand in the United States for the year 1920 in board feet as follows:

Pinus ponderosa (California white pine) and Pinus jeffreyi (Jeffrey pine), 249,578,000,000.

Pinus strobus (northern white pine) and Pinus resinosa (norway pine), 23,457,000,000.

Pinus monticola (Idaho white pine) and Pinus lambertiana (sugar pine), 57,071,000,000.

From the foregoing it appears that the available supply of ponderosa and its kindred Jeffrey pine is about three times greater than the total available supply of the botanically true white pine timber in this country. The record also discloses an estimate of more than 15,000,000,000 board feet of northern white pine (strobus) within the Canadian Provinces. At the rate of consumption given, not considering second growth, the present stand of timber will be practically exhausted within sixty years.

In respondent's exhibit #31—"U. S. Department of Commerce Bureau of Standards — Lumber — Simplified Practice Recommendation R 16-29" (issued December 5, 1929), there appears under the heading "Nomenclature of commercial softwoods" the statement:

"The following standard commercial names for lumber cut from the principal species of softwoods shall be used in the formulation of lumber-grading rules and in the construction of contracts and the terms of purchase and sale of American standard lumber. Preferred commercial names are shown in italic."

Here follows under subheadings of various names of trees such as cedars, firs, hemlocks, etc., the standard commercial name of lumbers produced therefrom. Under the subheading Pines appear sixteen names, the following among others: Arkansas soft pine, California white pine, Idaho white pine, longleaf pine, North Carolina pine, northern white pine, norway pine, pondosa pine, southern pine, sugar pine. Placed opposite each such standard commercial name is the proper botanical name or designation. Of the sixteen names, ten are of the botanical yellow pine. While commercially pine lumber falls within two main groups—the white and the yellow pines—it may be noted that the Bureau of Standards in the exhibit referred to makes no such groupings as it does in the case of douglas fir and the true firs.

While action taken by the Bureau of standards is persuasive in a case of this character, it is not necessarily controlling on the Federal Trade Commission or the courts. There may be cases in which the action of the Bureau should be regarded as decisive. As said by the Circuit court of Appeals, Seventh Circuit, in a recent case, Kirk & Co. v. Fed. Trade Comm., 59 F. (2d) 179, 183:

"We deem it quite pertinent and decisive of the question before us. The Government, through its agency, the Bureau of Standards, has thus committed itself to the proposition that castile soap may be made of oily and fatty elements other than olive oil. Being solely a question of fact, we deem it expedient for other departments of the Government, including the judiciary, to accept such construction, if for no other reason than that of consistency."

It would not necessarily follow from this decision that a yellow pine might be sold as a white pine if such sales were unfair to the trade and injurious to the public, notwithstanding the Bureau of Standards had specified a name such as "California white pine" in a list of "Standard commercial names" for pine lumber. It would be different, however, if the particular lumber sold under such name possessed substantially the same qualities possessed by the white pines of commerce as distinguished from certain well-known commercial yellow pines.

As shown by Bulletin 556 of the U. S. Department of Agriculture (respondent's exhibit 21) in the physical properties of weight, stiffness, strength, hardness, and shrinkage, ponderosa compares favorably with strobus. Expert witnesses from the United States Forest Products Laboratory place ponderosa in its mechanical properties with the typical white-pine lumbers. There appears to be no serious question in this respect.

A statement by E. P. Ivory, formerly with the U. S. Forest Service, a witness called by the Commission, succinctly presents certain facts:

"There are 37 pine species in the United States, and just as the oaks are divided into white and red oak groups, so the pines are divided into white and yellow pine groups. Botanically, California white pine falls in the yellow-pine group, chiefly because it has three long needles in each bundle, whereas the white pines have five. The physical properties and uses of the wood cut from this tree, however, align it with the white-pine group and set it apart very distinctively from the yellow-pine group."

From the testimony of this witness there also appears the statement:

"Physical properties of California white pine, as demonstrated in tests made at the U. S. Government Forest Products Laboratory, Madison, Wisconsin, and its uses, closely align California white pine with the botanical white pines. In fact, in many of its most important qualities and uses California white pine is more typieally a white pine than are some species which botanically are classified as white pines."

The finding of the Commission to which objection is principally directed as not being supported by the evidence reads:

"True white-pine lumber is far more durable than ponderosa lumber when exposed to weather conditions. The ponderosa pine has on an average a far greater amount of sapwood than trees generally used for lumber. The sapwood of the ponderosa is less durable than any other part of the tree—especially when exposed to weather conditions. It is the sapwood of the ponderosa that most closely resembles the heartwood of the true white pines in appearance and softness. It is the sapwood of the ponderosa that is usually sold for uses and purposes for which the heartwood of the true white pines is celebrated. The close resemblance between the heartwood of the true white pines and the sapwood of the ponderosa above noted is one of the greatest causes of the confusion and deception in the marketing of the two species."

The gist of this finding is that true white-pine lumber is far more durable and has a far less percentage of sap-

wood than ponderosa lumber, and that the close resemblance between the heartwood of true white pines and the sapwood of ponderosa is one of the greatest causes of confusion and deception in the marketing of the two species.

An exhibit in the record discloses that the sapwood of the true white-pine tree appears to be about 1¾ inches in thickness as compared with three inches for the yellow pine. The relative percentage of sapwood in a particular tree depends largely upon its diameter. The attention of the court is directed to a chart showing a strobus tree 9½ inches in diameter to have 60% sapwood, while a ponderosa tree 18 inches in diameter has 55% sapwood content, and trees of 21 inches in diameter have a sapwood content of 30% and 48%, respectively. While these figures are interesting as showing the proportion of sapwood and heartwood content of logs, they do not necessarily indicate the relative proportion of sapwood and heartwood content in the lumber produced therefrom. That there is a greater percentage of sapwood content in ponderosa lumber than there is in the true white-pine lumber there is no question. This variation, however, appears to be of importance only as it has a bearing upon the relative durability of the two classes of lumber. It is the sapwood which was found by the Commission to be more subject to decay when applied to exterior uses.

Upon the question of durability of ponderosa as compared with the true white pines the testimony of a number of witnesses appears in the record. A reference to the testimony of a few only will be sufficiently illustrative. Russell F. Whitehead, a New York City architect and

editor of an architectural journal, testified that lumber made from ponderosa "is not a satisfactory substitute for genuine white pine to use in exterior of a building, in any way, shape, or form." The witness further testified that he regarded it as reasonably satisfactory for interior purposes, "but not if exposed to the weather." W. B. Greeley, for seven years Chief Forester of the United States and now manager of the West Coast Lumberman's Association, Seattle, testified: "The genuine white pines have the reputation for greater durability in uses exposed to the weather. That would not apply to interior uses protected from the weather." George W. Kelham, for twenty-two years an architect in San Francisco, testified as to the use of ponderosa where exposed to the weather: "It is unsatisfactory under those conditions, and that would be the general opinion of the architects that I know. * * * It doesn't, in our opinion, last well. It decays more rapidly than other wood."

Professor C. P. Winslow, Director of the United States Forest Products Laboratory at Madison, Wisconsin, since 1917, to the question, "What is the difference between white pine and Pinus ponderosa as to durability?" answered: "I don't know."

Professor G. M. Hunt, of the same laboratory, testified: "The general experience with the use of the white pines during the 200 years since they began to be used indicated that these pines had moderately high durability. The general experience with Pinus ponderosa indicated that that wood had low durability in contact with the ground or any place favoring the growth of decay. That is a matter of common knowledge."

To the question, "Have there been tests which will adequately settle the question as to the relative decay-resisting qualities of the heartwood of Pinus ponderosa and the heartwood of Pinus strobus?" Professor Hunt answered: "There have not."

The weight to be given to testimony above outlined upon the question of the relative durability of the two lumbers is not as clear as it might otherwise seem to be, viewed in the light of other facts and circumstances. The expression that ponderosa lumber is not a satisfactory substitute "for use in exterior of a building, in any way, shape, or form" may well be viewed in the light of the fact that buildings erected from lumber from the original northern white-pine forests have withstood the elements for two centuries, while but few, if any, erected with lumber from the ponderosa tree may lay claim to an age in excess of about seventy-five years. Specific instances of decay under ordinary conditions of upkeep are almost wholly lacking in the record. The Director of the Forest Products Laboratory did not know what the difference in durability is. Professor Hunt's testimony was to the effect that it was a matter of common knowledge from general experience that ponderosa "had low durability in contact with the ground or any place favoring the growth of decay." As most of the lumber used even for exterior purposes does not come in contact with the ground, it would not necessarily follow that such lumber might not in other respects have moderately high durability unless the witness meant to say that any exterior use was a "place favoring the growth of decay." The testimony of the witness does not appear to warrant the latter

interpretation. What the testimony appears to establish is that northern white pine has relatively a greater durability for exterior use without establishing any comparative degree of such durability.

Upon the question of public confusion in the matter of lumber nomenclature, the testimony of a number of witnesses appears in the record. Mr. Alfred Busselle, for twenty-five years a practicing architect in New York, specializing in high-grade residential work, testified "In my experience there is a great deal of confusion in the pine market due to the terminology, and some of the confusion is quite honest. * * * I know that California white pine connotes to some people a distinct type of wood, but it connotes to other people white pine in general, and therein lies the confusion." Those who are confused, generally speaking, the witness testified, were the "millmen and the lumber dealers, as well as the architects." Just why architects and lumber dealers should be confused in view of the aid and assistance furnished by the Government through the Bureau of Standards is not readily apparent. It may properly be assumed that architects have a general knowledge of the qualities of the various materials they specify. If it is deemed important that a particular residence or other building be constructed of so-called true white pine because of its known or claimed superior wearing or other qualities, a reference to the standard commercial names, "northern white pine", "Idaho white pine", or "sugar pine", will enable the architect to so specify and the contractor and dealer to comply with the specifications. The testimony does not support a view that when architects so specify there is any confusion

or even any material amount of intentional substitution of some other lumber than that specified. It is clearly established by the testimony that the true white pines are sufficiently well known in the trade to be able to command a higher price over that sold under the trade name of California white pine or pondosa.

The testimony of a number of witnesses engaged in the retail trade in various States is to the effect that orders for white-pine lumber without other designation, would be filled by any lumber using the designation "white", including California white pine. It does not appear, however, from the testimony of these witnesses that in filling such orders with California white pine, or with other lumber using the designation "white", and which was not a botanically true white pine, a practice prevailed of charging a price therefor on a basis of the market price for northern or Idaho white pine.

P. J. Curley, president for five years of a wholesale and retail lumber house at Chicago, testified:

"It is commonly known among the sash and door men if a specification comes in for white pine, they will furnish California white pine or so-called 'western pine' or 'pondosa pine', without attempting to get the genuine northern white pine or Idaho white pine."

The reason for the substitution, the witness testified, "is the lower price, lower cost to the sash and door men or to the interior men." The amount of such substitution the witness estimated at "about ninety-five percent."

If it be considered that manufacturers of sash and doors and exterior trim use ponderosa lumber principally in such

manufacture, and supply the same when the specification calls for white pine, the important question remains of the character of material so supplied, and whether a price is charged therefor based on the difference in cost of the two lumbers. There is no testimony touching the question of price of this particular character of manufactured product. With the exception of the possible question of durability, the materiality of which has not been established, it does not otherwise appear the public is injured by action of such manufacturers. If, as testified by the witness Curley, these manufacturers use ponderosa pine as readily as they do California white pine in filling specifications calling for white pine, it is not apparent that an affirmance of the Commission's orders would afford any relief if injury from such manufacture in fact occurs.

In the finding of the Commission complained of appears the statement: "It is the sapwood of ponderosa that most closely resembles the heartwood of the true white pines in appearance and softness." In respondent's brief appears the statement: "True white pines excel ponderosa in the soft texture of the wood as an average * * *." The court's attention has not been called to any tests made of the relative hardness of heartwood as compared with sapwood. The tests made by the United States Forest Products Laboratory for "hardness (side section)" show ponderosa softer by 2% and "(end section)" softer by more than 6% than strobus. In comparison with the southern yellow pine (longleaf) both woods are softer by more than 50%.

As bearing on the question relative to the contention that the use of the commercial name "California white pine"

is unfair to the trade, we quote the following excerpt from the brief of respondent:

"Idaho white pine in 1922 and 1923 had a premium of $16 or $17 per thousand feet. Since the decline of 1927 the premium has been but $5.50 to $8.50. In September 1927 the Weyerhaeuser Sales Company made a drastic cut in Idaho white pine largely for the reason that the Weyerhaeuser concerns 'had come to the conclusion that, because other woods not true white pines were being marketed under the white-pine name, it was no longer possible to get the price preferences that we had previously gotten.'"

It may be noted, however, in connection with the foregoing statement, that the reduction in price did not occur until three years after the commercial name of half of the ponderosa of commerce was changed from western white pine to pondosa.

It may be conceded that if the use of the commercial name California white pine is prohibited in the lumber trade, northern white pine and Idaho white pine will be able to command a higher price than that which now prevails over lumber produced from the forests of ponderosa pine. If this situation be conceded, and it be further conceded that the increased price of strobus lumber finds a correlative reduction in the price of ponderosa lumber, the further question remains whether such change in commercial methods of sale will be in the interest of the public.

The case of Federal Trade Commission v. Winsted Hosiery Co., 258 U. S. 483, is stressed in the brief of respondent as one presenting a "remarkable parallel" respecting the use of unfair methods, the prevention of

which is in the interest of the public. From the opinion we quote the following excerpt:

"A substantial part of the consuming public, and also some buyers for retailers and sales people, understand the words 'merino', 'natural merino', 'gray merino', 'natural wool', 'gray wool', 'Australian wool', and 'natural worsted' as applied to underwear to mean that the underwear is all wool. By means of the labels and brands of the Winsted Company bearing such words, part of the public is misled into selling or into buying as all wool, underwear which in fact is in large part cotton. And these brands and labels tend to aid and encourage the representations of unscrupulous retailers and their salesmen who knowingly sell to their customers, as all wool, underwear which is largely composed of cotton."

The sale or purchase of a material as all wool which in fact is in large part cotton presents a situation which may not be said to be parallel to that presented upon the facts in this case. If a material from a gray wool from some other breed of sheep than a merino were dealt with in commerce under the name of "merino" or "gray merino", then there might be some parallel between the two cases.

In the case at bar we are considering questions as between certain pine lumbers. The use of the word "white" is here sought to be prohibited in connection with the trade name of a lumber produced from a certain species of pine tree which botanically falls within the yellow-pine group but which in its industrial utility comes within the white-pine group as known to commerce and industry. In the field of commerce and industry there are but two groups

of pine lumbers—the white and the yellow. Primarily this grouping reflects the industrial utility of the several lumbers. While botanically Pinus ponderosa falls within the same general classification as Pinus palustris, the lumber from which latter trees first became known to commerce as southern yellow pine, ponderosa in industrial utility possesses more nearly the qualities of Pinus strobus, which as northern white pine was the first of the pines known to commerce using the designation "white."

It may be conceded that the evidence establishes that northern white pine lumber from the forests of Minnesota, and Idaho white pine lumber possess certain qualities which make those lumbers a superior grade to lumber produced and sold as California white pine. When we compare Idaho white pine with northern white pine we find that the Department of Agriculture (exhibit 21) records the former as possessing greater strength and stiffness, but with all a softer quality. As said in the brief for respondent: "Lumber is a product of growth, not an inorganic, chemical product. Lumber from any given species, even the most uniform, will vary somewhat in quality. Where species are similar in average quality, or where the variations in a species are great there will be some overlapping." In considering California white pine with northern white pine, for example, the fact may not be overlooked that the greater portion of the annual production of such lumber, 467,000,000 board feet, comes from second-growth timber. Concerning this second-growth lumber, in the brief of respondent, we read: "While most of the new growth of strobus is being prematurely cut and used for

inferior purposes, yet doubtless many areas are being allowed to stand for their maximum value." This statement is suggestive of the fact that the public interest is not promoted by the premature cutting of second-growth timber.

In considering the fact that certain of the so-called true white pines produce lumber superior in certain respects to that produced from ponderosa, there is also to be considered the fact that these species of true white pines differ also from each other as the so-called true yellow pines differ from each other. Whatever these differences are, in commerce and industry pine lumber is classified into two groups, white pine and yellow pine, and any lumber falls within one or the other of these two main groupings, largely if not entirely because of its peculiar industrial utility.

In considering the weight to be given to the fact that ponderosa is not only not a botanical true white pine but in certain respects is also inferior in a more or less uncertain degree to certain of the true white pines of commerce, the past history as well as the future of the industry is deserving of consideration. The supply of the botanical true white pine is far more limited than that of ponderosa. The public is not only interested in not being deceived in the material it purchases under a certain nomenclature, but possibly in an even larger sense in the conservation of the forests. In the brief for respondent appears this statement:

"The superiority of true white-pine lumber over ponderosa has been reflected in the fact that northern white

pine, Idaho white pine, and sugar pine have all commanded a higher price on the market than ponderosa. The price differentials still continue."

It is manifest from this statement that, notwithstanding the fact that ponderosa has been sold in markets throughout the country under the commercial name "California white pine", and under other names using the word "white", for more than fifteen years prior to the institution of this proceeding, the so-called "true white pine" were able to command a higher price.

It is the conclusion of the court that, viewing the testimony in the light of all the facts of the case, it is insufficient to support findings that petitioners' use of the commercial name "California white pine" is an unfair method of competition or that its prevention would be in the interest of the public.

The orders complained of should be annulled and set aside. It is so ordered.

*Due service and receipt of a copy of the within is hereby admitted this.....day of September, 1933.*

.....

*Solicitor General.*

.....

*Attorney for Federal Trade Commission.*

FILE COPY

No. 240

FILED
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CHARLES ELMORE CROPLEY

# In the Supreme Court
OF THE
# United States

OCTOBER TERM, 1933

FEDERAL TRADE COMMISSION,
*Petitioner,*

vs.

ALGOMA LUMBER COMPANY, et al.,
*Respondents.*

On Writ of Certiorari to the United States Circuit Court of Appeals for the Ninth Circuit.

## Brief for
## Algoma Lumber Company, et al., Respondents.

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## Brief for
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### THE OPINION OF THE COURT BELOW.

The opinion of the Circuit Court of Appeals for the Ninth Circuit is reported in 64 F. (2d) 618, and is printed at page 1889 of the record herein. The decree of the court was entered on April 4, 1933 (R. 1899). Petition for cer-

tiorari was filed July 3, 1933, and was granted October 9, 1933 (R. 1900).

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**REPORT AND ORDER OF THE FEDERAL TRADE COMMISSION.**

The report and order of the Federal Trade Commission are printed in the record at pages 26-48 inclusive.

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**STATEMENT OF THE CASE.**

On or about May 23, 1929, the Federal Trade Commission, purporting to act in the public interest, filed complaints against the respondents and certain other lumber producers charging in brief that the use of the term "California White Pine" in the sale in interstate and foreign commerce of lumber yielded from the tree *Pinus ponderosa* is an "unfair method of competition" forbidden by Section 5 of the Federal Trade Commission Act. The trade name thus assailed came naturally and honestly into existence many years ago, and has been used by respondents and their predecessors continuously for more than 30 years in marketing this lumber throughout the United States.

Respondents own and operate lumber mills in the Sierra Nevada pine belt in California and southern Oregon. The lumber which they produce is yielded by the dominant pine of the Sierra forests, known to botanists as *Pinus ponderosa*. This lumber is marketed under the name "California White Pine" (Findings of Commission, Paragraphs two and three—R. 28).

As early as 1880, this lumber was marketed locally in California, New Mexico and Arizona under trade names

which included the words "white pine." By 1886 it was being generally marketed under terms including "white pine" in California, Nevada and Utah, with occasional shipments to the eastward. By about 1900 it had progressed into middle western territories and by 1915 national distribution was completed by entrance into New England (Findings of Commission, paragraph thirty—R. 33).

As this lumber commenced to move in volume into the markets of the Middle West and East, it naturally retained its established local name, "California White Pine." There were additional reasons for the employment of this commercial name. Then, as now, there were two types of pine lumber known to trade and industry—viz., "white pine" and "yellow pine" (R. 282). "White pine" lumber is white in appearance and soft in texture and its primary use is for shop or finish purposes—e. g., in the manufacture of sash and doors and interior trim (R. 613). "Yellow pine" lumber, on the other hand, is yellow in color and hard in texture and its primary use is for structural purposes where strength is required (Findings of Commission, Paragraph ten—R. 30). Respondents' lumber is of the "white pine" type, and far removed from the "yellow pine" type. Accordingly, it has always been known to trade and industry by a "white pine" name (R. 159, 778-9, 1368-9). The word "California" has been included for the purpose of specific identification.

The record shows without conflict that the name "California White Pine" was employed in national distribution in order to avoid confusion with the typical yellow pine lumbers of the southern states (R. 1189, 1206, 1273).

Until very recently no other trade name had been called into being. In short, from the introduction of this lumber into the channels of interstate commerce and continuously throughout the years, it has been predominantly known as "California White Pine."

In or about the years 1924 and 1925 a movement directed to a change in commercial nomenclature arose within the industry. Certain lumber manufacturers proposed a change from "California White Pine" to "Pondosa Pine" (a corruption of "ponderosa"), and such change was actually made by some of the producers. These respondents were unwilling to abandon the use of "California White Pine" (Complaint of Federal Trade Commission, Paragraph eight—R. 8). They were opposed to the newly coined "Pondosa" name. Thereupon the proceedings were commenced by the Commission.

Pursuant to its conventional practice, the Commission instituted its proceedings in response to *ex parte* representations and inquiries. The complaints tendered certain charges of fraudulent motive and wrongful conduct in the origin and use of the name, but these charges wholly failed of proof and were of necessity abandoned. The averments of the complaints were erroneous in other material respects. We take note of these unfounded charges and erroneous averments at this juncture in order to preclude misunderstanding as to the nature of the case tendered by the complaints and alike as to the nature of the case actually developed by the evidence.

**Averments of complaints which failed of proof.**

(1) The complaints charged that respondents sell their lumber, and designate it on letterheads, bill-heads and invoices, as "white pine," with or without the addition of further words of identification (R. 6). The evidence shows that the full term "California White Pine" has invariably been used by respondents, and the Commission has so found (Commission's Findings, Paragraph three—R. 28).

(2) The complaints aver that *Pinus ponderosa* does not "in the character of lumber made therefrom, belong to that group of pine species known as white pine * * *" (R. 6). The proofs shows without conflict that the character of this lumber places it in the white pine group (R. 159, 778-9, 1368-9).

(3) The complaints aver that *Pinus ponderosa* is, "by the average commercial qualities and characteristics of the species, a member of the aforesaid yellow pine group" (R. 7). The proofs show without conflict that in commercial qualities and characteristics this lumber is far removed from the yellow pine group (R. 159, 778-9, 1368-9).

(4) The complaints allege that the term "California White Pine" "was adopted and has been continued by respondents and other manufacturers thereof as a substitute for that of western yellow pine * * *" (R. 8). The record shows without contradiction that "California White Pine" was not adopted as a substitute for western yellow pine or as a substitute for any other name whatever. From the beginning this lumber carried a "white pine" name (R. 1189, 1468, 1470-2).

(5) The complaints aver that the term "California White Pine" "was adopted and has been continued by respondents and other manufacturers * * * in order to cause the trade and buying public to minify or ignore the characteristics wherein *Pinus ponderosa* is inferior to *Pinus strobus* * * *" (Northern White Pine) (R. 8). The record shows without conflict that "California White Pine" was adopted for the purpose of avoiding confusion with the typical yellow pine lumber of the southern states (R. 1189, 1206, 1273).

(6) The complaints charge that jobbers and retailers have been "misled into buying *Pinus ponderosa* in the belief that they thus secure genuine white pine * * *" (R. 9). No jobber or retailer has so testified.

(7) The complaints charge that respondents and other manufacturers "have been enabled to fill and have actually filled orders for genuine white pine with consignments of *ponderosa* pine" (R. 10). The record contains no proof that any respondent, or any person in privity with any respondent or otherwise, has at any time "filled orders for genuine white pine with consignments of *ponderosa* pine."

It appears accordingly that the complaints were founded upon two major premises which were false in fact: *first*, that the name "California White Pine" had been devised and used for the purpose of misleading and deceiving the trade and the public, and, *second*, that the characteristic qualities and uses of this lumber place it in the "yellow pine" group rather than in the "white pine" group. As to the first premise, counsel for the Commission was com-

pelled to admit upon brief filed before the Commission that *"there is no proof that the practice of designating ponderosa products by terms including the word 'white' was adopted for the purpose of misleading or deceiving the trade or the public."* As to the second premise, it is established incontestably that "California White Pine" lumber belongs in the "white pine" group in physical properties and essential industrial utility.

In order to make it clear beyond the possibility of a doubt that the Commission has expressly exonerated respondents from improper motive in the adoption of this trade name, we quote the following from page 80 of the brief for the Federal Trade Commission in these proceedings before the Circuit Court of Appeals:

> "It is true that the Commission alleged in its complaints that the respondents were actuated by an intent to secure the advantage of the association of the public mind with true white pine in the adoption of the term here in controversy.
>
> Such evidence as the Commission offered, as respects the origin of the term, indicated that the term 'California White Pine' was used before Northern or Idaho white pine came into local market where 'California White Pine' was offered, and that the term was adopted to avoid confusion with the hard 'yellow pine' of the south.
>
> *Accordingly, the allegations as to the improper motive at the adoption of the term 'California White Pine' were not sustained."* (Emphasis supplied.)

Having failed completely to sustain the complaints upon these major issues *(and these were the only substantial*

*charges tendered),* the Commission was relegated to *botanical* distinctions. Briefly stated, the claim appears to be that since the tree *Pinus ponderosa* has been grouped by botanists with those pine species commonly styled "yellow pines," the lumber which it yields may not lawfully be called by a commercial name containing the word "white." It will be found upon final analysis that the entire argument of "misdescription," "confusion" and "substitution" has been founded precariously upon the botanical criterion. But this issue was also found to rest upon a false premise, since the record shows without conflict that botanical classification and nomenclature have nothing in common with commercial nomenclature, that lumber buyers are not concerned with botanical distinctions and that their sole concern is with the characteristics of the lumber. The Commission now so concedes in its findings (Commission's Findings, Paragraph sixty-two—R. 39).

Notwithstanding that the material issues were thus resolved in their entirety against the allegations of the complaints, the Commission nevertheless proceeded upon its course.

**Summary of essential facts from the record before the Commission.**

For convenience the several complaints were consolidated for hearing and disposition. The controlling facts, as we conceive them, developed in the course of the proceedings before the Commission may be set forth in summary form as follows:

1. "California White Pine" is the commercial or trade name under which the lumber yielded by the

tree identified botanically as *Pinus ponderosa* has been marketed throughout the United States for more than 32 years last past. (In the Pacific Coast area since 1880 and nationally since 1900.) (See Paragraph thirty, Findings of Federal Trade Commission—R. 33.)

2. "California White Pine" was adopted as the commercial name for this lumber in order to distinguish it from the typical "yellow pine" lumbers of the southern states. (It is stated upon page 5 of the petition for certiorari in this cause that "the original purpose for the adoption of this term was to distinguish this lumber from the hard 'yellow pine' of the South.") (R. 1189, 1206, 1273.)

3. The botanical grouping of pine *trees* has no relation to the commercial nomenclature or industrial utility of pine *lumbers*. Botanical groupings respond to plant characteristics, while commercial groupings respond to physical properties and industrial use (R. 707, 962-3, 1366, 1387, 1450, 1822-3, 1827, 1839-40, 1845; see also Paragraph five, Commission's Findings—R. 28-29).

4. The *Pinus ponderosa* tree is conventionally assigned by botanists to the so-called "pinaster" or yellow pine group, but the lumber which it yields belongs with the white pine lumbers in mechanical properties and industrial utility (R. 778-9, 794, 812, 1368-9, 159, 168-9, 358, 731, 1082, 1123, 1338, 1374, 1408, 1410, 1666-7, 1863, 1824-5, 1832). (The following is quoted from page 9 of the petition for certiorari: "*This is*

*botanically a yellow pine but, from the standpoint of its industrial uses, is more closely allied with white pine.*" Emphasis supplied.)

5. The pine lumbers of the United States have been placed by trade and industry in two groups—viz., the white pine group and the yellow pine group. "California White Pine" has always been known to trade and industry as a white pine lumber (R. 282). It is far removed from typical yellow pine lumbers in mechanical properties and industrial utility. White pine lumbers are used for "finish" and "mill-work"; yellow pine lumbers are used for structural purposes (see references to Record under paragraph 4 *supra*).

6. It is admitted on the part of the Commission that "there is no proof that the practice of designating *ponderosa* products by terms including the word 'white' was adopted for the purpose of misleading or deceiving the trade or the public" (Brief for Federal Trade Commission in proceedings before the Commission, p. 87).

7. Scientific tests made at the United States Forest Products Laboratory at Madison, Wisconsin, show that in mechanical properties the lumber of *Pinus ponderosa* (California White Pine) belongs in the white pine group and is far removed from the yellow pine group (Respondents' Exhibits 21-23, 32; R. 778-780, 783, 784, 1368-9).

8. The experts of the United States Forest Products Laboratory at Madison, Wisconsin, state that there

are no tests which they regard as reliable permitting a conclusion as to the relative durability of *ponderosa* pine and the botanical white pines (R. 816, 820, 821, 822).

9. There is neither proof nor finding that the term "California White Pine" was devised or that it has been used for the destruction or restriction of competition, or for the purpose of trading on another's name. There is no proof that any respondent has at any time sold or invoiced this lumber under any other term than the full name "California White Pine."

10. "California White Pine" has been formally adopted and recommended as a "preferred commercial name" for this lumber by the Bureau of Standards of the United States Department of Commerce. This recommendation has been accepted by the major organizations of the lumber industry and by the American Institute of Architects (Respondents' Exhibit No. 31; R. 1353, 1360-1363).

These statements of fact are unassailable. They are established without conflict of record.

If we may single out the facts which appeal to us as being dominant in the cause, they would be briefly these:

*First:* That the botanical grouping of pine *trees* has no relation to the commercial grouping of pine *lumbers;*

*Second:* That there are only two groups of pine lumbers known to trade and industry—viz., the white

pine group and the yellow pine group—and that California White Pine belongs in the white pine group in physical properties and in industrial utility;

*Third:* That the term "California White Pine" came into being naturally and honestly, *admittedly without improper motive,* and that it has been used for upwards of 30 years throughout the United States in identifying and marketing this lumber.

**Material facts not found by Commission.**

The court should be advised that the Federal Trade Commission refrained from making findings with respect to certain phases of the record which were obviously material. Specifically it failed to find:

(1) That scientific tests conducted by government experts at the United States Forest Products Laboratory at Madison, Wisconsin, demonstrate that in mechanical properties, *ponderosa* lumber belongs with the white pine lumbers and not with the yellow pine lumbers (R. 778-780, 1368-9).

(2) That the government experts at the United States Forest Products Laboratory at Madison, Wisconsin, testified that there have been no scientific tests regarded as reliable which can afford a conclusion as to the relative durability of *ponderosa* pine and so-called botanical white pine lumbers (R. 816, 820-822).

(3) That "California White Pine" has been formally adopted and recommended as a "preferred commercial name" for this lumber by the Bureau of

Standards of the U. S. Department of Commerce (R. 1353, 1360-3).

All of this evidence was material to the issues, and yet the Commission studiously avoided making appropriate findings. It failed to report the results of the "mechanical properties" tests made by the United States Forest Products Laboratory. It predicated its findings respecting wood quality upon the opinions, prejudices and preferences of lay witnesses. It made no reference whatever to the approval of "California White Pine" by the United States Bureau of Standards.

The court below properly commented upon these material portions of the record (see opinion of the Circuit Court of Appeals, R. 1891-2, 1893, 1894).

**The order of the Commission.**

On June 8, 1931, the Commission made its findings and orders. The orders required each respondent to "*cease and desist from using, either orally or in writing, the word 'white' in connection, combination or conjunction with the word 'pine' or in connection with other word or words used in combination or conjunction with the word 'pine'*" (R. 47).

By these orders the Commission required the effectual suppression of this trade name, with all of the goodwill acquired throughout more than thirty years of continuous use in the lumber markets of the United States. Respondents are forbidden to call this lumber "white," either orally or in writing, in association with any other words

whatsoever. They are denied the use of the particular word which is essential in order to convey to trade and industry the characteristics and the industrial utility of this lumber. They may not call it "white" even though they should be willing to add other words of specific identification. This attempted suppression of a long-established trade name, honestly adopted and honestly used, would seem to exceed the furthermost bounds of the administrative authority committed to the Commission.

**Proceedings in the Circuit Court of Appeals.**

In proper course, in pursuance of Section 5 of the Federal Trade Commission Act, c. 311, 38 Stat. 717, 719 (U. S. C., Title 15, Sec. 45), these respondents filed their petition in the Circuit Court of Appeals for the Ninth Circuit seeking a review of the Commission's orders (R. 1879-1883). On April 4, 1933, the Circuit Court of Appeals filed its opinion in the cause. The opinion of the court concludes as follows:

> "It is the conclusion of the court that, viewing the testimony in the light of all the facts of the case, it is insufficient to support findings that petitioners' use of the commercial name 'California White Pine' is an unfair method of competition or that its prevention would be in the interest of the public.
>
> The orders complained of should be annulled and set aside. It is so ordered." (R. 1899.)

The judgment annulling and setting aside the orders of the Commission was entered on April 4, 1933 (R. 1899).

We are not content with the characterization of the opinion of the Circuit Court of Appeals as set forth in the

petition for certiorari and in the opening brief for the Federal Trade Commission. A brief review of the opinion of the court will be appropriate in order to make it clear that the court recognized the limits upon its reviewing jurisdiction and kept scrupulously within those limits.

Following a brief statement of the case and a summary of the elements of the law of unfair competition, conformably with the decisions of this court, the court recognizes that if the findings of the Commission are supported by the testimony, they are conclusive (R. 1890). The court proceeds to review the evidence of record in connection with the Commission's findings. It attaches significance to respondents' exhibit No. 31, "U. S. Department of Commerce, Bureau of Standards—Lumber—Simplified Practice Recommendation, R. 16-29," which approves "California White Pine" as a standard commercial name for this lumber (R. 1353, 1360-3). It is observed that while action by the Bureau of Standards is persuasive, "it is not necessarily controlling" (R. 1892). Reference is made to Bulletin 556 of the U. S. Department of Agriculture (respondents' exhibit No. 21—R. 779-780) reporting on the physical properties of *Pinus ponderosa* as compared with other pine lumbers, and the court notes that—

> "Expert witnesses from the U. S. Forest Products Laboratory place *ponderosa* in its mechanical properties with the typical white pine lumbers." (R. 1892.)

The court refers to the testimony given by the same experts of the U. S. Forest Products Laboratory at Madison, Wisconsin, directed to the durability of the several pine lumbers, showing in particular that there have been no

tests which can serve adequately to determine their relative decay-resisting qualities (R. 1894).

All of this evidence was material, particularly because it was supplied by unbiased government experts, and it was the duty of the court to give it consideration, *especially in view of the failure of the Commission to report it.*

Other evidence deemed material by the court was reviewed and pertinent decisions were considered. It is important to note, however, that the court did not "weigh the evidence," in the sense that it undertook to substitute its judgment for the judgment of the Commission as to the findings which should be made. *The court did not set aside a single evidentiary finding of the Commission.* It undertook to do no more than to exercise the reviewing authority expressly committed to it under the decisions of this court *(Federal Trade Commission v. Curtis Publishing Co.,* 260 U. S. 568; 43 Sup. Ct. Rep. 210; 67 L. Ed. 408).

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## THE ISSUES.

According to our view, the issues as framed in the brief for the Federal Trade Commission are largely misconceived. On our part we believe that the essential issue may be tersely and yet completely phrased in the following terms:

May the Federal Trade Commission competently suppress the use of a particular trade name as an "unfair method of competition in commerce":

(1) When there is neither proof nor finding that the use of the trade name is likely to result in "the destruction of competition or the restriction of it in a substantial degree";

(2) When it appears, and is admitted on the part of the Commission, that the trade name was not adopted "for the purpose of misleading or deceiving the trade or the public";

(3) When there is neither proof nor finding of intent to deceive or deception in fact;

(4) When there is neither proof nor finding that the name was adopted, or has at any time been used, for the purpose of trading upon another's name or for the purpose of destroying or injuring the business of a competitor;

(5) When it appears that the name is correctly descriptive of the properties and uses of the product and identifies the territory of its origin;

(6) When it appears that the name was adopted, and has been continuously used, for the purpose of avoiding confusion with other products having dissimilar properties and uses;

(7) When it appears, and without conflict, that the name came honestly into being and has been honestly used by respondents for upwards of 30 years in trade and industry throughout the United States.

In thus phrasing the issues we have kept strictly within the undisputed facts of record.

## NATURE OF POWER ASSERTED BY FEDERAL TRADE COMMISSION.

The true nature of the power sought to be exercised by the Federal Trade Commission in these proceedings is aptly disclosed by the following excerpt from page 10 of the petition for certiorari in this cause:

> "In other words, does the Federal Trade Commission Act authorize the Commission, where a commercial name was originally adopted without improper motive or purpose, to compel use of more accurate and specific commercial names than those heretofore employed?"

This language reveals the Commission's preoccupation with trade nomenclature, irrespective of the law of unfair competition as commonly understood. It invites reference to the comment of the Circuit Court of Appeals for the Fourth Circuit in

> *Flynn & Emrich Co. v. Federal Trade Commission,* 52 Fed. (2d) 836, 838,

in which it was said:

> "It was never intended that the Commission should act the part of a petty traffic officer in the great highways of commerce."

If the Commission may competently exercise as wide an authority as that here claimed, it is subject to no appreciable restraint in the arbitrary revision of trade nomenclature. We expect to show that the law of unfair competition which the Commission administers has no such scope.

## SUMMARY OF ARGUMENT.

I. The trade-name "California White Pine" as applied to lumber yielded by *Pinus ponderosa* is truly descriptive of the physical properties, the commercial qualities and industrial utility of the lumber. The term has no botanical significance. Its use is therefore not misdescriptive.

The botanical classification of pine trees is not a criterion of the commercial nomenclature of pine lumbers. In classifying the several species of pines, the botanists have not considered either the mechanical properties, commercial qualities or the industrial utility of the lumber product. Purchasers and users of lumber have no interest in the botanical place of the tree which yields the lumber but are interested solely in the characteristics of the product itself.

Considered with respect to mechanical properties, commercial qualities and industrial utility, the lumber of *Pinus ponderosa* falls distinctly within the "white pine" group and is wholly dissimilar to the lumber of the so-called "yellow pines."

There are only two kinds of pine lumbers known to trade and industry, viz., "white pine" lumbers and "yellow pine" lumbers. "California White Pine" has always been considered a white pine in the trade.

The Federal Trade Commission has itself rejected botanical distinctions as criteria of commercial nomenclature (*In the Matter of the Gillespie Furniture Co.*, Docket 1739, order dated June 30, 1931).

No scientific tests have been made by which the relative durability of the several white pines of commerce can be ascertained.

The Circuit Court of Appeals properly gave consideration to the "Simplified Practice Recommendation" of the Bureau of Standards, United States Department of Commerce, adopting and recommending *"California White Pine"* as *preferred commercial name* for respondents' lumber. This was a "material fact not reported by the Commission." Action taken by the Bureau of Standards is persuasive and in some cases may be regarded as decisive *(Kirk & Co. v. Federal Trade Commission,* 50 Fed. (2d) 179).

The words "in the interest of the public," as used in the Federal Trade Commission Act, are not substantive words of jurisdiction but complementary words of limitation *(Federal Trade Commission v. Raladam Co.,* 283 U. S. 643; 75 L. Ed. 1324; 51 S. Ct. Rep. 587).

II. The commercial name "California White Pine" has neither been devised nor used for the purpose of misleading or deceiving the trade or the public.

Commercial names are addressed to trade and industry. "California White Pine" carries the representation that the lumber is a white pine lumber in mechanical properties and industrial uses. This is a truthful representation. A "yellow pine" name would be misdescriptive and misleading.

Respondents are entitled to a trade name which will place their lumber in one of the two groups of pine lumbers recognized by trade and industry. A white pine name appropriately characterizes this lumber in quality and utility.

III. "Unfair methods of competition" within the meaning and intendment of the Federal Trade Commission Act have not been established against the respondents upon the record or by the Commission's findings.

"Unfair methods" are "those resorted to for the purpose of destroying competition or eliminating a competitor or of introducing a monopoly—such as tend unfairly to destroy or injure the business of a competitor" *(Federal Trade Commission v. Raladam Co.,* supra).

There is neither charge nor proof of acts on the part of respondents tending to restrict competition or unfairly to destroy or injure the business of their competitors.

Fraudulent purpose and intent to deceive are indispensable elements of unfair competition *(Elgin National Watch Co. v. Illinois National Watch Co.,* 179 U. S. 665; *Howe Scale Co. v. Wyckoff, Seamans, etc.,* 198 U. S. 118; *Thum v. Dickinson,* 245 Fed. 609; *Wirfs v. Bosley Co.,* 20 Fed. (2d) 632; *Queen Mfg. Co. v. Ginsberg & Bros.,* 25 Fed. (2d) 284; *Vortex Mfg. Co. v. Ply-Rite Contracting Co.,* 33 Fed. (2d) 302).

IV. Neither fraud, dishonesty nor deception has been found against respondents. The decision of this court in *Federal Trade Commission v. Winsted Hosiery Co.,* 258 U. S. 483; 66 L. Ed. 729; 42 S. Ct. Rep. 384, is therefore inapposite.

V. The Commission exceeded its province in ordering a suppression of respondents' trade-name.

Trade-names which have been long in use constitute valuable business assets in the nature of good-will, the destruction of which should not be ordered if less drastic

means will accomplish the same result (*Federal Trade Commission v. Royal Milling Co.*, 288 U. S. 212; 77 L. Ed. 493; 53 S. Ct. Rep. 335; *Fluegelman & Co. v. Federal Trade Commission*, 37 Fed. (2d) 59; *Federal Trade Commission v. Cassoff*, 38 Fed. (2d) 790; *Federal Trade Commission v. Good-Grape Co.*, 45 Fed. (2d) 70).

VI. The public interest requirement has not been sustained of record.

The proceedings before the Commission arose out of a controversy essentially private in its nature. They are not founded upon a substantial public interest (*Federal Trade Commission v. Klesner*, 280 U. S. 19; 74 L. Ed. 131; 50 S. Ct. Rep. 5).

The comment of the lower court respecting the interest of the public in forest conservation was not a ground of the decision.

VII. The Circuit Court of Appeals made no independent appraisal of the evidence; neither did it reject any of the evidentiary findings made by the Commission.

The reviewing court has power to examine the whole record and ascertain for itself the issues presented and whether there are material facts not reported by the Commission (*Federal Trade Commission v. Curtis Publishing Company*, 260 U. S. 568; 67 L. Ed. 408; 43 S. Ct. Rep. 210).

The court is not bound by the Commission's conclusions as to ultimate facts (*Temple Anthracite Coal Co. v. Federal Trade Commission*, 51 Fed. (2d) 656, 659; *Federal Trade Commission v. Curtis Publishing Company*, supra; *International Shoe Co. v. Federal Trade Commission*, 280 U. S. 291; 74 L. Ed. 431; 50 S. Ct. Rep. 89, 91).

## ARGUMENT.

### I.

**THE TRADE-NAME "CALIFORNIA WHITE PINE" AS APPLIED TO LUMBER YIELDED BY PINUS PONDEROSA IS TRULY DESCRIPTIVE OF THE PHYSICAL PROPERTIES, THE COMMERCIAL QUALITIES AND INDUSTRIAL UTILITY OF THE LUMBER. THE TERM HAS NO BOTANICAL SIGNIFICANCE. ITS USE IS THEREFORE NOT MISDESCRIPTIVE.**

Preliminarily we should note that the trade-name here under review is "California White Pine." These respondents have invariably sold and invoiced their lumber under that complete name, and not merely as "White Pine" without further word of identification, as the opposing brief would suggest.

The argument in behalf of the Commission perpetuates a confusion, initially tendered by the text of the complaints themselves, between the *botanical grouping of pine trees* and the *commercial grouping of pine lumbers*. The two groupings have nothing in common; one is not a criterion of the other. The botanical grouping of *pine trees* is responsive to plant characteristics. The commercial grouping of *pine lumbers* is responsive to mechanical properties and industrial utility.

It may be conceded that the tree *Pinus ponderosa* is commonly assigned by botanists to the group of *pine trees* popularly known as the "yellow pine group" but it does not follow that the lumber yielded by the tree must be assigned to the "yellow pine group" of *pine lumbers*. On the contrary the record shows that, in mechanical prop-

erties[1] and industrial utility, the lumber belongs in the white pine group and is far removed from the yellow pine group. To call this lumber by a *white pine name* is therefore neither false nor misdescriptive. Obversely, it would be misdescriptive to call this lumber by a *yellow pine name,* and counsel for the Federal Trade Commission has so argued.

(The opposing brief is in error in reciting that "The falsity of the description is generally acknowledged by respondents' witnesses." There has been no such admission.)

All of this is established without conflict of record, but apparently some exposition will be appropriate in order to preclude erroneous impressions.

**Botanical Classification v. Commercial Nomenclature.**

In classifying the several species of the *genus Pinus* botanists have commonly separated them into two main groups, the technically correct names for which are: (1) the "strobus group" and (2) the "pinaster group," each taking the name of its most important species (R. 1826). *In making this grouping, however, botanists did not and do not consider either the industrial utility, the mechanical properties or the commercial quality of the lumber produced from these trees.* These factors have been found to vary greatly, and to cut across rather than to run parallel

(1) We have reproduced in the Appendix certain charts (A to F, inclusive) based upon the laboratory tests made at the U. S. Forest Products Laboratory at Madison, Wisconsin (Respondents' Exhibits 21 and 22—R. 778-780, 783-4, 1368-9) showing graphically that in mechanical properties this lumber falls immediately within the white pine group.

with other plant factors (R. 1506-7, 1826, 1827-9, 1830). Their use as a basis of plant classification would not give scientifically dependable results, and botanists have therefore entirely disregarded them in their groupings. Instead, they have considered such non-variable characteristics as the nature of the reproductive organs of the plants in question, and, in the case of the pines, the structures of the cones, the arrangement of the needles, and to a minor degree the bark.[2]

By such methods, and considering these primary botanical characteristics only, botanists have arrived at the groupings above mentioned. So considered, and with no reference whatever to the commercial qualities, the industrial utility or the mechanical properties of the lumber produced from it, the tree *Pinus ponderosa* has been assigned botanically to the "pinaster" group of pines, to which the several species commonly known as the "southern yellow pines" also belong. Similarly, considering only

(2) At one stage of the proceedings before the Commission, counsel for the Commission insisted that "botanical distinction includes the quality of the wood product" (R. 1512). This was doubtless an inadvertence on his part, since the experts are agreed that botanical classification takes no account of wood quality (R. 707, 963, 1450, 1823, 1827, 1839-40, 1845) and is based primarily on the nature of the seeds, bark, needles and cones of the several trees (R. 962-3, 1366, 1387, 1822-3; Commission's finding No. 5, R. 28). It was because of the statement of counsel, above mentioned, that respondents determined to secure the testimony of Professor Jepson, of the University of California, and the highest authority on the trees of the Pacific Slope, who testified at length on this subject. It is clear that "wood quality" is not, and never has been, considered by botanists as a factor in either botanical classification or nomenclature. Respondents' Exhibits 21, 22, 23 and 32 (R. 778-784, 1368-9) disclose that *Pinus ponderosa* belongs distinctly in the "white pine" group when judged by its characteristics *as wood*.

their purely botanical characteristics, the trees *Pinus monticola* and *Pinus lambertiana* have been placed botanically in the so-called "strobus" group.[3]

It cannot be too strongly stressed that, in making their groupings, botanists have never considered and do not now consider either the commercial qualities, the industrial utility or the mechanical properties of the lumber produced from these several trees, and also that, when it is appraised with respect to these factors, the lumber of *Pinus ponderosa* which is marketed as "California White Pine" is found to fall distinctly within the so-called "white pine group," and to be almost wholly dissimilar in these respects to the lumber of the so-called "yellow pines." In this connection Prof. J. A. Newlin, an expert of the United States Forest Products Laboratory at Madison, Wisconsin, Engineer in Forest Products, in charge of timber tests, and co-author of official bulletins on the mechanical properties of woods grown in the United States, was questioned as follows:

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(3) The following testimony of the Commission's witness, Professor Koehler, of the United States Forest Products Laboratory, on cross-examination is illuminating:

> "Q. The most we can say is that certain of these pines have been conveniently grouped together and termed members of the white pine group and others have been grouped together for convenience and termed members of the yellow pine group. Is that a fair statement?
> A. Yes." (R. 706.)

The witness added that the distinguishing characteristics are certain microscopic cell indentations in the "yellow pines" and certain other differences such as the number of needles in a "bundle". But he was emphatic to the effect that the mechanical properties of the woods of these trees are not considered at all in determining their classification, "because they vary and overlap". (R. 707.)

"Q. Is it a fair summary or characterization of these tests that the mechanical properties of *Pinus ponderosa* as disclosed by the data in these tables more closely resemble the mechanical properties of the white pines, botanically speaking, than the southern yellow pines?

A. Yes, sir.

Q. Let us assume for the moment, Professor Newlin, that we are making one group of the three true white pines as they have been termed, botanically speaking, namely the *Pinus strobus,* the *Pinus monticola,* and the *Pinus lambertiana.* Then we make a second group of the three leading Southern yellow pines, namely the *Pinus palustris, Pinus echinata,* and the *Pinus taeda.* We now address ourselves to the consideration of the mechanical properties of the *Pinus ponderosa* in comparison to the relation of the mechanical properties of the white pines and yellow pines to which I refer. Now, considering the mechanical properties alone, would you again say that *Pinus ponderosa* is more directly to be assimilated to the white pine group than to the Southern yellow pine group?

A. The *Pinus ponderosa* in its mechanical properties more properly belong(s) in with the white pines than with the Southern yellow pine group, that is, it is much closer in its mechanical properties to that group." (R. 778-779.)

Another recognized authority on wood technology and nomenclature, Prof. T. J. Starker, of the Oregon State College, succinctly stated the situation:

"Q. In relation to the comparative mechanical properties of the wood, does the lumber yielded by the

> *Pinus ponderosa* tree belong more appropriately in the white pine group or the yellow pine group?
>
> A. These mechanical properties of *Pinus ponderosa*—in every test it falls within the limits set by the white pine group, and is very far removed from the average of the yellow pine." (R. 1368-9.)[4]

When the Commission's findings speak of "genuine" or "true" white pine, therefore, they should be understood as speaking of *a technical botanical relationship, wholly apart and distinct from the commercial quality and industrial utility of the lumber yielded by the several trees.* It is on the latter basis, however, that the propriety of accepted commercial names must, of course, be judged, as the Commission itself at length impliedly conceded. When judged on that basis "California White Pine" is in every essential respect a "white pine" and is properly so designated in commerce. As one Commission witness succinctly declared:

> "* * * when you come right down to it, basically speaking, there are only two kinds of pine, white pine and yellow pine, that are known in the lumber business, and that" (California White Pine) "is not a yellow pine; it is considered as a white pine in the trade." (R. 282.)

The opposing argument apparently suggests that the respondents have represented their lumber to be so-called "true white pine." There has been no such representation.

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(4) The tests of the United States Forest Products Laboratory at Madison, Wisconsin, show distinctly that in its mechanical properties this lumber fits *within the limits* set by the other "white pines" of commerce. (Respondents' Exhibits 21, 22, 23 and 32; Record, 779, 794, 812, 1368-9, 1374, 1408, 1410.)

The Commission's findings expressly acquit respondents of that charge. We quote the concluding sentence of Paragraph twenty-nine of the Commission's findings (R. 33):

> *"Nor have these producers supported their designation of ponderosa products by terms which include the phrase 'white pine' by express declarations to their customers that said products are true white pine."* (Emphasis supplied.)

*There has been no representation that "California White Pine" is botanically anything which it is not.* The record in these proceedings contains no evidence of even a single instance of a sale of this lumber by any of the respondents under the claim, declaration or imputation that it is produced from a tree *botanically* classified in the same group of pine species to which *Pinus strobus, Pinus monticola* and *Pinus lambertiana* are assigned by botanists. Furthermore, there is no evidence in this record that these respondents or any of them have at any time or in any instance whatsoever either "been enabled to fill" or have actually filled orders (or, even a single order) for "genuine white pine" with *ponderosa* pine. In point of fact, there is no evidence that any lumber producers or lumber merchants, whether privy to these respondents or not, have been supplying this lumber upon orders for so-called "genuine white pine" or upon orders for "Northern White Pine," "Idaho White Pine" or "Sugar Pine."

The lumber of *Pinus ponderosa* which is marketed as "California White Pine" fell naturally and honestly by its commercial name. Those who originally adopted that designation were not only unfamiliar with technical botan-

ical distinctions, but had in mind solely the practical necessity, in the interest of the lumber-consuming public, of distinguishing this lumber from the totally different lumber produced from the "yellow pines" of the south.

The facts respecting the origin of the term "California White Pine" were brought out by the Commission's witness Cox, who though hostile to the respondents stood firmly upon the ground that the name was adopted in order to distinguish this lumber from that of Southern Yellow Pine. We quote from page 1206 of the record:

"By Mr. Burr:

Q. What were the reasons for the change?

A. The name was adopted to distinguish it from Southern pine or yellow pine.

Q. Yes.

A. It wasn't called yellow pine because it was different. If we called it yellow pine we thought that it would be mixed or confused with the product of the south.

Q. Well, why call it white?

A. I don't know—just because it was whiter than yellow pine, that was all."

Even when the Commission's counsel resorted to leading and suggestive questions, the testimony of the witness was not modified. We quote further from page 1206 of the record:

"By Mr. Burr:

Q. Are you sure that in the debate there was no other reason given for the use of the word white in connection with it?

A. That is my memory."

The Commission's witness, Frederick Weyerhaeuser, an official of one of the largest lumber producing and marketing organizations in the United States, in response to a question as to why his company had originally adopted the name "Western Soft Pine" for *Pinus ponderosa* lumber produced by it in the "Inland Empire" region, testified:

> "We thought it was desirable to give it a name different from the yellow pine of the south, as it was a soft wood." (R. 1273.)

Again the witness Weyerhaeuser, when asked whether or not "California White Pine" lumber and longleaf yellow pine from the south are in competition, said:

> "They are not very active competitors, one wood being rather the complement of the other, for many uses." (R. 1507.)

That this distinction is an important one in commerce is shown by the fact that counsel for the Commission himself declared in his brief before the Commission that to call this lumber by any commercial name containing the word "yellow" would be a "wrong" and would cause confusion (Par. 100). He had previously so stated at the hearings (R. 967, 1402). From every practical viewpoint this lumber belongs exactly where the commercial practice of the lumber trade for the past thirty years has placed it, to-wit, along with the other pine lumbers that are soft and white and are used for finish as contrasted with structural purposes. This has been a natural grouping, and

there is not now and never has been any question of an intent to "trade on another's name."[5]

*Under whatever name it were to be marketed, it is admitted that this wood must go into these general "white pine" uses.*

Indeed, the technical, botanical relationships of wood used for lumber are not ordinarily significant when their commercial names are under consideration, and the failure of the practical lumber merchant in this instance to follow such distinctions is neither unique nor unusual. For example, the well-known lumber commonly marketed throughout the country as "Douglas Fir" is not produced from a tree which is botanically a fir tree, but from a tree which is neither fir, spruce nor pine but which botanists have classified as "Pseudotsuga" (literally "false hemlock"). For many years this wood was also marketed as "Oregon Pine," and this is still its standard commercial name in California and in the export trade.[6]

Again, no species of tree which is botanically a "cedar" grows in the United States, yet the lumber of several trees

(5) As we have already stated, the charge of "trading on another's name" has been withdrawn. This was necessary, as the Commission was unable to prove a single instance of any such action. Not only was the origin of the name "California White Pine" free from such taint, but its use has likewise been universally free from any such purpose.

(6) The Record contains much testimony respecting the non-botanical commercial names for the lumber known to the trade as "Douglas Fir" and "Oregon Pine". (R. 843-4, 961, 964, 1028, 1093-4, 1128, 1129, 1201, 1231-2, 1380, 1498-1501, 1504, and Respondents' Exhibit 31, R. 1360-3.) "True" botanical "fir" is produced and marketed in large quantities (R. 964-5) and is used for many purposes for which "Douglas Fir" is unsuitable or distinctly inferior. (R. 1129.)

of other botanical *genera* is commonly advertised and marketed as "cedar." Thus the well-known "Port Orford Cedar" is not botanically a cedar (R. 965-6, 1129-30, 1160-1, 1502).

Moreover, by a recent decision, the Federal Trade Commission has itself rejected botanical distinctions (of much greater technical extent than those here involved) as criteria of commercial nomenclature. We refer to the so-called second "Philippine Mahogany" decision, by which the use of that term in commerce for woods not belonging even to the botanical family of "genuine" mahogany is held to be proper and not to constitute an "unfair method in commerce," thus reversing a previous decision which had condemned the use of that term as misleading *(In the Matter of the Gillespie Furniture Co.,* Docket 1739, order dated June 30, 1931). Furthermore, the so-called "longleaf pine" lumber of the south may be and often is the product of any one of the three main southern pines, the distinction being the appearance and utility of the particular piece of wood rather than the botany of the tree from which it was cut. This is also true of the "shortleaf pine" lumber of the south, which may in practice come in part from the tree *Pinus palustris,* commonly known as "longleaf pine." In other words its utility and adaptability are considered in commerce rather than its botany (R. 120, 162-3, 1139, 1380).

This list might be greatly enlarged, the fact being that commerce and industry have taken little account of the purely botanical distinctions between various trees. The controlling considerations in commerce and industry are

*the mechanical properties and the quality and utility of the lumber* rather than the number of needles in a "bundle," the character of the bark or cones or the nature of the flowering organs.

It was stipulated by the Commission's counsel in this connection that purchasers and users of lumber are neither familiar with nor concerned with botanical classification, nomenclature or relationship (R. 919-20), and that their primary concern is with its quality, mechanical characteristics and industrial utility (R. 873; see also R. 78, 270, 279, 375, 388, 389, 508, 550, 555 and 570).

The Commission's witness Greeley declared:

> "I think the actual characteristics and similarities of the wood is a more important factor in commercial practice than botanical distinctions." (R. 1143.)

He also stated:

> "I can readily see from the standpoint of the manufacturer, and the standpoint of the trade, logical commercial reasons for making clear that the lumber of *ponderosa* is in no wise confused with lumber of southern yellow pine.
>
> Q. And does this also go to the standpoint of the consumer?
>
> A. Yes." (R. 1121.)

The record shows overwhelmingly that purchasers and users of lumber have no interest in the botanical place of the tree which yields the lumber, but that they are interested solely in the characteristics of the lumber itself. We

close this phase of the discussion by reproducing the concluding sentences of Paragraph sixty-two of the Commission's findings (R. 39):

> "Nor are these classes of buyers informed of or concerned over the purely botanical distinctions considered by scientists in the classification of species. They buy by common names and are concerned over distinction between the characteristics of the lumber of the various species."

These findings should suffice. Botanical terms and botanical identities hold no interest either for the practical lumberman, the lumber merchant, the architect or the consumer.

The Federal Trade Commission is concerned solely with trade practices in commerce and industry, and in commerce and industry the term "white pine" has never possessed any technical significance of a botanical character.[7] As the

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(7) The use of the term "white pine" as the "common name" of the tree *Pinus strobus* and certain related species is of no import. The record is clear to the effect that so-called "common names" of plants are not words of science. Neither do they possess botanical significance. They are merely convenient and frequently arbitrary nicknames of a purely colloquial rather than scientific character. They are never used by botanists in an exact sense, but are included in botanical literature purely as an aid to popular description, either because exact translation of the botanical title is impossible or impracticable, or because that title is too cumbersome for popular use. (R. 964, 1131-2, 1367, 1383-4, 1830-1, 1837.) Professor Cheney of Minnesota, a Commission witness, had the following to say on this subject:

"Q. Why are common names adopted by botanists?
A. I do not think they are.
Q. They are not?
A. They are adopted by other people.

wood of *Pinus strobus* has become scarcer this term has quite naturally attained a broader significance wholly apart from botany.[8] Both "Idaho White Pine" and "California White Pine" have been terms in common use for a long period of years, while "Sugar Pine" has never been marketed as "White Pine." The lumber sold as "California White Pine" came into the markets of the east and middle west along with, if not slightly earlier than, "Idaho

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Q. Then they are really not, technically not correct, at all, are they?

A. No." (R. 964.)

Such common names possess no relation to the lumber cut from any tree, nor to its botany. (R. 1338, 1372-3, 1446-7, 1830-1.) The common names "white pine" and "yellow pine" are of such character. Neither is descriptive of the trees in the forest, and "white pine" trees are not white. The term possesses meaning only to distinguish the *wood* cut from them from that of the so-called "Southern yellow pines." On this basis the lumber of *Pinus ponderosa* is fully entitled to the term "white," since it is not at all to be assimilated to the "yellow" pines, and is frequently lighter in color than that of the other "white pines" of commerce. (R. 1367.) The Forestry Department's term "Western Yellow Pine" for *Pinus ponderosa* is not a "common name" at all, but was arbitrarily adopted for convenience in referring to that tree at a time *after* its lumber had been for many years sold as "California White Pine." It bears no relation to the color, quality, mechanical characteristics or utility of this truly "white pine" lumber.

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(8) For at least thirty years the term "white pine" has not been confined in the lumber trade to lumber produced solely from trees to which the term was also applied colloquially (R. 213, 923-4, 1812), and during that period the term has been undergoing a broadening of meaning (R. 330, 505-6, 752-3), until it has come to signify pine lumber of the soft or finish type as distinguished from the structural pine lumber of the "yellow pines" of the south. (R. 557-8, 589-90, 1400.)

White Pine" and "Sugar Pine";[9] it possesses the industrial characteristics and utility of the old so-called "white pine," and is wholly dissimilar in its qualities and uses to the lumber of the so-called "yellow pines." It has never been, and admittedly should not be, marketed as "yellow pine." *In its mechanical properties it falls distinctly within the class of the so-called "white pines,"* as is clearly disclosed by the unanimous testimony of the experts.

Doubtless enough has been said to reveal the error inherent in the attempted assimilation of *botanical classification of pine trees* to *commercial grouping of pine lumbers.* The former relates to the pines as *trees;* the latter relates to *pine lumbers.* The two groupings have distinctive meaning and purpose, and have never been in conformity. To our minds the persistent confusion exhibited by the opposing brief in dealing with the incidents of botanical classification and commercial nomenclature, respectively, is gratuitously unnecessary.

**The Circuit Court of Appeals properly gave consideration to the "Simplified Practice Recommendation" of the Bureau of Standards, U. S. Department of Commerce, adopting and recommending "California White Pine" as a PRFERRED COMMERCIAL NAME for respondents' lumber. This was a "material fact not reported by the Commission."**

The brief for the Federal Trade Commission finds error

(9) "Idaho White Pine" came on the market of the United States at approximately the same time as, or a little later than, "California White Pine." (R. 664, 932, 1270, 1272-3, 1485-6, 1570-1.) Sugar Pine and "California White Pine" have been marketed under those distinctive trade names throughout their history in the lumber markets. Sugar Pine has never been marketed under any other name, and has never been known in the lumber trade by any name containing the word "white."

in the consideration given by the Circuit Court of Appeals to the Simplified Practice Recommendation of the Bureau of Standards, United States Department of Commerce, adopting and recommending "California White Pine" as a preferred commercial name for lumber yielded by *Pinus ponderosa*. (The second specification of error recites that the court erred "in weighing the evidentiary value of nomenclature approved by the Bureau of Standards.") The court committed no error in this respect but kept expressly within its reviewing jurisdiction as defined by this court.

In the proceedings before the Federal Trade Commission these respondents offered in evidence a copy of a bulletin of the Bureau of Standards, United States Department of Commerce, captioned "Lumber, 4th Edition, Simplified Practice Recommendation R. 16-29," dated July 1, 1929. This was received in evidence as respondents' Exhibit No. 31 (R. 1353, 1360-1363). This bulletin carries various recommendations under the caption "American Lumber Standards," and sets forth in particular that the commercial name "California White Pine" is a preferred name for lumber yielded by *Pinus ponderosa* (R. 1361). The bulletin was tendered and received for that specific purpose.

Certainly this was material evidence. It had a bearing both upon the issue of unfair competition and the issue of the public interest. If any administrative agency of the federal government such as the Bureau of Standards, attempting to bring about uniform and simplified practices in trade and industry, recommends specific trade nomenclature as "preferred," surely that recommendation is

significant of a conviction that the recommended trade-name is neither deceptive nor misleading nor confusing, nor opposed to the public interest. The bulletin was received in evidence. But the Federal Trade Commission made no reference to the bulletin, or to the simplified practice recommendation as to "California White Pine," in its findings in these proceedings. This was a material fact, not reported by the Commission, and this court has held that the reviewing court has "power to examine the whole record" and to ascertain for itself "whether there are material facts not reported by the Commission." The following is quoted from the opinion of this court in

*Federal Trade Commission v. Curtis Publishing Co.*, 260 U. S. 568, 43 S. Ct. 210, 213, 67 L. Ed. 408:

"Manifestly, the court must inquire whether the commission's findings of fact are supported by evidence. If so supported, they are conclusive. But as the statute grants jurisdiction to make and enter, upon the pleadings, testimony and proceedings, a decree affirming, modifying or setting aside an order, *the court must also have power to examine the whole record and ascertain for itself the issues presented and whether there are material facts not reported by the commission.* If there be substantial evidence relating to such facts from which different conclusions reasonably may be drawn, the matter may be and ordinarily, we think, should be remanded to the commission—the primary fact-finding body—with direction to make additional findings, but if from all the circumstances it clearly appears that in the interest of justice the controversy should be decided without further delay the

court has full power under the statute so to do. The language of the statute is broad and confers power of review not found in the Interstate Commerce Act." (Emphasis supplied.)

It will be found upon examining the opinion of the Circuit Court of Appeals in this cause that the consideration given to the simplified practice recommendation of the Bureau of Standards is within the limits of the reviewing jurisdiction as defined by this court (R. 1891, 1892). It has reported a material fact which was not reported by the Commission. But the court has been particular to say that while action by the Bureau of Standards is persuasive, it is not necessarily controlling on the Federal Trade Commission or the courts. We quote from the opinion of the court below (R. 1892):

"While action taken by the Bureau of Standards is persuasive in a case of this character, it is not necessarily controlling on the Federal Trade Commission or the courts. There may be cases in which the action of the Bureau should be regarded as decisive. As said by the Circuit Court of Appeals, Seventh Circuit, in a recent case, Kirk & Co. v. Fed. Trade Comm., 59 F. (2d) 179, 183:

" 'We deem it quite pertinent and decisive of the question before us. The Government, through its agency, the Bureau of Standards, has thus committed itself to the proposition that castile soap may be made of oily and fatty elements other than olive oil. Being solely a question of fact, we deem it expedient for other departments of the Government, including the judiciary, to

accept such construction, if for no other reason than that of consistency.'

"It would not necessarily follow from this decision that a yellow pine might be sold as a white pine if such sales were unfair to the trade and injurious to the public, notwithstanding the Bureau of Standards had specified a name such as 'California white pine' in a list of 'Standard commercial names' for pine lumber. It would be different, however, if the particular lumber sold under such name possessed substantially the same qualities possessed by the white pines of commerce as distinguished from certain well-known commercial yellow pines."

The case of *Kirk & Co. v. Federal Trade Commission,* supra, cited in the opinion of the court below, seems to be directly pertinent. It appeared in that proceeding that the Bureau of Standards had prescribed rules as to what should constitute castile soap. The Federal Trade Commission ignored this material fact, and its order was set aside by the Circuit Court of Appeals of the Seventh Circuit. Certiorari was denied by this court on December 5, 1932 (287 U. S. 663, 53 S. Ct. Rep. 220, 77 L. Ed. 238).

These respondents do not contend, as the opposing argument may imply, that the functions of the Bureau of Standards "overlap or supersede the functions of trade regulation." We do contend, however, that irrespective of the precise legal aspects of the functions exercised by the Bureau of Standards, the adoption of "California White Pine" as a preferred commercial name by the bureau was a material piece of evidence upon which findings should properly have been made by the Commission. Since

the Circuit Court of Appeals has "*power to examine the whole record and ascertain for itself the issues presented and whether there are material facts not reported by the Commission,*" the court below did not exceed its powers in taking cognizance of this material fact in its efforts to determine whether the entire record could support the Commission's findings that respondents were guilty of unfair methods of competition.

**Alleged differences between ponderosa and other pine lumbers.**

As the brief for the Commission would have it, these respondents are attempting to excuse terminology which is "false technically" upon the plea that they are offering "an exactly similar article or one equally as good." This is an erroneous characterization of respondents' position, and alike of the opinion of the court. We contend that the term "California White Pine" is technically correct as applied to the lumber yielded by *Pinus ponderosa* because it properly characterizes its physical properties and industrial uses. The term has no botanical connotation.

We deny misdescription. Again pointing out that there are but two groups of pine lumbers known to trade and industry, viz: the white pine lumbers and the yellow pine lumbers, our task is to determine in which group this lumber appropriately falls. To our minds this is the controlling question. Applying the dual test of "mechanical properties" and "industrial utility," we find that the lumber of *Pinus ponderosa* belongs definitely within the white pine group and not within the yellow pine group. The record will admit of no other conclusion. Therefore

this lumber is entitled to a white pine name. "California" is added for specific identification.

Refined argument respecting the relative merits of competing lumbers would seem to lend little assistance toward a determination of the real issues here presented. In many particulars, as it seems to us, the opposing brief is careless of the record, but we shall not devote space to correction. Admittedly the lumber market is highly competitive and the numerous witnesses called by the Commission and by the respondents had their several preferences and prejudices. The prevailing fact, however, is that *no evidence has been offered remotely suggesting that this lumber belongs in the yellow pine group or that it should have a yellow pine name.*

We find an apparent suggestion in the opposing brief that since this lumber is yielded by a tree which has been assigned botanically to the yellow pine group, the lumber should bear a yellow pine name. Such at least is the implication conveyed by the brief for the Federal Trade Commission. However, it should be made clear to the Court that the Commission is opposed with equal vigor to a yellow pine name for this product. This is apparent from the record declaration of counsel for the Federal Trade Commission which we here reproduce (R. 165):

> *"Now, then, I do not believe that these gentlemen should be required to call their product western yellow pine. The Government has not taken one step or made one single attempt to introduce evidence in this case which could be construed as forcing or attempting to force the Pinus ponderosa interests to call*

*their product western yellow pine or anything else with the name 'yellow pine' in it.*

*I should be opposed to such an order."*

In brief, the argument seems to be that although *ponderosa* is assigned botanically to the yellow pine group of trees, *the lumber cannot be called yellow;* and although the properties of the lumber place it in the white pine group, *it cannot be called white.* The vagaries of administrative regulation could not be more vividly exemplified.

Particular differences in quality, utility, durability or any other characteristic need not engage us, except to say that the witnesses were not in accord. This is sufficiently shown by the findings of the Commission. We think, however, that the court should know that the only expert testimony received of record respecting relative durability—*a point strongly stressed in the Commission's findings and urged with equal ardor in the Commission's brief*—completely fails to sustain the Commission's findings of relative inferiority for this lumber.

The experts of the United States Forest Products Laboratory at Madison, Wisconsin, testified without exception that *no scientific tests have ever been made by which the actual relative durability of these several white pines of commerce can be ascertained.* Typical of the expert testimony on this subject was that of Professor G. M. Hunt, of the United States Forest Products Laboratory. When asked whether there have been any tests which in his opinion are adequate to enable him to advise with assurance as to the relative decay resisting qualities

of the heartwood of *Pinus lambertiana* and the heartwood of *Pinus ponderosa,* he said:

"A. There have been no tests which we consider adequate to settle the question of comparative decay resisting properties of those two woods.

Q. Have there been such tests as will enable you to advise with assurance as to the relative decay resisting qualities of the heartwood of pinus ponderosa and pinus monticola?

A. There have been no tests to settle that question.

Q. Have there been tests which will adequately settle the question as to the relative decay resisting qualities of the heartwood of pinus ponderosa and the heartwood of pinus strobus?

A. There have not." (R. 821.)

The same witness also stated:

"Q. In this matter of durability do you know of any tests that have been attempted which would show a comparison between the durability of the white pines and pinus ponderosa?

A. No." (R. 816.)

In the interest of completeness we add the testimony of Professor C. P. Winslow, Director of the United States Forest Products Laboratory since 1917. Professor Winslow was called as a witness for the Commission. We quote from page 820 of the record:

"Q. (By Mr. Burr) What is the difference between white pine and pinus ponderosa as to durability?

A. I don't know."

As to alleged wood failures, they were not satisfactorily identified as *Pinus ponderosa,* and Professor Koehler of the Forest Products Laboratory, a witness for the Commission, and an authority on wood technology and identification, explicitly stated that the samples submitted to him were for the most part too small to admit of absolute identification. They were "yellow pine", but the species could not be determined with certainty (R. 698, 699-700, 706).

This evidence was material, in the view of the Commission, and yet the Commission ignored it in its findings. It preferred to rest its findings upon lay testimony based upon individual preference, prejudice and repute. The failure of the Commission to report the testimony of the government experts again exemplifies the omission of material facts. Under the ruling of this court in *Federal Trade Commission v. Curtis Publishing Company,* supra, it was within the province of the lower court to take note of this omission. This the court did, with appropriate quotations from the testimony. (R. 1894.)

The Commission has again been unfair in making findings respecting relative heartwood and sapwood content which are wholly without support of record. We refer to paragraph 40 which contains the following statement (R. 35):

> "The ponderosa pine has on an average a far greater amount of sapwood than trees generally used for lumber."

This statement is wholly devoid of record support, and counsel for the Commission so admitted in oral argument

before the Circuit Court of Appeals. We assume that the same admission is in order now.

The court below comments upon this paragraph of the findings in its opinion (R. 1896). Again the court was within its proper province.

It was apparently found necessary to traduce the qualities of this lumber in order to find some occasion for condemning this long established trade name. If the findings were valid they could not serve, as we understand the law, to make out a case of unfair competition. Be the facts what they may as to the precise relative merits of these several competing lumbers, it is certain that neither the record nor the findings can justly deny to these respondents their right to use a white pine name with an appropriate term of identification, i. e., "California White Pine".

**The current meaning of "white pine."**

The fact may be conceded that, many years ago, "white pine" meant lumber yielded by *Pinus strobus* only. It has long ceased to have that restricted meaning. For example, "Idaho White Pine" has been known by that name for some 30 years, although the lumber is not yielded by *Pinus strobus*. "California White Pine" has been known by that name for more than 30 years throughout the United States and for practically a half century in the Pacific coastal area, although it is not yielded by a botanical white pine.

This extension of the original meaning to include lumbers other than those yielded by *Pinus strobus* has

been a natural transition and in no respect responsive to improper motive or purpose. Today "white pine" means any one of several lumbers of the finish type, as distinguished from the structural type, and with an appropriate prefix such as "Northern", "Idaho", and "California" in the interest of specific identification. Trade and industry have been completely adjusted to this prevailing nomenclature.[10]

**Usage, intent and purpose.**

The brief for the Commission observes that this proceeding is not brought by private parties but is brought by a governmental agency and "in the interest of the public". The Commission, however, overlooks the fact that these words, "in the interest of the public", are *"not substantive words of jurisdiction, but complementary words of limitation"*.

This Court so held in

*Federal Trade Commission v. Raladam Co.*, 283 U. S. 643, 649; 51 Sup. Ct. Rep. 587; 75 L. Ed. 1324.

In brief, the phrase "in the interest of the public" added nothing to the law of unfair competition. Unfair competition must first appear, and even then the Commission cannot proceed unless it further appears that its pro-

(10) That "white pine" cannot mean *strobus* only is attested by the fact that the proceedings before the Commission were avowedly brought in behalf of three distinct lumbers, viz., "Northern White Pine", "Idaho White Pine" and "Sugar Pine". As previously noted, the latter wood has never been marketed under a white pine name although it is yielded by a tree assigned by botanists to the white pine group.

ceeding is "in the interest of the public." The preexisting law of unfair competition itself has not been changed.

The Commission now represents upon brief that there is "ample testimony to show improper motive as well as deliberate deception" (Brief for Commission, p. 33). This we deny. There is neither testimony nor finding to such effect. Counsel for the Commission made the following express admission upon page 87 of his brief filed before that body in these proceedings:

> "There is no proof that the practice of designating *ponderosa* by terms including the word 'white' was adopted for the purpose of misleading or deceiving the trade or the public."

That admission was compelled by the record.

It is also suggested in the brief for the Commission that respondents' "present intent" is wrongful (Brief for Commission, p. 34). In short, since respondents defend their well-established trade name in the belief that it has monetary value, since they state that this name "classifies our woods with the other woods that have been known to the trade, including itself, as white pine" (R. 1551-2), an improper motive may be ascribed to them. An argument so strained, and so patently unfair, will not require extended answer. Suffice it to say that the use of a trade name which places this lumber where it clearly belongs by virtue of its mechanical properties and industrial utility—i. e., in the white pine group of lumbers—proceeds from a proper motive. Resistance to change to the Latin terminology employed by botanists is equally free from any sinister aspect.

The case of

*Straus v. Notaseme Co.*, 240 U. S. 179, 60 L. Ed. 590, 36 S. Ct. Rep. 288,

holds nothing in common with the instant case, for there the offending manufacturer undertook to retain a trade design originated by a competitor after he was put on notice of the competitor's priority of right. These respondents are not chargeable with the simulation or use of a rival's trade name or device.

The Commission has made no findings of improper motive either in the adoption or in the retention of this trade name. *It has made no findings of deception on the part of these respondents in the use of this trade name in all of the eighty paragraphs of its findings.* (R. 28-43.)

In its petition for certiorari in this cause the Commission tendered issue in the following terms:

> "In other words, does the Federal Trade Commission Act authorize the Commission, *where a commercial name was originally adopted without improper motive or purpose,* to compel use of more accurate and specific commercial names than those heretofore employed." (Petition for certiorari, p. 10.)

This is not only a complete acquittance of improper motive or purpose on the part of the respondent lumber companies in the adoption of their trade name, but it reveals the extravagant nature of the power which the Commission seeks to exercise over commercial nomenclature.

The decision of this court in

*Federal Trade Commission v. Winsted Hosiery Co.*,
258 U. S. 483; 66 L. Ed. 729; 42 S. Ct. Rep. 384,

is far from apposite. There the offending manufacturer had, with deliberate intent to deceive, misbranded his wares. He had knowingly resorted to false and misleading labels, to the injury of honest manufacturers and the consuming public. This is not such a case, as we shall show in a later portion of this argument.

It is enough here to point out that the test of "usage, intent and purpose" is wholly favorable to these respondents. "Usage", throughout all the years during which this lumber has been known, assigns it to the white pine lumbers and accords to it a white pine name. "Intent and purpose", by the consensus of the testimony, are to identify its properties and uses and to avoid confusion with the "yellow pine" lumbers, from which it is far removed in appearance, quality and essential industrial utility.

**The element of competition.**

We are at a loss to understand the occasion for the discussion of competition in the brief for the Federal Trade Commission. The existence of competition between California White Pine and other lumbers entering into the so-called white pine uses has at all times been conceded. The court below expressly recognized in its opinion that the use of this trade name is a method of competition in commerce (R. 1890). No controversy exists on this point.

## II.

### THE COMMERCIAL NAME "CALIFORNIA WHITE PINE" HAS NEITHER BEEN DEVISED NOR USED FOR THE PURPOSE OF MISLEADING OR DECEIVING THE TRADE OR THE PUBLIC.

We have heretofore noted the admission of counsel for the Commission that there is no evidence showing that "California White Pine" was adopted for the purpose of misleading or deceiving the trade or the public. We add that it has never been used by respondents for that purpose or with that effect.

There is no evidence, nor any finding, that any respondent has ever sold or invoiced this lumber under any other term than the full name "California White Pine" (see Paragraph three of findings—R. 28).

There is no evidence that any respondent, or any person in privity with a respondent or otherwise, has at any time sold this lumber in response to an order for so-called botanical "white pine".

There is no evidence that any respondent, or any other person in trade or industry, has at any time represented this lumber to be a botanical "white pine".

Keeping in mind that the botanical classification and nomenclature of *pine trees* do not run parallel with the commercial classification and nomenclature of *pine lumbers*, it is not difficult to meet the persistent argument of "misdescription".

The term "California White Pine" conveys no botanical implications. It is not a representation that the lumber is

yielded by a tree which has been placed by botanists in the group popularly known as white pine trees. Commercial names are addressed to trade and industry, i. e., to the purchasers and users of the product. "California White Pine" is such a commercial name and carries the representation that the lumber is a white pine lumber in mechanical properties and in industrial uses. This is a truthful representation. It is in no sense misdescriptive.

Obversely, the name "California White Pine" suggests that the lumber is not a yellow pine lumber in mechanical properties and industrial uses. This again is a truthful representation.

The fact is that the entire argument of "misdescription", "false labelling" and "misbranding" is predicated upon a premise which is false in fact. That premise is that "California White Pine" carries an implied representation that the lumber comes from a *botanical* white pine tree. Since such is not the representation, either express or implied, the premise is false and the claim of misdescription fails.

Trade and industry know little and care less about botanical classification. This is the consensus of the testimony and is attested by the Commission's findings (Commission's findings, paragraph sixty-two, R. 39).

The architect witnesses were agreed that their interest is not in the botanical identity of the tree which yields the lumber; rather their interest is in quality and utility (R. 78, 677-8). It is inconceivable that the consumer is interested in botanical nomenclature. The Commission has found to the contrary (R. 39).

Indeed, until this trade name lately became the subject of agitation, it is certain that neither the lumber industry nor the lumber users exhibited any concern either with the botanical names or the classification of trees. Their concern was with the lumber itself—its mechanical properties, qualities and industrial uses.

A like fallacy underlies the argument directed to "confusion". The alleged "confusion" has been largely engendered by the proponents of a change in trade-name, and that confusion is mainly unfamiliarity with the botanical place of the several pine trees which yield commercial lumber. Whether this be termed "confusion" or more exactly "ignorance", it is not truly attributable to the use of this commercial name nor would it be remedied by a change in the name.

How could "ponderosa" (or "pondosa", the name favored by our adversaries) assist trade or industry toward a knowledge of the place occupied by this lumber, either botanically or industrially? It suggests neither white pine nor yellow pine. It would not remove such confusion as exists; it would not be a cure for ignorance, nor would it obviate misleading practices.

As far as the supposed competitive difficulties which confront other lumbers are concerned, it is enough to say that these difficulties simply evidence the normal rivalry between lumbers which are sold and used for a common purpose. These competitive conditions will of course persist irrespective of trade nomenclature.

The plain fact is that these lumber manufacturers are rightfully entitled to a trade name which will place their

lumber in one of the two groups of pine lumbers recognized by trade and industry. A yellow pine name is forbidden, because this would be misdescriptive, misleading and confusing in the highest degree. A white pine name is appropriately indicated because this places the lumber in the group where it belongs in physical properties, essential quality and industrial utility.

Surely these respondents should not be forbidden to use either a white pine or a yellow pine name and be relegated to the use of a nondescript Latin term, as the Federal Trade Commission seems to desire.

It should be noted that the findings of confusion are quite wanting in concreteness. There are these significant deficiencies:

(1) No wholesale or retail dealer has testified that the name "California White Pine" has induced him to buy lumber which otherwise he would not have purchased.

(2) No user or consumer has testified that the name has caused him to use this lumber when he did not desire it.

(3) No architect has testified that he has been misled into specifying "California White Pine" when, without that name, he would have specified some other lumber.

The evidence and alike the findings do not reveal deception in fact. A careful scrutiny of the Commission's report will show that there is no finding of deception, nor any other finding reflecting adversely upon the honesty or good faith of these respondents.

## III.

**"UNFAIR METHODS OF COMPETITION" WITHIN THE MEANING AND INTENDMENT OF THE FEDERAL TRADE COMMISSION ACT HAVE NOT BEEN ESTABLISHED AGAINST THE RESPONDENTS UPON THE RECORD OR BY THE COMMISSION'S FINDINGS.**

A. "The paramount aim of the Act is the protection of the public from the evils likely to result from the destruction of competition or the restriction of it in a substantial degree."

B. "Unfair methods" are "those resorted to for the purpose of destroying competition or of eliminating a competitor or of introducing a monopoly—such as tend unfairly to destroy or injure the business of a competitor."

C. "The object of the Trade Commission Act was to stop in their incipiency those methods of competition which fall within the meaning of the word 'unfair'."

In the interest of precision we have couched the foregoing propositions of law in the authoritative language of this court, excerpted from the opinion in

*Federal Trade Commission v. Raladam Co.*, supra.

This decision served clearly to define the limits of the jurisdiction conferred upon the Federal Trade Commission by the Federal Trade Commission Act. Little doubt can now exist as to the nature and purpose of the administrative power granted to the Commission.

The following excerpt from the opinion of the court (pp. 647-648) establishes beyond question that the pur-

pose of the statute is to enforce by administration the prohibitions of the Sherman Act and the Clayton Act:

> "In a case arising under the Trade Commission Act, the fundamental questions are, whether the methods complained of are 'unfair', and whether, as in cases under the Sherman Act, they tend to the substantial injury of the public by restricting competition in interstate trade and 'the common liberty to engage therein'. The paramount aim of the Act is the protection of the public from the evils likely to result from *the destruction of competition or the restriction of it in a substantial degree,* * * *." (Emphasis supplied.)

The court also inquired into the genesis of the statute and set forth the results of its inquiry as follows (pp. 649-650):

> "The foregoing view of the powers of the Commission under the act finds confirmation, if that be needed, in the committee reports and the statements of those in charge of the legislation, as well as in the debate which took place in the Senate, extending over weeks of time and covering hundreds of pages in the Congressional Record. In that debate the necessity of curbing those whose unfair methods threatened to drive their competitors out of business was constantly emphasized. It was urged that the best way to stop monopoly at the threshold was to prevent unfair competition; that the unfair competition sought to be reached was that which must ultimately result in the extinction of rivals and the establishment of monopoly; that by the words 'unfair methods' was meant those resorted to for the

purpose of destroying competition or of eliminating a competitor or of introducing monopoly—such as tend unfairly to destroy or injure the business of a competitor; that the law was necessary to protect small business against giant competitors; that it was an effort to make competition stronger in its fight against monopoly; that unfair competition was that practice which destroys competition and establishes monopoly."

The court points out further (p. 648) that:

"The object of the Trade Commission Act was to stop in their incipiency those methods of competition which fall within the meaning of the word 'unfair'."

Finally it is observed (p. 649):

"Unfair trade methods are not *per se* unfair methods of competition."

When the record in this cause and the findings of the Commission are appraised in the light of these principles, it is clear that no case cognizable by the Commission—no case falling within the intendment or purpose of the Act—has been made out against these respondents.

Specifically, there is neither allegation nor proof of conspiracy among the respondents. Counsel for the Commission has formally stipulated of record that "no conspiracy among these several respondents being (is) charged or proved herein" (R. 26).

There is neither charge nor proof of any act tending to "the destruction of competition or the restriction of it in a substantial degree".

There is neither charge nor proof that respondents have resorted to any course "for the purpose of destroying competition or of eliminating a competitor".

There is neither charge nor proof of any course of action tending "unfairly to destroy or injure the business of a competitor".

Clearly these respondents have been charged with no offense within the range of the statutory provisions which the Federal Trade Commission was created to enforce.

It seems to have been the view of the Federal Trade Commission that its powers exceed the provisions of the Sherman Anti-Trust Act and the Clayton Act and extend alike beyond the range of the law of unfair competition. As we read the decisions of this court, however, the pre-existing law of "unfair competition" was not expanded by the Federal Trade Commission Act. This much has been determined by the cases already cited. And note may be taken of the fact that the cases dealing with unfair competition characteristically hold that "fraudulent purpose", "wrongful, fraudulent intention", "intent to deceive", "fraudulent misrepresentations" are indispensable elements of the offense. Such "fraudulent purpose" or "intent to deceive" must be established, either directly or as a justifiable "inference from the inevitable consequences of the act complained of". Representative decisions are:

*Elgin National Watch Co. v. Illinois National Watch Co.*, 179 U. S. 665;

*Howe Scale Co. v. Wyckoff, Seamans, etc.*, 198 U. S. 118;

*Thum v. Dickinson*, 245 Fed. 609;

*Queen Mfg. Co. v. Ginsberg & Bros.*, 25 Fed. (2d) 284;

*Vortex Mfg. Co. v. Ply-Rite Contracting Co.*, 33 Fed. (2d) 302.

Not only are the respondents free of wrongful motive, but in the succeeding subdivision we shall undertake to make it clear that they are not chargeable with fraud, dishonesty or deception in any form.

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## IV.

### NEITHER FRAUD, DISHONESTY NOR DECEPTION HAS BEEN FOUND AGAINST RESPONDENTS.

We are familiar with no decision of this court in which an order of the Commission compelling a revision of trade nomenclature has been sustained in the absence of satisfactory proof of dishonesty, fraud or deception in the origin or use of the name.

The Commission's "Findings as to the Facts" are set forth in 80 paragraphs, reproduced upon pages 28 to 44, inclusive, of the record. Upon a careful reading of the entire text it will be found that *there is no finding or suggestion of fraud, dishonesty or deception in any particular.* There is not a sentence which reflects even remotely upon the conduct of the respondents in the use of their trade name. There are findings of "confusion" (due to general unfamiliarity with botanical distinctions and nomenclature), but not a word ascribing or imputing

to these respondents anything in the nature of wrongful conduct.

The Commission has set forth its conclusions under the caption "Summary and Conclusions of Fact" (R. 44-45). These conclusions are not binding upon the reviewing court, but we find that even here no fraudulent or dishonest act has been ascribed to respondents. The net result of this examination of the Commission's entire report is that *the Commission has found neither a wrongful motive nor a wrongful act on the part of these respondents.* In this behalf we note that—

1st: The Commission has found no case of fraud or fraudulent representation on the part of the producers of "California White Pine".

2nd: The Commission has made no finding against these respondents of deception in fact.

3rd: The Commission has expressly exonerated these respondent lumber manufacturers of any "express declaration to their customers that said products" (*ponderosa*) "are true white pine". (Commission's findings, Paragraph twenty-nine—R. 33.)

4th: The Commission has made no finding that *ponderosa* lumber has been furnished or "substituted" by any respondent upon an order for "true white pine".

There is no testimony of record from any witness (jobber, retailer, architect or consumer) to the effect that he has purchased "California White Pine" in the belief that he is obtaining so-called "true white pine". The final

paragraph (Paragraph (o)) of the Commission's "Summary and Conclusions of Fact" (R. 45) is wholly unsupported by concrete testimony of this character.

The conclusion is impelled, upon a review of the findings themselves, that the essential ingredients of a charge of "unfair methods of competition" have not been made out against these respondents.

The brief for the Federal Trade Commission relies upon the decision of this court in

*Federal Trade Commission v. Winsted Hosiery Co.*, supra.

The facts of that case are not in parallel with the facts here presented, and the decision is inapposite. It will not be difficult to point the distinction.

In the *Winsted* case the Federal Trade Commission was confronted with a deliberate and premeditated act on the part of a hosiery manufacturer in placing palpably false and misleading labels on his goods. Underwear which contained only a small percentage of wool, "some as little as ten per cent", was branded or labelled as "Natural Merino", "Natural Wool", "Australian Wool" and similar terms. The bulk of the fabric was cotton. The manufacturer was falsely representing that his *cotton* was *wool*. The deliberate purpose and necessary effect of his course was to deceive the public and of course unfairly to compete with "honest manufacturers". This court found that the labels in question were "literally false" and in most instances "palpably so". *There was intent to deceive.* It was held that the public is entitled to protection against

such deception and that "honest manufacturers" are entitled to protection against such unfair competition.

Clearly this case affords no precedent against these respondents. In the *Winsted* case the offending manufacturer was guilty of a dishonest purpose and a dishonest practice. No such dishonest purpose or practice was or could be established in the instant proceedings. There has here been no desire to mislead the consumer or to obtain an advantage over "honest manufacturers". Respondents are not misrepresenting either the quality or the utility of their product. The sole motive which led to the adoption of the commercial name "California White Pine" was accurately and properly to characterize this lumber with respect to its quality and utility, to avoid confusion with "Southern Yellow Pine" and to identify it with respect to the locality of its origin. We need not repeat the testimony upon this question, for, as previously noted, the admission has been made on the part of the Commission that in the adoption of this name there was no purpose or intent to mislead or deceive the trade or the public. This admission effectively places this case outside the *Winsted Hosiery* case and related cases.

We have heretofore noted the present contention of the Commission that although the term "California White Pine" came into being in response to an honorable purpose and although this name was not adopted for the purpose of misleading the trade or the public, nevertheless a wrongful motive may be "imputed" to respondents because they are not now willing to cease the use of their long-established and well-known trade name. We may

note that in the brief filed for the Commission in the Circuit Court of Appeals (p. 81) it was expressly conceded that the evidence of respondents' witnesses "does not go to the point that petitioners" (respondents) "have a fraudulent motive * * *". In spite of this concession it was nevertheless insisted that "a motive wrongful in law is imputed to them * * *".

The desire, honest in purpose, of these manufacturers to retain their established trade name cannot thus be translated into wrongful motive. The Commission has made no finding of intent to deceive, either past or present, and on this record it is plain that it could not do so. Respondents' present intent is the same as was that of their predecessors who first used the name "California White Pine" many years ago. It is to avoid rather than to create confusion; it is to place this wood in commerce where it justly and inevitably belongs. Dishonest motive or intent could not be imputed to those who originated the name, nor can such motive or intent be imputed to respondents now.

---

## V.

### THE COMMISSION EXCEEDED ITS PROVINCE IN ORDERING A SUPPRESSION OF RESPONDENTS' TRADE NAME.

Reliance is placed by the Commission upon the decision of this court in

*Federal Trade Commission v. Royal Milling Co.*, 288 U. S. 212, 216-217; 77 L. Ed. 493; 53 S. Ct. Rep. 335 (1932).

That case seems rather to be an authority favorable to these respondents. There the respondents were doing business under such names as "Royal Milling Company" although none of the respondents was actually engaged in the performance of any milling operations. In brief, they were not "grinders of wheat". The orders of the Federal Trade Commission forbade the use of the words "milling company" or words of like import. Upon review the Circuit Court of Appeals set aside the orders. The case was brought to this court on certiorari and it was there held that "the purchasing public is entitled to be protected against this species of deception". In the instant case the Commission has not found that respondents are guilty of any "species of deception" whatever.

It should be expressly noted, however, that although the court sustained the Commission's findings and conclusions, it found that *"the Commission went too far in ordering what amounts to a suppression of the trade names"*. The court continues (p. 217):

> "These names have been long in use, in one instance beginning as early as 1902. They constitute valuable business assets in the nature of good will, the destruction of which probably would be highly injurious and should not be ordered if less drastic means will accomplish the same result. *The orders should go no further than is reasonably necessary to correct the evil and preserve the rights of competitors and public and this can be done, in the respect under consideration, by requiring proper qualifying words to be used in immediate connection with the names.*" (Emphasis supplied)

(The court here cited *Fluegelman & Co. v. Federal Trade Commission,* 37 Fed. (2d) 59, 61; *Federal Trade Commission v. Cassoff,* 38 Fed. (2d) 790; *Federal Trade Commission v. Good-Grape Co.,* 45 Fed. (2d) 70, 72.)

If this decision is in any respect pertinent to the pending controversy, it shows clearly that the Federal Trade Commission has exceeded its proper province *in attempting a suppression of trade names which have been in use for upwards of 30 years.* The most that the Commission could properly require upon this record is the use of "proper qualifying words". We have a proper qualifying word—viz., "*California*"—in the trade name which is here under review. It gives this lumber a separate and specific identification.

It would seem accordingly that the present trade name used by respondents conforms with the essence of the principle laid down by this court in the *Royal Milling Co.* case. The name does afford a specific identification of the lumber. This is precisely what respondents desire. They believe that their full trade name has value. It is difficult to see that greater particularity can be attempted without exceeding the requirements of reason.

Respondents stand upon the propriety of including the word "white" in their trade name, not only because of long usage but because it serves appropriately to indicate the essential properties and industrial uses of the lumber. The elimination of the word "white", as the orders of the Commission require, would wholly deprive these manufacturers of a trade name which will suggest either the characteristics or the utility of the product.

We find nothing in the opinion of this court in the *Royal Milling Co.* case or in any other decision which can remotely justify the extraordinary requirement of the Commission's orders that respondents

> *"do cease and desist from using either orally or in writing, the word 'white' in connection, combination or conjunction with the word 'pine' or in connection with other word or words used in combination or conjunction with the word 'pine'."*

---

## VI.

**THE PUBLIC INTEREST REQUIREMENT HAS NOT BEEN SUSTAINED OF RECORD. THE DECISION OF THE COURT BELOW WAS NOT RESTED UPON A CONSIDERATION OF FOREST CONSERVATION.**

The brief for the Commission assails the conclusion of the court that the action of the Commission was not in the interest of the public. We submit that the court correctly so held.

It is our view that the opposing brief fails aptly to state or fairly to characterize the substance of the opinion of the Circuit Court of Appeals in dealing with the question of public interest. That court specifically found, on a review of the record, that the evidence before the Commission was insufficient to show that action by the Commission to force a change in this long established trade name was in the public interest. The court examined the evidence and considered the Commission's findings and

advisedly reached a conclusion adverse to the Commission on this jurisdictional issue.

The lower court did not hold, as the opposing argument would imply, that the public is not injured by false and misleading commercial names. It held rather that the term "California White Pine" is neither false nor misleading. It expressly distinguished the decision of this court in *Federal Trade Commission v. Winsted Hosiery Company,* supra, which condemned trade names which are palpably false and misleading and injurious both to honest manufacturers and the consuming public.

In substance the court found nothing false, misleading or dishonest in the use of "California White Pine" by respondents as the commercial name for their lumber. The court could appropriately have added that there is no concrete evidence of record that the use of this trade name has caused any member of the public to purchase or use lumber which otherwise he would not have ordered.

**Pending Controversy Essentially Private in Nature.**

The blunt truth is that the proceedings before the Commission "arose out of a controversy essentially private in its nature". As we view it, the action of the Commission in this trade name controversy was not in the public interest but was responsive to its preoccupation with internal trade name disputes.

Proof that this controversy is of private origin is found in the text of the complaints themselves, which recite in Paragraph Eight (R. 8) that

> "in or about the years 1924 and 1925 there was among various manufacturers of lumber an advocacy of, on the part of some, and an opposition on the part of others to, a proposal to change the trade name and designation of forest products made from Pinus ponderosa from 'white pine' or from the designations named in Paragraph Three thereof which include the words 'white pine' to some other designation and particularly to 'pondosa' pine * * *."

Such is the origin of this trade name controversy, as authoritatively declared by the Commission in its own pleadings. (See also R. 1203, 4.) The refusal of these respondents to abandon "California White Pine", with the prestige gained by more than thirty years of use, eventuated in an effort on the part of certain lumber manufacturers to persuade the Federal Trade Commission to intervene. We feel free to declare that the objective of the proceedings, although covert as far as the findings and order are concerned, is to compel respondents to accept "pondosa" (or "ponderosa")—an unpalatable and lately coined trade name—a corruption of a Latin word employed by botanists.

Not only have these proceedings been motivated by disaffected lumber manufacturers following a controversy suddenly precipitated respecting trade nomenclature, but there is neither suggestion nor proof of any complaint on the part of the public respecting "California White Pine". There is no evidence that any purchaser or consumer of lumber has expressed dissatisfaction with "California White Pine" or has pressed for a change in name. The

controversy in which the Commission intervened was not of public cognizance but was purely a private controversy within an industry.

This court has held that the Commission may not competently intervene in a controversy which is essentially private in its nature.

*Federal Trade Commission v. Klesner,* 280 U. S. 19; 74 L. Ed. 131; 50 S. Ct. Rep. 5.

The following language excerpted from page 29 of the opinion of the court in that case appears to be apposite:

> "If members of the public were in 1920, or later, seriously interested in the matter, it must have been because they had become partisans in the private controversy between Sammons and Klesner."

It is highly significant that the pending controversy *did not arise until at least twenty-seven years after the term "California White Pine" had become standard in the general lumber trade. The Commission did not issue its complaints until May, 1929, or some twenty-nine years thereafter. Obviously, the complaints followed upon the refusal of these respondents to submit to the demand of competing producers and join in the adoption of a novel and unwelcome trade name.*

Paraphrasing the words of the Supreme Court above quoted, it would seem that

> If members of the public were in 1929 or later seriously interested in the matter, it must have been because they had become partisans in the private controversy between the producers of "California

White Pine", on the one hand, and the producers of "Northern White Pine", "Idaho White Pine", "Sugar Pine" and "Pondosa" on the other hand.

Enough has been said, we think, to make it clear that these complaints have emanated from a purely private controversy and that they are not founded upon a genuine public interest. The record is barren of any public complaint against "California White Pine" and equally barren of any demand from purchasers or consumers that existing trade nomenclature be changed.

**Reference to the Policy of Conservation.**

The opposing brief seeks to find in a casual observation of the lower court respecting forest conservation some indicia of an excess of jurisdiction. We may concede that the comment was "collateral and immaterial", but it has been treated in the opposing brief as if it constituted a ground of the decision. We think that this treatment is unfair to the opinion of the lower court and that the argument founded upon it is misconceived. The sentence to which exception is taken reads as follows:

> "The public is not only interested in not being deceived in the material it purchases under a certain nomenclature, but possibly in an even larger sense in the conservation of the forests." (R. 1890.)

This has been translated in the opposing brief into a holding that "Public interest in 'conservation of forests' was held to outweigh the public interest in maintaining fair competition * * *" (Brief for Commission, p. 11).

At the worst, the observation thus made by the court was surplusage, and could not possibly be reversible error. It was enough that the court found that the evidence before the Commission was insufficient to support its conclusions with respect to unfair methods of competition and with respect to the public interest. These are the jurisdictional prerequisites, and it was immaterial, at most, that the court suggested further considerations militating against the Commission's action.

(4 *Corpus Juris* 1057.)

It will be clear upon a reading of the entire opinion of the lower court that the remark respecting forest conservation was casually made, and merely parenthetical in character. It was not a ground of the decision. The comment was harmless and the extended effort made in the opposing brief to convert this observation into judicial error seems rather exaggerated. As we view it, a feigned issue has been raised.

Even if the statement were deemed to be error, the action of the court would not thereby be invalidated. It is enough that neither the record nor the findings can serve to make out a case of "unfair competition" as defined by this court.

## VII.

### THE CIRCUIT COURT OF APPEALS MADE NO INDEPENDENT APPRAISAL OF THE EVIDENCE; NEITHER DID IT REJECT ANY OF THE EVIDENTIARY FINDINGS MADE BY THE COMMISSION.

The final argument tendered by the opposing brief is to our minds wholly without foundation in point of fact. It is insisted that the court exceeded its jurisdiction "by making its own independent appraisal of the evidence and rejecting all of the essential findings made by the Commission". (Brief for Commission, p. 66.) We are compelled to challenge this characterization of the court's action in its entirety. We insist that the court recognized and faithfully observed the limitation upon its reviewing jurisdiction as fixed by this court. Upon the very threshold of its opinion the lower court stated that if the findings of the Commission are supported by the testimony, such findings shall be conclusive (R. 1890). It entered upon its examination of the record with this limitation in mind, and it scrupulously refrained from transgressing that limitation.

Unquestionably the court reviewed the evidence, and in the light of the findings of the Commission. Such was its right and duty. As previously noted, this court has held that the Circuit Court of Appeals has power in these cases "to examine the whole record and ascertain for itself the issues presented and whether there are material facts not reported by the Commission".

*Federal Trade Commission v. Curtis Publishing Company,* supra.

We have been unable to find upon an examination of the opinion of the court below that any evidentiary finding of the Commission was rejected. The court reported certain matters which were material, and as to which the Commission refrained from making findings, but this was within the reviewing power.

**The Reviewing Court is not Bound by the Commission's Conclusions as to Ultimate Facts.**

The real complaint tendered by the opposing argument is that the court refused to accept the ultimate determination of what constitutes "unfair methods of competition". This was within the province of the court. Moreover, the court was not obligated to accept the Commission's conclusions as to "ultimate facts" as distinguished from "evidentiary facts". It is clear upon the authorities that, while the Commission's evidentiary findings are conclusive if supported by evidence, the court is not bound by the Commission's "conclusion as an ultimate fact". As the Circuit Court of Appeals for the Third Circuit said in

*Temple Anthracite Coal Co. v. Federal Trade Commission,* 51 Fed. (2d) 656, 659,

> "We will therefore consider whether that ultimate finding of fact is sustained by the basic facts as found from the evidence before the Commission. While the Act provides that the findings of fact made by the Commission are final and conclusive, it still remains the duty of the supervising court to determine whether the facts found are such as to warrant the conclusion * * *."

See also

*Federal Trade Commission v. Curtis Publishing Co.*, supra;

*International Shoe Company v. Federal Trade Commission*, 280 U. S. 291, 297; 50 S. Ct. Rep. 89, 91; 74 L. Ed. 431.

It will be found upon detailed examination of the opinion of the court below that it has rejected none of the evidentiary findings of the Commission but has kept expressly within the limits of its reviewing jurisdiction.

---

## CONCLUSION.

Neither the record nor the Commission's findings can serve to make out a case of "unfair methods of competition" against these respondents.

Respondents are not charged with any practice tending to "the destruction of competition or the restriction of it in a substantial degree".

They are not charged with practices tending "unfairly to destroy or injure the business of a competitor".

They are not charged with attempted monopoly or restraint of trade.

They are not charged with fraudulent or deceitful purpose nor with fraud or deception in fact.

The record shows without conflict that the trade name which respondents defend was adopted for a proper and lawful purpose, and that it has never been used by re-

spondents for a fraudulent, deceitful or other wrongful purpose.

These, as we conceive it, are the determinants of unfair methods of competition. All else is unrelated to the authority reposed in the Commission with respect to "unfair methods of competition".

If the Commission may competently assert the authority which it claims in its petition for certiorari in this cause —viz.,

> "Where a commercial name was originally adopted without improper motive or purpose, to compel use of more accurate and specific commercial names than those heretofore employed" (Petition for certiorari, p. 10)

—it should be content with the requirement that the full name "California White Pine" should always be used. If a still more "accurate and specific commercial name" should be proved necessary, this can be readily attained, as shown by the decision of this court in the case of

*Federal Trade Commission v. Royal Milling Co.*, supra.

These respondents have no objection to "accurate and specific commercial names", but they stand upon the right to retain the word "white" in their commercial name, not only because of the goodwill acquired through many years of continuous use, but because it is indispensable in denoting the essential character and utility of the lumber.

The Circuit Court of Appeals correctly held that the record "is insufficient to support findings that petitioners'

use of the commercial name 'California white pine' is an unfair method of competition or that its prevention would be in the interest of the public''.

Respectfully submitted,

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*Attorneys for Respondents.*

Dated: San Francisco, California,
November 29, 1933.

(APPENDIX FOLLOWS)

## Appendix

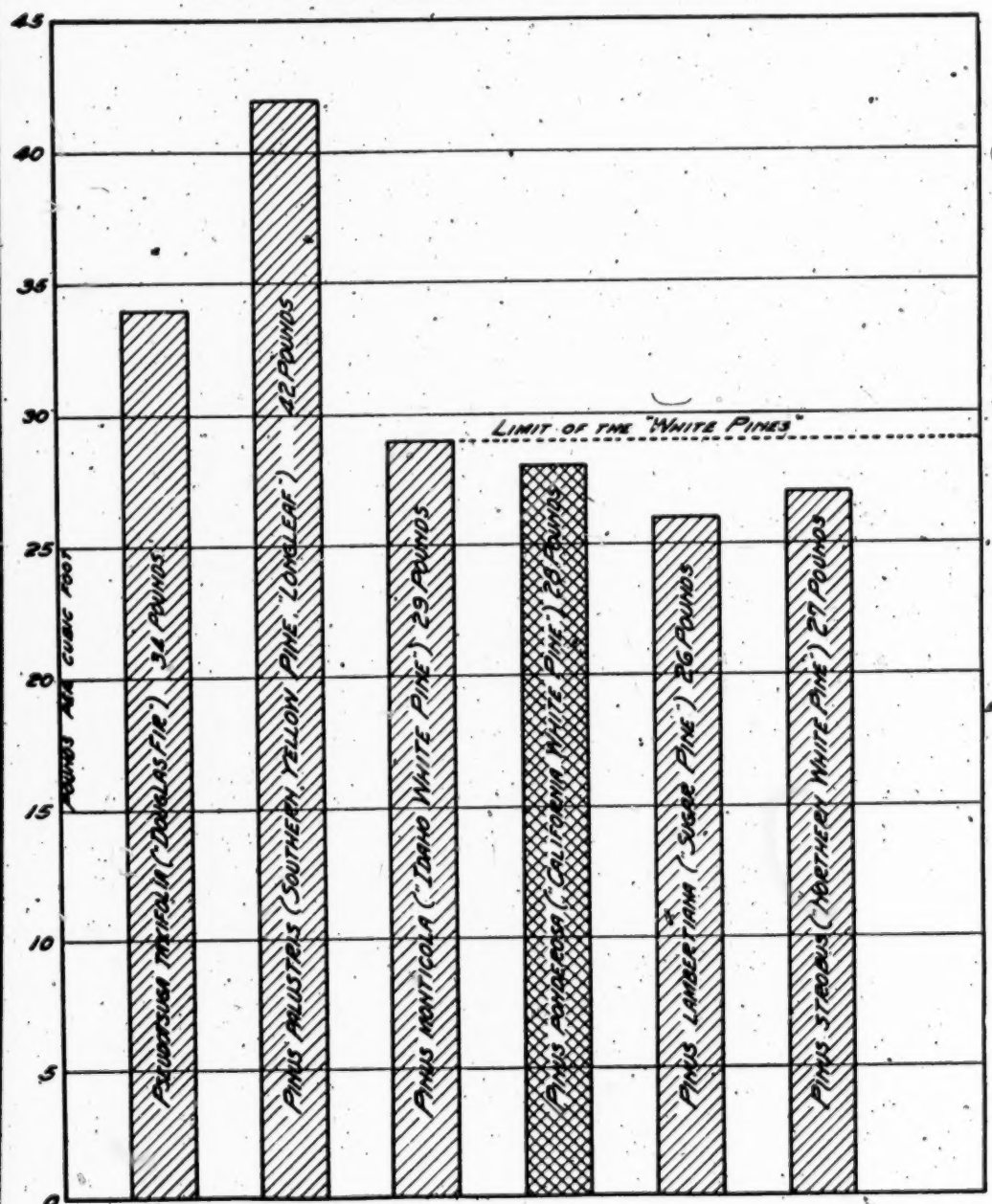
In this appendix we present a group of charts (lettered A to F, inclusive) prepared from the record and showing that the lumber of *Pinus ponderosa,* when tested with respect to mechanical properties, falls *within the limits set by the lumbers of the other white pines of commerce.* Contrasted with these white pines the mechanical properties of southern yellow pine and of "Douglas Fir" are also shown.

# CHART A

## WEIGHT OF WOODS

POUNDS PER CUBIC FOOT, AIR-DRY CONDITION

(FROM U.S. DEPT. AGR. BULL. 556, RESPONDENTS' EXHIBIT 21.)

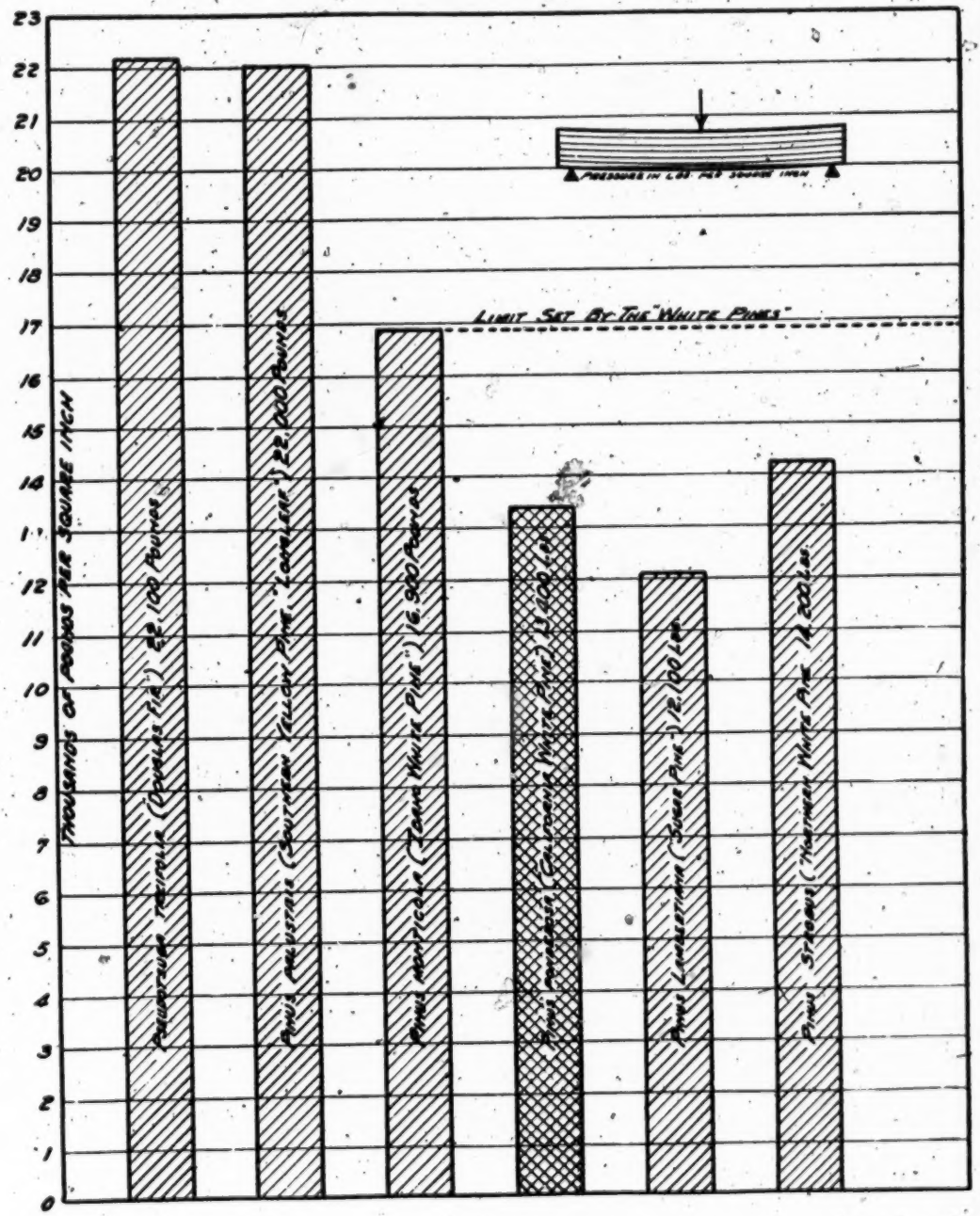


# CHART B

## STIFFNESS OF WOODS

MODULUS OF ELASTICITY, AIR-DRY

( FROM U.S. DEPT. AGR. BULL. #556, RESPONDENTS EXHIBIT 21.)

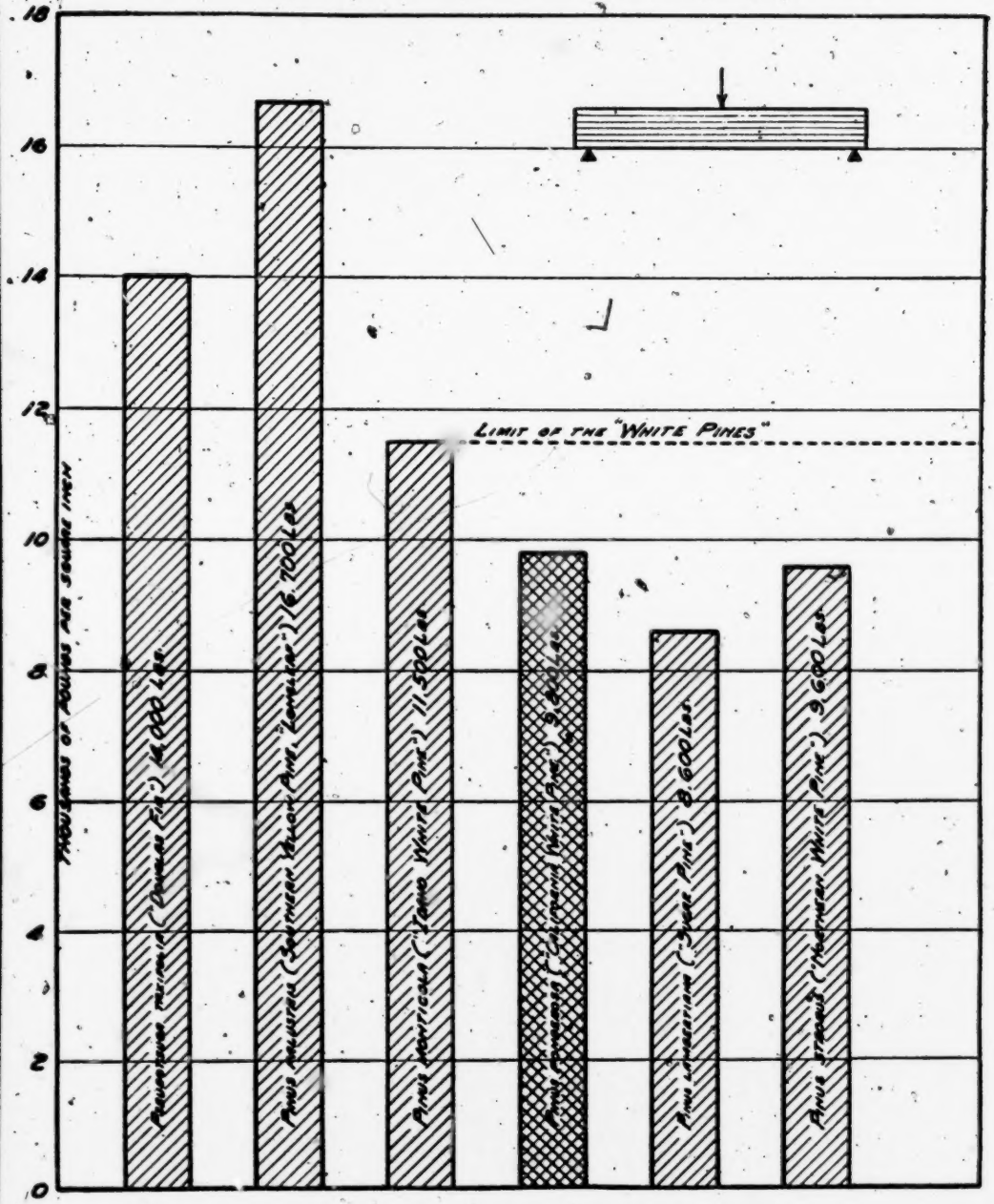


# CHART C

## STRENGTH OF WOODS

MODULUS OF RUPTURE IN BENDING, — AIR DRY

(FROM U.S. DEPT. AGR. BULL. #556, RESPONDENTS' EXHIBIT 21.)

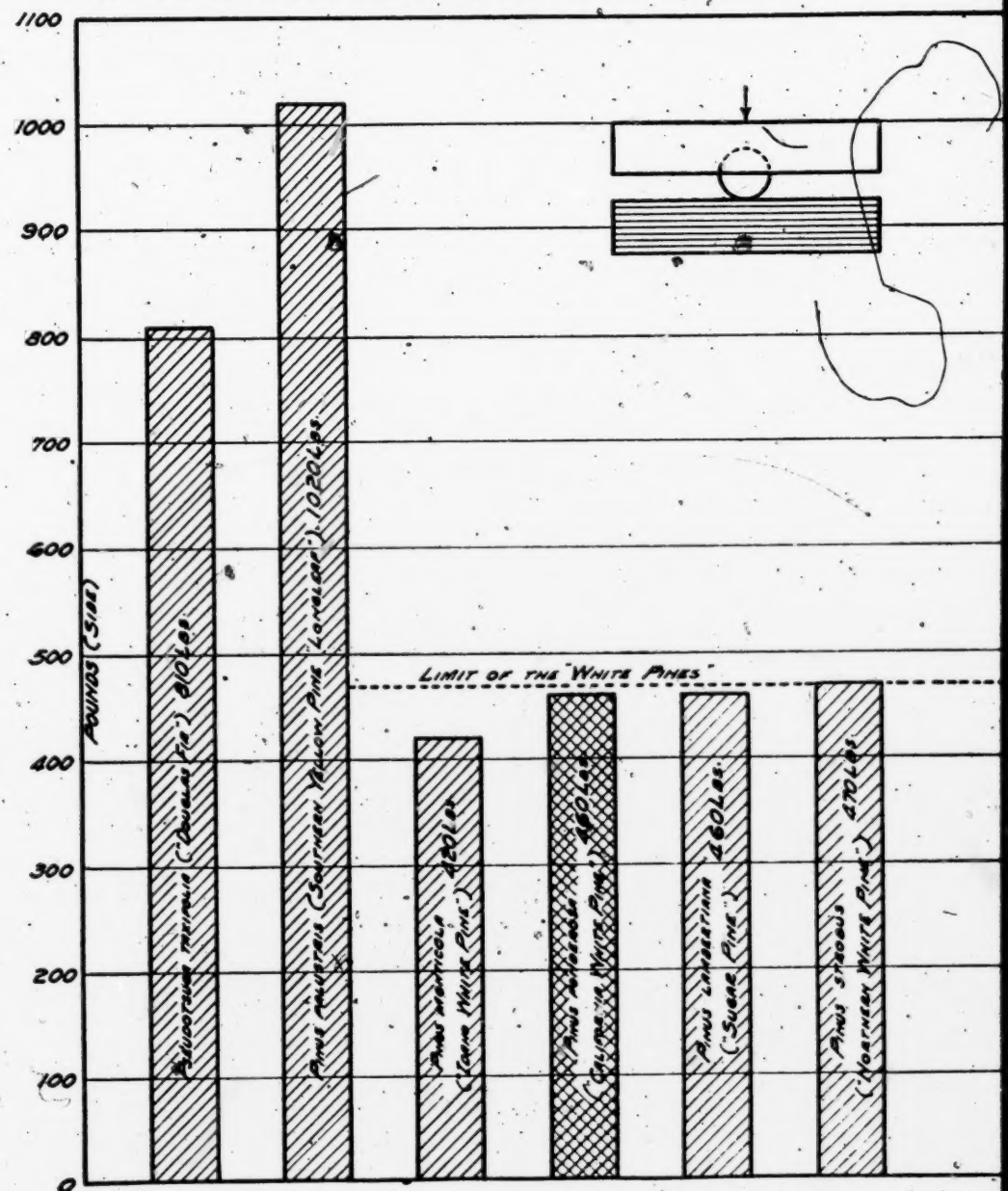


# CHART D

## HARDNESS (SIDE SECTION)

(LOAD REQUIRED TO IMBED A 0.444 INCH BALL TO ONE HALF ITS DIAMETER, – AIR DRY)

(FROM U.S. DEPT. AGR. BULL. 556, RESPONDENTS' EXHIBIT 21.)

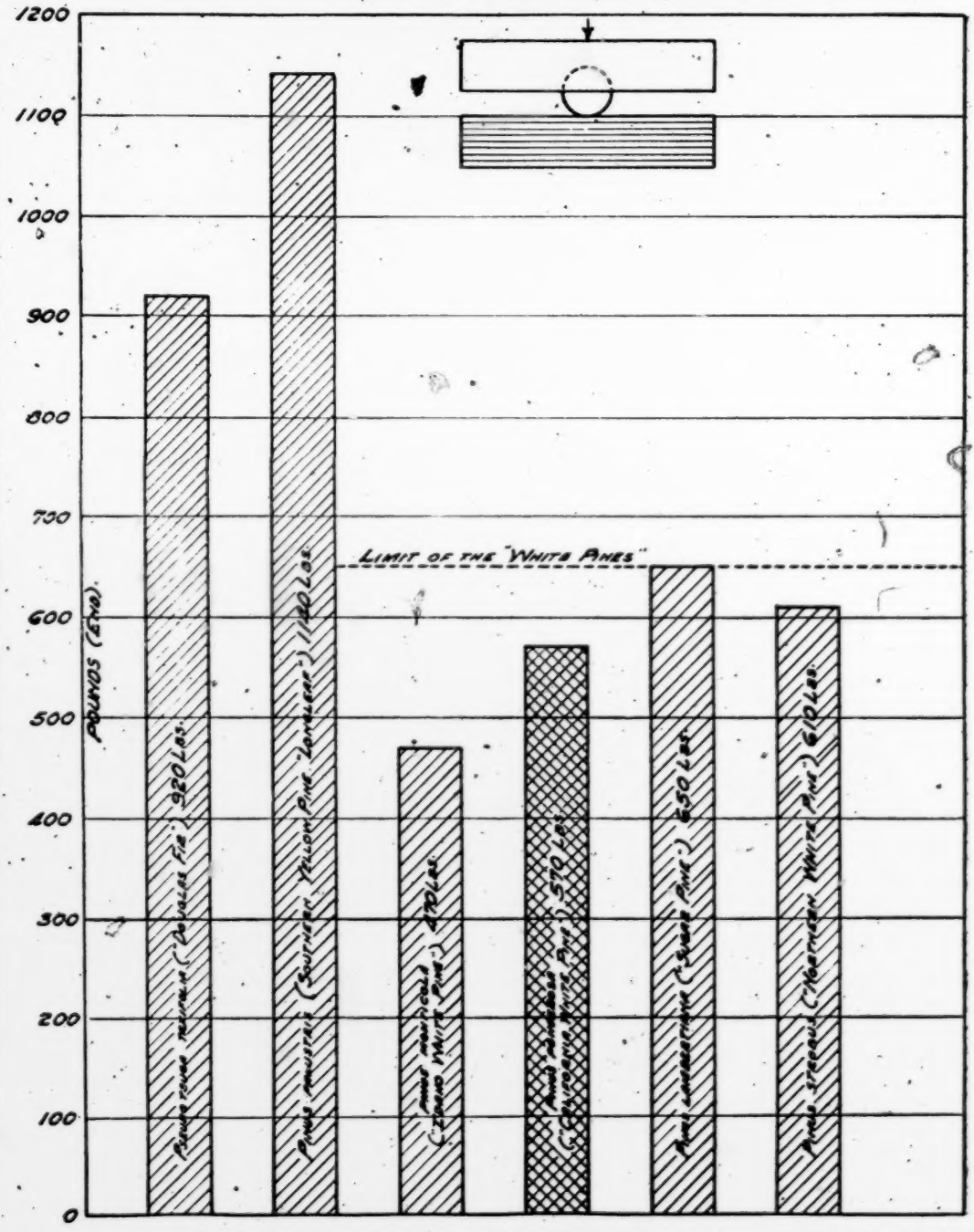


# CHART E

## HARDNESS (END SECTION)

(LOAD REQUIRED TO IMBED A 0.444 INCH BALL TO ONE HALF ITS DIAMETER.-AIR DRY)

(FROM U.S. DEPT. AGR. BULL. 556, RESPONDENTS EXHIBIT 21.)



# CHART F

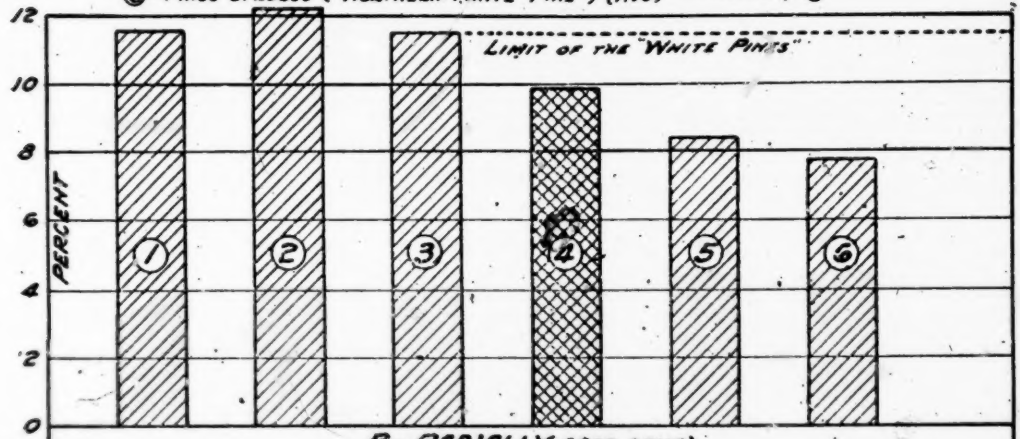
## SHRINKAGE

### FROM GREEN TO OVEN-DRY CONDITION

### (FROM U.S. DEPT. AGR. MISC. PUB. 46. RESPONDENTS' EXHIBIT 22.)

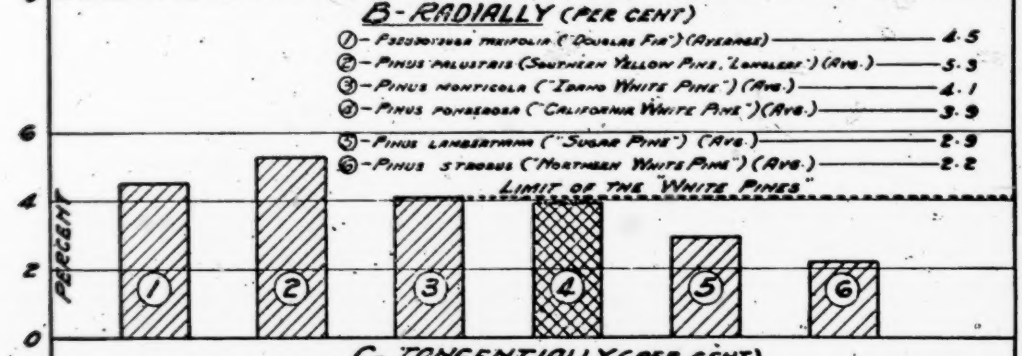
**A-IN VOLUME (PER CENT)**

1. PSEUDOTSUGA TAXIFOLIA ("DOUGLAS FIR") (AVERAGE) — 11.6
2. PINUS PALUSTRIS (SOUTHERN YELLOW PINE "LONGLEAF") (AVG.) — 12.2
3. PINUS MONTICOLA ("IDAHO WHITE PINE") (AVG.) — 11.5
4. PINUS PONDEROSA ("CALIFORNIA WHITE PINE") (AVG.) — 9.9
5. PINUS LAMBERTIANA ("SUGAR PINE") (AVG.) — 8.4
6. PINUS STROBUS ("NORTHERN WHITE PINE") (AVG.) — 7.8



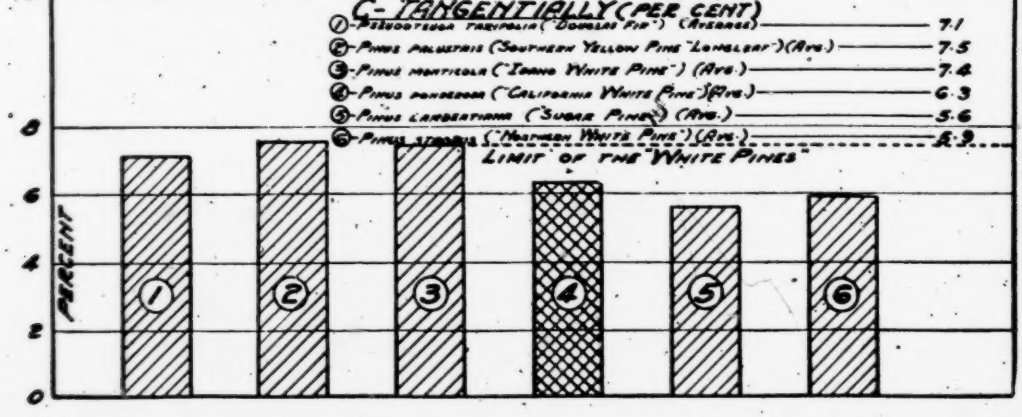

**B-RADIALLY (PER CENT)**

1. PSEUDOTSUGA TAXIFOLIA ("DOUGLAS FIR") (AVERAGE) — 4.5
2. PINUS PALUSTRIS (SOUTHERN YELLOW PINE, "LONGLEAF") (AVG.) — 5.3
3. PINUS MONTICOLA ("IDAHO WHITE PINE") (AVG.) — 4.1
4. PINUS PONDEROSA ("CALIFORNIA WHITE PINE") (AVG.) — 3.9
5. PINUS LAMBERTIANA ("SUGAR PINE") (AVG.) — 2.9
6. PINUS STROBUS ("NORTHERN WHITE PINE") (AVG.) — 2.2




**C-TANGENTIBLLY (PER CENT)**

1. PSEUDOTSUGA TAXIFOLIA ("DOUGLAS FIR") (AVERAGE) — 7.1
2. PINUS PALUSTRIS (SOUTHERN YELLOW PINE "LONGLEAF") (AVG.) — 7.5
3. PINUS MONTICOLA ("IDAHO WHITE PINE") (AVG.) — 7.4
4. PINUS PONDEROSA ("CALIFORNIA WHITE PINE") (AVG.) — 6.3
5. PINUS LAMBERTIANA ("SUGAR PINE") (AVG.) — 5.6
6. PINUS STROBUS ("NORTHERN WHITE PINE") (AVG.) — 5.9



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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1933

FEDERAL TRADE COMMISSION,
*Petitioner,*

vs.

ALGOMA LUMBER COMPANY, et al.,
*Respondents.*

**On Writ of Certiorari to the United States Circuit Court of Appeals for the Ninth Circuit.**

## RESPONDENTS' REPLY TO BRIEF OF AMICUS CURIAE.

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## RESPONDENTS' REPLY TO BRIEF OF AMICUS CURIAE.

### INTRODUCTORY.

The brief of *amicus curiae* has been so lately filed as to preclude extended reply within the time now available to respondents. Under the circumstances we are content to permit our brief in reply to the brief for the Federal Trade Commission to serve likewise as our reply to the brief of

*amicus curiae.* We shall take note here only of such matters as may seem to require separate response.

The brief of *amicus curiae* is characterized throughout by prodigal references to the trade name "California White Pine" as "misrepresentation," "false description," "instrument of fraud," "deception" and "fraudulent." *The record warrants no such characterization and no citations to the record are offered in support.*

*There is no finding or suggestion of fraud, dishonesty or deception in any respect in the Commission's "Findings as to the facts"* (R. 28 to 44). Moreover, the brief of *amicus curiae* inconsistently admits that the name "California White Pine" was honestly adopted. It is stated (p. 5) "While in this case, *as was found,* the term 'California White Pine' may originally have been used to distinguish Ponderosa Pine from Southern Yellow Pine, * * * " (Emphasis supplied). In the brief of counsel for the Commission before that body it was admitted (p. 87):

> "There is no proof that the practice of designating *ponderosa* by terms including the word 'white' was adopted for the purpose of misleading or deceiving the trade or the public."

A similar admission apears in the brief for the Commission in the Circuit Court of Appeals (p. 80).

The argument of *amicus curiae* is rested upon the assumption that, in order to be lawful, the *commercial* grouping or classification of *pine lumbers* must necessarily conform with the *botanical* grouping or classification of the *pine trees* from which the lumber is produced. The fact is that the trade has little interest in and less knowledge with respect to botanical groupings or classifications of trees. The Commission has so found. (R. 39.) It is concerned only with commercial nomenclature which will fairly characterize the qualities and uses of the particular lumber. The brief of *amicus curiae* disregards this distinction. The record shows that "California White Pine" is truly de-

scriptive of the lumber yielded by Pinus ponderosa in view of its physical properties and industrial utility and that it belongs in the white pine group by virtue of these qualities. The term has no botanical significance.

## I.

### The Public Interest.

There is no tangible evidence of record that respondents' use of "California White Pine" works injury to the public or to respondents' competitors. There is some assertion by hostile witnesses to that end, but no concrete cases have been presented. Specifically we note the following:

(a.) *No user of this lumber* has testified that he has been led by this trade name to purchase lumber which otherwise he would not have bought.

(b.) *No wholesale or retail dealer* has testified that he has been deceived by this name into purchasing lumber which otherwise he would not have ordered. (The Commission called fifty-two such dealers to the witness stand.)

(c.) *No architect,* out of the thirty architects summoned by the Commission, has testified that he has been influenced by this trade name to specify respondents' lumber, and that otherwise he would not have specified it.

(d.) *No remanufacturer* has testified to such effect, and it should be understood that this lumber now supplies the bulk of the requirements of the remanufacturing industries. Mr. Frederick Weyerhaeuser, who may fairly be styled our principal opponent, has testified explicity that he has no doubt that "the remanufacturers of lumber, such as the manufacturers of sash and doors, understand fully that they are getting a lumber, under the name of California White Pine, which is yielded from the Ponderosa pine tree." (R. 1282)

The precise truth respecting the current lumber situation is that "Northern White Pine" has become so scarce, and its quality has so declined, that it can supply only a minor fraction of the requirements of trade and industry. (R. 279-80; 489; 571; 575; 628; 631; 735; 1294; 1608) Mr. Weyerhaeuser admits that the larger factories now obtain the bulk of their lumber from the Pacific Slope States (R. 1295), and that there has been a "natural economic replacement" of Strobus pine lumber with western pine. (R. 1296) He also testifies that Idaho White Pine yields little lumber of the "shop type" (R. 1296) and believes it to be "quite natural that the ponderosa pine lumber should supply the needs of the remanufacturers in the Middle West engaged in making sash and doors and other materials from shop lumber" (R. 1296). He expects that, irrespective of trade nomenclature, "the bulk of the shop trade will be supplied, as now, with ponderosa pine lumber" * * * "except as coast fir may make inroads on it." (R. 1301.)

Sugar pine lumber cannot supply the shop demand. Its annual cut is about 10 per cent of the ponderosa cut. (Commission's findings, R. 32, 33.) The Commission also finds that "There is a tendency for sugar pine to become a specialty wood." (R. 32.)

These are the substantial and controlling facts, established mainly by the testimony of our adversaries. They should serve to destroy the persistent representation that this lumber has acquired its dominating position by "misuse" of a trade name and by practices characterized as "substitution". The truth is that this lumber has attained dominance because it alone can meet the requirements and supply the demands of trade and industry. If this be "substitution", it is wholly proper and lawful, and no wrong is done either to respondents' competitors or the public.

## II.

### Respondents' Trade Name "California White Pine" is Not Misdescriptive and Its Use is Not Unfair.

Respondents' trade name here under review is "California White Pine" and not merely "White Pine" as the opposing brief constantly implies.

The argument tendered by our adversaries may well give rise to the inference that respondents are attempting to defend misdescription and misrepresentation in trade nomenclature. Such is not respondents' position. We deny misdescription and we deny misrepresentation. The name was not assumed as a disguise. We insist that this name truthfully denotes the essential properties and the industrial utility of this lumber and that it serves adequately as a particular identification.

The charge that the name is false and deceptive and that "it is an artifice by which one group of traders secure for themselves custom which, but for it, would probably come to another group" is wholly gratuitous. It has no support in the findings of the Commission. We may search the findings of the Commission in vain for anything tending to show that this trade name is an "artifice" by which respondents seek to obtain trade belonging to others.

The undisputed circumstances under which this name came into being completely acquit these respondents of any design to "trade on another's name" or to "pass off" their lumber for another's product. The name was adopted, as the record shows without conflict, not merely because it had long been in use locally in the Pacific coastal area, but in order to distinguish this lumber from the typical yellow pine lumbers of the southern states. This was a proper purpose. The motive was to avoid confusion, and that motive is still present.

Our adversaries affect to find improper purpose in the respondents' desire to perpetuate this name because it associates the lumber with the other white pine lumbers of

commerce. The argument is not only strained but it plainly distorts the facts. We may again point out that there are but two groups of pine lumbers known to trade and industry—viz., the white pine group and the yellow pine group. Respondents are entitled to a name which will place their lumber in one of these two groups. A white pine name is appropriately indicated because the lumber is of the white pine type and goes into the characteristic white pine uses. Assuredly no improper motive can be ascribed to respondents because they seek to perpetuate a name which truthfully characterizes the properties and uses of their product.

It will be found upon final analysis that the contention of our adversaries that this trade name is "false," "untruthful" and "misleading" is founded upon the botanical criterion. We have sufficiently considered the question of botanical identities in our brief in reply to the Commission. We have shown, as the Commission has indeed found, that trade and industry are not interested in botanical classification or botanical nomenclature but that their interest is in the quality and utility of the lumber. We have also shown that the botanical classification of *pine trees* is not a criterion for the commercial classification of *pine lumbers*. The two classifications have different objectives. The botanist classifies pine *trees* with respect to the number of needles in a bundle and the nature of the cones, bark and flowers. His criterion is found in plant characteristics. In this classification no consideration whatever is given either to the mechanical properties or the industrial utility of the lumber product. Trade and industry, on the other hand, classify *pine lumber* with respect to texture, quality and primary industrial use. It follows that the lumber manufacturer and the lumber merchant do not speak botanically when they give trade names to forest products. *A fortiori* neither the purchaser nor the consumer speaks botanically when ordering lumber under a common trade name. Hardly would it be contended that either botanical

nomenclature or botanical distinctions were in mind when the commercial names now common in the lumber trade came into being.

There can be no justification, either upon the record or without the record, for this persistent effort to identify the botanical classification of pine *trees* with the commercial nomenclature of pine *lumbers*. They have never been identical in point of fact, nor was there any suggestion that they should be identified until this controversy lately arose.

The Commission has perforce abandoned its apparent initial reliance upon botanical classification. At least its reliance on botany has been extensively qualified. *Amicus curiae* can hardly sustain a contention which is now thoroughly discredited. It is enough to say by way of summary that the expert witnesses who testified of record were agreed:

> *First,* that in the classification of pine trees by botanists no consideration was given either to the mechanical properties or the quality or utility of the lumber product;
>
> *Second,* that commercial nomenclature has never given heed to botanical identities or distinctions;
>
> *Third,* that the mechanical properties of California White Pine place it in the white pine group rather than in the yellow pine group;
>
> *Fourth,* that the industrial uses of California White Pine place it within the white pine group and not in the yellow pine group.

If anything further is needed in order to condemn the effort to force botanical classification as the guide for commercial nomenclature, it will be found in the following excerpt from Paragraph 62 of the Commission's findings in these proceedings:

> "The dealers, architects and consuming public are influenced by common names given to lumber products and not by the botanical names. They seldom know the

> Latin term for the respective species although of late there has been a tendency on the part of certain architects to use 'strobus' in their specifications of Northern white pine. Nor are these classes of buyers informed of or concerned over the purely botanical distinctions considered by scientists in the classification of species. They buy by common names and are concerned over distinctions between the characteristics of the lumber of the various species."

These findings on the part of the Commission afford a sufficient answer to the argument implicit in the brief of *amicus curiae* that botanical distinctions are significant in trade nomenclature.

Without any justification whatever, our adversaries seek to assimilate botanical classification to commercial classification. If these two matters could properly be assimilated, there might be small occasion for criticising this trade name. Inasmuch as such assimilation is not possible, our adversaries are patently confusing facts when they predicate the argument of misnomer upon botanical classification and identities.

## III.

### Current Meaning of "White Pine."

The Court will understand that today the term "white pine" does not mean the lumber from a single genus of pine tree, namely *Pinus strobus*. Indeed these complaints are avowedly brought in behalf of the lumber yielded by three distinct genera, one of which has never been marketed under a white pine name. For at least a third of a century, "white pine" has meant any one of four lumbers, separately identified by individual trade names.

The record affords convincing proof that a trade name which adheres to the botanical criterion may yet be misleading and dishonest in fact. The lumber of *Pinus lambertiana* has been marketed throughout the years as "sugar

pine". The tree is a "5-needle pine" and therefore is assigned to the white pine group. It grows almost entirely in California. The botanical argument suggests that this sugar pine lumber can most appropriately be sold as "California White Pine," and such may well be the program of our adversaries if they should prevail in their present effort to excise "white" from respondents' trade name. Thereby they would appropriate the good-will established by respondents through a generation of continuous use. Botany would justify the attempted appropriation, and yet it is agreed that that name would be misdescriptive, misleading and confusing in the highest degree. (R. 128) In short, "California White Pine" is a well established name for respondents' lumber and it would be nothing other than fraud to market "sugar pine" under the name "California White Pine."

## IV.

## The Word "California" in Respondents' Trade Name is Sufficiently Distinctive.

Respondents use the full name "California White Pine" and they desire to use that full name. The word "white" denotes the quality and utility of the lumber. The word "California" particularly identifies the lumber as a product distinct from Northern White Pine and Idaho White Pine and other competing lumbers. It is not the occasion of confusion; it rather serves to avoid confusion.

If the trade name "Idaho White Pine" is not calculated to confuse that lumber with "Northern White Pine", it is difficult to see wherein "California White Pine" should lead to confusion.

The record shows without conflict that "California White Pine" has been known to trade and industry for a generation and that purchasers know what they are getting under that name.

## V.

### Quality and Utility.

Further debate respecting relative quality and utility would be of doubtful assistance to this Court. It was to be expected that our adversaries would seek to disparage respondents' product, but we have noted that the Government experts do not sustain them. The Commission called a hearing at Madison, Wis., in order to get the testimony of the experts of the United States Forest Products Laboratory, but counsel for the Commission was frankly discomfited when he discovered that they were not prepared to give evidence in support of his contentions respecting wood quality, including durability. He expressed a preference for the omission of their testimony. (R. 703, 704.) Nevertheless, the testimony was received, and was found to be in no respect unfavorable to respondents' lumber.

We have protested in our brief in reply to the Commission against the refusal of Commission to report the results of the Government tests and the evidence given by the expert technologists. It is enough here to suggest that such evidence should take precedence over disparaging comments on the part of our adversaries. (Resp. Exhibits Nos. 21-23, 32. R. 778-780, 783-784, 1368-9.)

## VI.

### The Status of Competitors.

It will be granted that much of this lumber is now sold under the trade name "Pondosa Pine", a term of very recent origin. It is represented that those producers who have adopted the "pondosa" name are at a disadvantage. If so, it is because they have adopted a name which is meaningless to trade and industry. It fails to denote the properties and industrial utility of the lumber. It suggests neither white pine nor yellow pine. It is so wanting in the informative qualities which trade names should possess

that it is small wonder that "pondosa" manufacturers encounter difficulty in giving their product a proper place in the public mind. This is a problem which the "pondosa" manufacturers have created for themselves. Assuredly the act of these respondents in adopting "California White Pine" some 33 years ago cannot be regarded as the occasion for such difficulties as may now confront those who use the "pondosa" name.

As far as the manufacturers of "Northern White Pine" and "Idaho White Pine" are concerned, their chief grievance is that respondents' lumber has become a strong competitor of their product. It could not have become such a competitor except upon its merits. It will be found upon a careful review of the record that the alleged competitive disadvantages of "Northern White Pine" and "Idaho White Pine" are attributable to nothing other than the normal rivalry of competing lumbers in trade and industry. As Mr. Weyerhaeuser has testified, there has been a natural economic replacement of the older pine by the western pine. In brief the name "California White Pine" has not produced this alleged competitive disadvantage. The lumber itself is the competitor.

## VII.

### The Opinion of the Court Below.

We have sufficiently dealt with the essentials of the opinion of the court below in our major brief in this cause. We need not repeat that discussion.

As our adversaries would have it, the lower court was disposed to excuse misdescription for reasons which do not go to the merits of the controversy. A careful reading of the opinion of the court below will show that this characterization is not warranted. The grievance of our adversaries here is akin to the objections raised in the brief for the Federal Trade Commission. The court reported material facts which the Federal Trade Commission refrained

from reporting. In consideration of those facts and of the findings of the Commission, the conclusion was reached that respondents are not chargeable with unfair methods of competition forbidden by the Federal Trade Commission Act.

We think it immaterial that the opinion of the lower court referred to matters which the Federal Trade Commission ignored. Neither are we concerned with the reasoning of the court below. We understand that the case is now before this court on the merits and that if neither the record nor the findings of the Commission can sustain a charge of unfair methods of competition the orders of the Commission cannot be sustained.

The findings of the Commission will be searched in vain for facts requisite to the establishment of a case of unfair competition. The pertinent cases are reviewed in our brief in reply to the Commission, and need not be again reviewed here.

## CONCLUSION.

The opposing brief goes beyond the facts of record when it characterizes this trade name as a "false designation" and when it represents that particular purchasers have been deceived. *There is no testimony on the part of any purchaser that he has been deceived by this trade name, and the Commission has made no findings to that end.*

The findings of fact actually made by the Commission cannot serve to make out a violation of law on the part of these respondents.

Respectfully submitted,

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Balfour Building,
San Francisco, Calif.,
*Attorneys for Respondents.*

Dated at
Wash., D. C.,
Dec. 14, 1933.

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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1933.

No. 240.

FEDERAL TRADE COMMISSION, *Petitioner,*

*vs.*

ALGOMA LUMBER COMPANY, ET AL., *Respondents.*

## BRIEF AS AMICUS CURIAE IN SUPPORT OF PETITION AND MOTION FOR LEAVE TO FILE ON BEHALF OF

Weyerhaeuser Sales Company, St. Paul, Minnesota,
Weyerhaeuser Timber Company, Klamath Falls, Oregon,
Madera Sugar Pine Company, Madera, California,
Yosemite Lumber Company, Pinedale, California,
Sugar Pine Lumber Company, Pinedale, California,
Northern Lumber Company, Cloquet, Minnesota,
Johnson-Wentworth Company, Cloquet, Minnesota,
Cloquet Lumber Company, Cloquet, Minnesota,
Boise-Payette Lumber Company, Boise, Idaho,
Bonners Ferry Lumber Company, Ltd., Bonners Ferry, Idaho,
Humbird Lumber Company, Sand Point, Idaho,
Potlatch Forests, Inc, Potlatch, Idaho,
Edward Rutledge Timber Company, Coeur d'Alene, Idaho,
Clearwater Timber Company, Lewiston, Idaho,
Winton Lumber Company, Gibbs, Idaho,
J. Neils Lumber Company, Libby, Montana,
Deer Park Lumber Company, Deer Park, Washington,
McGoldrick Lumber Company, Spokane, Washington,
Dalkena Lumber Company, Dalkena, Washington,
Cascade Lumber Company, Yakima, Washington,
Hallack & Howard Lumber Company, Denver, Colorado,
Edward Hines Lumber Co., Burns, Oregon,
Kalispell Lumber Company, Kalispell, Montana,
Kinzua Pine Mills Co., Kinzua, Oregon,
McCloud River Lumber Co., McCloud, California,
Michigan-California Lumber Co., Camino, California,
Polleys Lumber Co., Missoula, Montana,
Shevlin-Hixon Co., Bend, Oregon,
State Lumber Co., Columbia Falls, Montana,
H. E. Brown Timber Company, Sand Point, Idaho,
MacFarland-Brown Lumber Company, Sand Point, Idaho,
Craig Mountain Lumber Company, Winchester, Idaho,
Pondosa Pine Lumber Company, Elgin, Oregon,
Stoddard Lumber Company, Baker, Oregon,
Peshastin Lumber & Box Company, Peshastin, Washington,
Brooks Scanlon Lumber Company, Bend, Oregon,
Kellogg Lumber Company, Dishman, Washington,
Mt. Emily Lumber Company LaGrande, Oregon,
Atlas Tie Company, Coeur d'Alene, Idaho,
Somers Lumber Company, Somers, Montana,
Blackwell Lumber Company, Coeur d'Alene, Idaho,
Western Pine Manufacturing Company, Ltd, Spokane, Washington.

EDWARD S. ROGERS,
New York,
*amicus curiae.*

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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1933.

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No. ——

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FEDERAL TRADE COMMISSION, *Petitioner,*

*vs.*

ALGOMA LUMBER COMPANY, ET AL., *Respondents.*

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## MOTION FOR LEAVE TO FILE BRIEF AS AMICUS CURIAE IN SUPPORT OF PETITION.

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Comes now Edward S. Rogers, a member of the Bar of this Court, as *amicus curiae* acting on behalf of the lumber companies named on the cover and moves the Court for leave to file the attached brief as *amicus curiae* under the following circumstances:

The undersigned is acting in this matter on behalf of forty-two lumber companies. These companies include some of the largest lumber interests in the United States.

A brief *amicus curiae* was filed in their behalf in Circuit Court of Appeals without objection, and on account of the great importance of the case to these companies they desire to file a brief as *amicus curiae* in this Court. On the assumption that no objection would be raised, since none was raised in the Circuit Court of Appeals, the undersigned as counsel prepared and printed the brief which is attached hereto, and obtained the consent of the Federal Trade Commission, Petitioner, to its filing. Counsel for Respondents, however, some time after a proof of Petition-

er's proposed brief had been delivered to them, refused to consent and objected to its being filed on the ground that it imposed an unnecessary burden upon the Respondents.

Under these circumstances, it is respectfully submitted that the Court should permit the attached brief to be filed. The forty-two lumber companies are vitally interested parties in the litigation and ordinarily would be actual parties to the suit if it arose under any other branch of the Federal Law, as for instance under the Interstate Commerce Act. They should, therefore, on principle and in fairness be allowed the small privilege of informing this Court of the nature and importance of the case and their interest in it, and offering the attached brief in support of the petition.

It may be noted that in many cases the government when asked to consent to a brief being filed by an *amicus curiae* has not given its consent but, not objecting to such filing, this Court upon an oral motion for leave to file has permitted the brief to be received. In addition it has been the uniform practice of this Court to allow the government and the Attorneys General of the various States to file briefs as *amici curiae* even where objection has been made by one of the parties, in order to allow the interest of the government or of the various States to be placed before the Court. It is submitted that in many cases the interest of the Federal Government, or of a State, is no more important than the interests of private parties where, as in the present instance, a class case is presented vitally involving a basic industry and with a large amount ultimately at stake.

Lastly, counsel respectfully suggests that while appearing at the instance of the lumber companies above referred to, he is still appearing as *amicus curiae,* to give such assistance to the Court as he may be able. It would seem that such possible assistance should not be refused because counsel for one of the parties does not desire the Court

to have it; it is suggested too that putting it in the power of opposing counsel to deny such possible assistance to the Court is not in accord with the traditional right of any person to offer any help, however slight, to aid the Court in its administration of justice.

Respectfully submitted,

EDWARD S. ROGERS, *amicus curiae*
*acting on behalf of:*

Weyerhaeuser Sales Company, St. Paul, Minnesota,
Weyerhaeuser Timber Company, Klamath Falls, Oregon,
Madera Sugar Pine Company, Madera, California,
Yosemite Lumber Company, Pinedale, California,
Sugar Pine Lumber Company, Pinedale, California,
Northern Lumber Company, Cloquet, Minnesota,
Johnson-Wentworth Company, Cloquet, Minnesota,
Cloquet Lumber Company, Cloquet, Minnesota,
Boise-Payette Lumber Company, Boise, Idaho,
Bonners Ferry Lumber Company, Ltd., Bonners Ferry, Idaho,
Humbird Lumber Company, Sand Point, Idaho,
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Kinzua Pine Mills Co., Kinzua, Oregon,
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Blackwell Lumber Company, Coeur d'Alene, Idaho,
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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1933.

No. 240.

FEDERAL TRADE COMMISSION, *Petitioner,*

*vs.*

ALGOMA LUMBER COMPANY, ET AL., *Respondents.*

## BRIEF AMICUS CURIAE IN SUPPORT OF PETITION.

This brief is filed on behalf of a large number of producers of White Pine and Ponderosa Pine lumber who do not use trade designations which include the words "White Pine" except as applied to true White Pine. These parties are in competition with the respondents.

The unfair methods of competition which the Commission proceeded against in this case are of the same kind as those condemned by this court in *Federal Trade Commission v. Winsted Hosiery Co.*, 258 U. S. 483. There the act was the use of the terms "wool" and "merino" for products which were not wool. In this case respondents use a term which includes the words "White Pine", for lumber which is not White Pine.

The Commission, from the evidence, found as a fact that true White Pine lumber is useful for certain pur-

poses, has a good reputation, commands a ready sale and has and deserves public confidence. (Par. 17, R. 31.)

The Commission also found from the evidence that the respondents misapply a designation which includes the words "White Pine" to lumber cut from trees botanically of the Yellow Pine group. The scientific name of this tree is Pinus Ponderosa. Lumber from Pinus Ponderosa differs structurally and commercially from true White Pine. It is cheaper and not as good as true White Pine for many purposes. (Pars. 35-41, R. 34-36; Pars. 53-57, R. 37-38; Par. 61, R. 39.)

The Commission also found that substantial deception resulted from respondents' inclusion of the words "White Pine" in their trade term. (Par. 63, R. 39-40; Pars. 70-74, R. 41-42.)

The Commission followed the *Winsted* case, *supra*, and held respondents' acts to be unfair methods of competition. The Commission thereupon entered the cease and desist order which the Circuit Court of Appeals for the Ninth Circuit set aside (64 Fed. (2d) 618).

The testimony in this case, as in most cases where the meaning of words is in question, was not harmonious. The Commission considered the conflicting evidence and made eighty specific findings of facts. The Circuit Court of Appeals seems to have made its own analysis of the testimony and to have come to a different conclusion. In this, we think, it failed to observe the requirement of the statute, "The findings of the Commission as to the facts, if supported by testimony, shall be conclusive." There is no doubt that the Commission's findings of fact were supported by testimony—we believe by a great preponderance. Indeed, it is not clear that the court disagreed with the specific findings of fact made by the Commission but apparently set aside its order because it differed

with the Commission's conclusion that the facts found were, as a matter of law, unfair methods. This aspect of the case is discussed in the brief filed on behalf of the Commission and raises an important question under the Federal Trade Commission Act.

In this brief, we wish to draw the court's attention to the effect which respondents' conduct has on their competitors. Those in whose behalf this brief is filed are competitors of respondents. They are in two categories: (1) producers of true White Pine lumber who use the designation "White Pine" truth fully and who are compelled to meet the competition of a different and cheaper lumber represented as White Pine; and (2) producers of lumber from Ponderosa Pine who sell it under names which truthfully represent it and do not apply to it designations which include the words "White Pine". These parties are compelled to compete with respondents who, by including the words "White Pine" in the name they apply to Ponderosa Pine are able to obtain a wider market for the same product.

Respondents' use of trade designations including the words White Pine gives them an unfair advantage in their competition both with the sellers of true White Pine and sellers of Ponderosa Pine. The false inclusion by respondents of the words White Pine in their designation of lumber which is not White Pine, either in scientific or in common understanding, must of necessity injure all competitors who truth fully use the description which respondents use untruthfully, as well as all those who sell the same lumber which respondents sell and will not apply a misleading description to it.

Respondents' misdescription injures the public by fostering the substitution of a wood unfit for many of the purposes for which White Pine is well known to be fit. The consumer is led by respondents' misuse of the words

"White Pine" into paying his money for that which he does not intend to buy and might not otherwise consider. Consumers who are thus misled are potential customers for the lumber sold by the parties on whose behalf this brief is filed. They are in the market ordering "White Pine" and expecting to get true White Pine which these parties mill and sell. Moreover, the misdescription as White Pine of Ponderosa Pine gives it a greater salability than if this wood were sold for what it is.

The misdescription which the court below permitted to continue cannot be employed without taking away an appreciable portion of their market from the competitors of the respondents who sell true White Pine and Ponderosa Pine and describe them truthfully.

It is, of course, not necessary to show specific instances of substitution and loss to producers of true White Pine where both are the plain consequences of the situation. It appears from this record that the custom of the retail trade is to a large extent one of substitution and passing off without the knowledge or consent of the buyer, and that the retailer is induced to this course by the fact that he buys the Ponderosa lumber under a trade term which includes the words "White Pine". The producers of true White Pine are thus deprived of a legitimate market and the public is being deceived by respondents' misdescription, into purchasing lumber not intended to be purchased and for uses for which it is not adapted. Respondents' use of a trade description which includes the words White Pine is the instrument of fraud which produces this result. This matter is of great importance to the producers of true White Pine, to the producers of Ponderosa Pine who sell it on its merits, and to the public.

That respondents' conduct is an unfair method of competition goes without saying. It is an artifice by which

one group of traders secure for themselves custom which, but for it, would come to another group. As Mr. Justice Holmes in *International News Service v. Associated Press,* 248 U. S. 215, said, p. 246:

> "If a given person is to be prohibited from making the use of words that his neighbors are free to make some other ground must be found. One such ground is vaguely expressed in the phrase unfair trade. This means that the words are repeated by a competitor in business in such a way as to convey a misrepresentation that materially injures the person who first used them, by appropriating credit of some kind which the first user has earned. The ordinary case is a representation by device, appearance, or other indirection that the defendant's goods come from the plaintiff. But the only reason why it is actionable to make such a representation is that it tends to give the defendant an advantage in his competition with the plaintiff and that it is thought undesirable that an advantage should be gained in that way."

No one would have any complaint if the producers of Ponderosa Pine should compare it with White Pine and point out the good qualities which Ponderosa admittedly has, its usefulness for interior trim, its abundance, its moderate price. In short, an effort to sell this wood on its merits, under its own proper name, would be commendable and fair competition but to disguise it under the name of another wood is unfair and we should suppose, unlawful. As early as 1846, Senator Lott in *Taylor v. Carpenter,* 11 Paige, 292, 2 Sand., Ch. 603, remarked:

> "A disguise is not usually assumed for an honest object. It is a mark more characteristic of deception and fraud. It defeats the very end and object contemplated by legitimate competition, the choice to the public to select between the articles exposed to sale."

While in this case, as was found, the term "California

White Pine" may have been originally used to distinguish Ponderosa Pine from Southern Yellow Pine, the respondents now desire to perpetuate the term in order to enjoy the resulting identification of their lumber in the public mind with true White Pine, and the larger profit which admittedly accrues to them from the use of the words "White Pine." While the original use of the term may have been innocent, continuation after attention had been called to the confusion it was producing is fraudulent and unfair.

In *Cochrane v. McNish* (1896), A. C. 225, 13 R. P. C., 100, 107, Lord Morris said:

> "The respondents erred unwittingly at first. But as they persisted in their error after their attention was called to the fact that they were infringing the appellant's rights, their conduct, in the eye of the law, amounts to fraud, and they must be held responsible for the consequences."

In *Huntley & Palmer v. Reading Biscuit Co.*, 10 R. P. C., 277, 280, Mr. Justice Chitty said:

> "Again, the defendants set up by their counsel, and they set up on the affidavits that they did not mean anything wrong, and their intentions were fair and proper at the time. I need not refer to what Lord Justice James has said on this matter in *Hendriks v. Montagu*, L. R., 17 Ch. D., 638, p. 646, as to stealing a plaintiff's name, and as to its being a defendant's persistence, after his attention has been called to his use of the plaintiff's name, that justifies the court in using a harsh term."

That a deceptive practice has been going on for some time is an added reason why it should be stopped, not continued. The test is not how long a misrepresentation may have been used but whether it still deceives.

The undersigned desire to make it plain to the court that they regard respondents' actions an unfair method of competition which is injurious to them. It is urged

therefore, that the court grant the writ and review the decision of the Circuit Court of Appeals of the Ninth Circuit.

Respectfully submitted,

EDWARD S. ROGERS, *amicus curiae*
*acting on behalf of:*

Weyerhaeuser Sales Company, St. Paul, Minnesota,
Weyerhaeuser Timber Company, Klamath Falls, Oregon,
Madera Sugar Pine Company, Madera, California,
Yosemite Lumber Company, Pinedale, California,
Sugar Pine Lumber Company, Pinedale, California,
Northern Lumber Company, Cloquet, Minnesota,
Johnson-Wentworth Company, Cloquet, Minnesota,
Cloquet Lumber Company, Cloquet, Minnesota,
Boise-Payette Lumber Company, Boise, Idaho,
Bonners Ferry Lumber Company, Ltd., Bonners Ferry, Idaho,
Humbird Lumber Company, Sand Point, Idaho,
Potlatch Forests, Inc, Potlatch, Idaho,
Edward Rutledge Timber Company, Coeur d'Alene, Idaho,
Clearwater Timber Company, Lewiston, Idaho,
Winton Lumber Company, Gibbs, Idaho,
J. Neils Lumber Company, Libby, Montana,
Deer Park Lumber Company, Deer Park, Washington,
McGoldrick Lumber Company, Spokane, Washington,
Dalkena Lumber Company, Dalkena, Washington,
Cascade Lumber Company, Yakima, Washington,
Hallack & Howard Lumber Company, Denver, Colorado,
Edward Hines Lumber Co., Burns, Oregon,
Kalispell Lumber Company, Kalispell, Montana,
Kinzua Pine Mills Co., Kinzua, Oregon,
McCloud River Lumber Co., McCloud, California,
Michigan-California Lumber Co., Camino, California,
Polleys Lumber Co., Missoula, Montana,
Shevlin-Hixon Co., Bend, Oregon,
State Lumber Co., Columbia Falls, Montana,
H. E. Brown Timber Company, Sand Point, Idaho,
MacFarland-Brown Lumber Company, Sand Point, Idaho,
Craig Mountain Lumber Company, Winchester, Idaho,
Pondosa Pine Lumber Company, Elgin, Oregon,
Stoddard Lumber Company, Baker, Oregon,
Peshastin Lumber & Box Company, Peshastin, Washington,
Brooks Scanlon Lumber Company, Bend, Oregon,
Kellogg Lumber Company, Dishman, Washington,
Mt. Emily Lumber Company LaGrande, Oregon,
Atlas Tie Company, Coeur d'Alene, Idaho,
Somers Lumber Company, Somers, Montana,
Blackwell Lumber Company, Coeur d'Alene, Idaho,
Western Pine Manufacturing Company, Ltd, Spokane, Washington.

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DEC 1 1933

CHARLES ELMORE CROPLEY
CLERK

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1933.

## No. 240

FEDERAL TRADE COMMISSION, *Petitioner,*

*vs.*

ALGOMA LUMBER COMPANY, ET AL., *Respondents.*

## BRIEF OF EDWARD S. ROGERS, AS AMICUS CURIAE ON BEHALF OF

Weyerhaeuser Sales Company, St. Paul, Minnesota,
Weyerhaeuser Timber Company, Klamath Falls, Oregon,
Madera Sugar Pine Company, Madera, California,
Yosemite Lumber Company, Pinedale, California,
Sugar Pine Lumber Company, Pinedale, California,
Northern Lumber Company, Cloquet, Minnesota,
Johnson-Wentworth Company, Cloquet, Minnesota,
Cloquet Lumber Company, Cloquet, Minnesota,
Boise-Payette Lumber Company, Boise, Idaho,
Bonners Ferry Lumber Company, Ltd., Bonners Ferry, Idaho,
Humbird Lumber Company, Sand Point, Idaho,
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Winton Lumber Company, Gibbs, Idaho,
J. Neils Lumber Company, Libby, Montana,
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Dalkena Lumber Company, Dalkena, Washingon,
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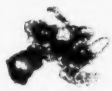

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1933.

No. 240.

FEDERAL TRADE COMMISSION,
*Petitioner,*

*vs.*

ALGOMA LUMBER COMPANY, *et al.*,
*Respondents.*

## BRIEF AMICUS CURIAE.

This brief, by leave of court, is filed on behalf of the lumber companies whose names are printed on the cover. They are in direct competition with the respondents and are in two categories: (1) producers of true White Pine lumber who use the designation "White Pine" truthfully and who are compelled to meet respondents' competition in selling a different and cheaper lumber represented as White Pine; and (2) producers of lumber from Ponderosa Pine who sell it under names which do not misrepresent it as white pine. These parties are obliged to meet the competition of the respondents who, by applying a designation which includes the words "White Pine" to Ponderosa Pine (which is not White Pine, either in scientific or in common understanding), are enabled to obtain a wider market and a better price for the same product and

encounter less trade resistance in its sale.* Thus, those in the second group, because they are unwilling to apply a false description to the lumber that they sell, are handicapped in their competition with respondents.

Respondents' use of trade designations including the words "White Pine" gives them an unfair advantage over competitors in both classes.

The misdescription which the court below permitted respondents to continue, cannot be employed without taking away an appreciable portion of their market from the competitors of the respondents in one group or the other.

## The Public Interest.

Respondents' methods inflict an injury on the public as well as upon their competitors. The misdescription fosters the substitution of a wood unfit for many of the purposes for which White Pine is well known to be fit and thus consumers are led, by respondents' misuse of the words "White Pine", into paying their money for lumber not intended to be bought and which might not otherwise be considered. The consumers who are thus misled are potential customers of the parties on whose behalf this brief is filed. They are in the market ordering "White Pine" and expecting to get true White Pine which these parties mill and sell, or they might buy Ponderosa Pine if sold on its merits and not under a disguise.

---

* Willis J. Walker, president of the Red River Lumber Company, one of the respondents and one of the most prominent "California White Pine producers", testified (Rec., 1551):

"Q. You think there is an advantage in the use of the word 'white' in connection with the term 'California white pine'? A: Yes.

Q. Have you at any time estimated that it is worth about $2 a thousand to the California white pine manufacturers? A. I don't remember ever having tried to put it in dollars and cents.

Q. But you think it has a monetary advantage to you. A. I do.

Q. Why is that? A. Because it classifies our woods with the other woods that have been known to the trade, including itself as white pines, the general group with this (sic) similar characteristics.

Q. Well, now, that is one of the reasons you want to continue to use it, is it? A. That is one of the reasons; yes."

It is no answer to say that Ponderosa is a good wood for certain purposes and that purchasers, who buy it as White Pine, although fooled, are not much hurt. As far back as 1848, in a case where it was argued that there was no actionable misrepresentation because the spurious article was as good as the genuine, the defense was disposed of with the remark, "The privilege of deceiving the public, even for their own benefit, is not a legitimate subject of commerce." (*Partridge* v. *Menck*, 2 Sandf., Ch. 622, How. App. Cas. 558.) As Mr. Justice Butler said in *U. S.* v. *95 Barrels of Vinegar*, 265 U. S. 438, 444, 445:

> "If an article is not the identical thing that the brand indicates it to be it is misbranded. * * * And it makes no difference whether vinegar made from dried apples is or is not inferior to apple cider vinegar."

**Respondents' Methods Are Unfair.**

As the direct result of respondents' methods, the producers of true White Pine and Ponderosa Pine, truthfully named, are deprived of their legitimate market. Potential customers are taken away from them by competitors' misrepresentation. The public is being deceived into purchasing lumber not intended to be purchased and for uses for which it is not adapted. Respondents' misuse of a trade description which includes the words "White Pine" is the instrument of fraud which produces these results.

That respondents' use of the expression "California White Pine" is a method of competition was found by the court below (Rec., 1890). That it is an unfair method seems almost too plain for denial. It is false. It deceives the public. It injures competitors. It is an artifice by which one group of traders secure for themselves custom which, but for it, would probably come to another group. It is the appropriation by respondents for their lumber, of

credit which another wood has earned. By this means, respondents' lumber is given a salability it would not otherwise have.* Respondents thus secure an advantage over their competitors. This is unfair competition at common law. As Mr. Justice Holmes said in *International News Service* v. *Associated Press*, 248 U. S. 215, 246:

> "If a given person is to be prohibited from making the use of words that his neighbors are free to make some other ground must be found. One such ground is vaguely expressed in the phrase unfair trade. This means that the words are repeated by a competitor in business in such a way as to convey a misrepresentation that materially injures the person who first used them, by appropriating credit of some kind which the first user has earned. The ordinary case is a representation by device, appearance, or other indirection that the defendant's goods come from the plaintiff. **But the only reason why it is actionable to make such a representation is that it tends to give the defendant an advantage in his competition with the plaintiff and that it is thought undesirable that an advantage should be gained in that way.**"

The fact that those injured by the misrepresentation are so numerous that it is doubtful if an action could be maintained by any one of them, is one of the reasons which moved Congress, in the public interest, to confer upon the Commission jurisdiction over such wrongs.*

No one would have any complaint if the producers of Ponderosa Pine should compare it with White Pine and point out the good qualities which Ponderosa admittedly has, its usefulness for interior trim, its abundance, its moderate price. In short, an effort to sell this wood on its merits, under its own proper name, or under some trade name not including the phrase "White Pine", would be commendable and fair competition, but to disguise it under a name which inevitably suggests another wood seems un-

* *Roy. Baking Powder Co.* v. *Federal Trade Commission* (C. C. A. 2), 281 Fed. 744, 751, 753.

fair and we should suppose, unlawful. As early as 1846, Senator Lott remarked, in *Taylor* v. *Carpenter*, 11 Paige, 292, 2 Sandf. Ch. 603:

> "A disguise is not usually assumed for an honest object. It is a mark more characteristic of deception and fraud. It defeats the very end and object contemplated by legitimate competition, the choice to the public to select between the articles exposed to sale."

The essence of fair competition, where names and brands are concerned, is the opportunity to choose between goods offered for sale. In no other way can good will and good reputation be perpetuated and profited by. If purchasers have no chance to distinguish between an article desired and one not desired or not known, there could be no credit for good merchandise, no responsibility for bad, and no competition except in cheapness and sophistication.

While in this case, as was found, the term "California White Pine" may originally have been used to distinguish Ponderosa Pine from Southern Yellow Pine, the respondents now desire to perpetuate the term in order to enjoy the resulting identification of their lumber in the public mind with true White Pine, and the larger profit which admittedly accrues to them from the use of the words "White Pine". While the original use of the term may have been innocent, continuation, after attention had been called to the confusion it was producing, is fraudulent and unfair.

In *Cochrane* v. *McNish* (1896), A. C. 225, 13 R. P. C. 100, 107, Lord Morris said:

> "The respondents erred unwittingly at first. But as they persisted in their error after their attention was called to the fact that they were infringing the appellant's rights, their conduct, in the eye of the law, amounts to fraud, and they must be held responsible for the consequences."

In *Huntley & Palmer* v. *The Reading Biscuit Co.*, 10 R. P. C., 277, 280, Mr. Justice Chitty said:

> "Again, the defendants set up by their counsel, and they set up on the affidavits that they did not mean anything wrong, and their intentions were fair and proper at the time. I need not refer to what Lord Justice James has said on this matter in *Hendriks* v. *Montagu*, L. R., 17 Ch. D., 638, p. 646, as to stealing a plaintiff's name, and as to its being a defendant's persistence, after his attention has been called to his use of the plaintiff's name, that justifies the court in using a harsh term."

That a deceptive practice has been going on for some time is an added reason why it should be stopped, not continued. The test is, not how long a misrepresentation may have been used, but whether it still deceives.

**The Word "California" in Respondents' Trade Description Is Not a Distinction.**

The use by respondents of the qualifying word California —"California White Pine"—in their trade description of Ponderosa lumber, is not a distinction which would prevent deception. The true White Pines have always been distinguished as to their geographical origin by the use of locality names. The Commission found:

> "This lumber is often referred to merely as 'White pine'. Of its other names the commonest is 'Northern white pine'. It is also given various designations including 'New England white pine', 'Maine white pine', 'Michigan white pine', 'Michigan cork pine', 'Wisconsin white pine', 'Minnesota white pine', 'Canadian white pine', 'New Brunswick white pine', among others." (Par. 13, Rec., 30.)

This finding is directly supported by the testimony. (Rec., 415, 417, 504, 899, 921, 985, 1067.) The fact is assumed by many witnesses, (Rec., 109, 242-3, 271, 291, 510, 547, etc.), and indeed it is a matter of common knowledge.

It is unreasonable to expect the architect and general

buyer or even the majority of retailers to know that each of the various white pines from "Maine white pine" and "New Brunswick white pine" in the east to "Idaho white pine" in the west, are true white pines and yet that "California white pine", "New Mexico white pine" and "Arizona white pine" are not. Prefixing the geographical name does not distinguish, but adds to the confusion and makes discovery of the deception all but impossible. "California White Pine" would be understood to mean, not that the wood is not White Pine at all, but that it is White Pine coming from California. The situation is analagous to the use of a defendant's name in connection with the plaintiff's trade-mark. "That is an aggravation and not a justification, for it is openly trading in the name of another upon the reputation acquired by the device of the true proprietor." (*Menendez* v. *Holt*, 128 U. S. 514, 521.)*

## The Opinion of the Court Below.

*Algoma Lumber Co.* v. *Federal Trade Commission*, 64 Fed. (2d) 618 (Rec., 1889).

The Circuit Court of Appeals, without overruling the Commission's findings, made some of its own which would

* "'Duraleather' is a coined word. 'Dura' admittedly is an abbreviation of the word 'durable', and the word thus composed can be given no other meaning than 'Durable leather'. So read and considered it is an assertion that the product marked, advertised and sold as 'Duraleather' consists of leather. By putting this imitation product bearing a false name into the channels of trade, whatever may have been the petitioner's motive in so doing, they furnished their customers and those dealing with them the means to misrepresent that the goods made from that product were made of leather, and when such a false trade name is subsequently associated with the sale of goods made from such product, the petitioners cannot escape legal responsibility by disclaiming any intention to deceive or by showing that those with whom they dealt directly—first purchasers of the product—well knew that it was but an imitation or substitute for the genuine article. While this imitation leather, as it passed from the petitioners in the first instance, was to its customers a finished product, it was to their knowledge and purpose to be used ultimately in upholstering and in the manufacture of suitcases and other goods and to come into the hands of those usually called the consuming public." *Masland Duraleather Co.* v. *Federal Trade Commission* (C. C. A. 3), 34 Fed. (2d) 733, 736.

seem to confirm those of the Commission and lead to a conclusion exactly contrary to the one reached by the court. The court found:

> "That the use of the expression 'California White Pine' is a method of competition, there is no question." (Rec., 1890.)

The court stated that the only questions are, is it an unfair method and is the proceeding in the interest of the public? Concerning the falsity of the description complained of, the court concedes that:

> "Pinus Ponderosa belongs botanically with the so-called 'yellow pine' group." (Rec., 1890.)
>
> * * * * * * *
>
> "The only species of true botanical 'white pines' of commercial importance are Northern White Pine, and two Pacific coast varieties—Idaho White Pine and Sugar Pine." (Rec., 1890.)

That the misdescribed lumber is inferior is also admitted. The court says:

> "That there is a greater percentage of sap wood content in ponderosa lumber than there is in the true white pine lumber, there is no question. This variation, however, appears to be of importance only as it has a bearing upon the relative durability of the two classes of lumber. It is the sapwood which was found by the Commission to be more subject to decay when applied to exterior uses." (Rec., 1893.)*

---

* Willis J. Walker, president of the Red River Lumber Company, one of the respondents, testified. (Rec., 1556):

> "Q. Is the trade unable or is it able to tell the California white pine from the so-called genuine white pines by appearance? A. I think so—by appearance—I don't know, not necessarily.
>
> Q. In the clear grades, the California white pine is largely sap, isn't it, rather than heart in character? A. The clear grade will run more to heart; yes.
>
> Q. More to heart? A. More to sap—excuse me."

The inferiority of sapwood to heartwood in joinery has always been recognized. In Robert Greene's "**A Quip for an Upstart Courtier, or A Quaint Dispute between Velvet Breeches and Cloth Breeches**", 1592 (Crosart, Works, Vol. 11, p. 270), there is an argument between a plain man and a courtier, each pointing out the vices of the other's class. Velvet Breeches cites the rascality of the various trades,—the saddler

Durability is one of the factors which influence the purchase of building material.

The court then quotes from the testimony of five witnesses who state that Ponderosa lumber is well known to be unsatisfactory for exterior use, but concludes that although buildings of true White Pine have survived for two hundred years, the use of Ponderosa is too recent to permit of comparison, notwithstanding the fact that it is known to rot quickly when exposed to the weather. The court concludes,

> "What the testimony appears to establish is that Northern white pine has relatively a greater durability for exterior use without establishing any comparative degree of such durability." (Rec., 1895.)

This is equivalent to saying that Ponderosa is inferior in durability to true White Pine, so we have up to this point, findings by the court below that so-called "California White Pine" is misdescribed, that it is not White Pine, and that it is inferior to genuine White Pine.

The court then quotes testimony showing that architects and others are deceived by the use for Ponderosa, of trade names which include the words White Pine, but comments:

> "Just why architects and lumber dealers should be confused in view of the aid and assistance furnished by the government through the Bureau of Standards is not readily apparent." (Rec., 1895.)

---

for selling cheap skin as if it came from Muscovy or Calabria; the cutler, a blade that can only be thrust into a bushel, swearing it came from Turkey or Toledo; the butcher for selling a piece of an old cow for a chop from a young ox; Tom Tapster for filling the poor man's can of small beer half full of froth; and "the joiner, though an honest man, yet he maketh his joints weak, and putteth in sap in the mortices, which should be the heart of the tree, and all to make his stuff slender".

Oxford Dictionary, Vol. VIII, p. 100.

Architects and lumber dealers are in fact confused, but, the court thought they ought not to be.*

The court then cites testimony showing passing off of "California White Pine" on specifications for White Pine and refers without dissent to the testimony of a witness who estimates the amount of this substitution to be "about ninety-five per cent". (Rec., 1896.)

This shows that 95 per cent of the trade are in fact confused by a misdescription into buying an inferior wood for a superior one, although "just why" they "should be confused * * * is not readily apparent." The apparent, indeed the only, cause of the confusion is respondents'

---

* This seems completely to overlook the well-known rule that if a false representation in fact deceives the person to whom it is made, it is unlawful:

> "Defendants' contention that customers need not have been deceived, had they taken note of the differences disclosed to their senses in the appearance between the Prest-O-Lite package filled by complainant and such package filled by defendant, is answered by the truism that the imitation need not be such as to mislead the careful and discriminating purchaser; it is enough that it misleads the ordinary and casual buyer." *Auto Acetylene Light Co.* v. *Prest-O-Lite Co.* (C. C. A. 6th) 264 Fed. Rep. 810, 813.

Indeed the courts have often said that any representation is unlawful which is likely to deceive the "unwary". (*Battle* v. *Finlay*, 45 Fed. 796, 798; *Liebig's Extract of Meat Co.* v. *Chemists Co-Op. Co.*, 13 R. P. C. 635; C. A. 13 R. P. C. 736, 739, Lord Justice Smith: "The real question in this case is whether the Defendants' goods are made up in such a way as to deceive an unwary purchaser." In *McLean* v. *Fleming*, 96 U. S. 245, 256, Mr. Justice Clifford speaks of the deception of "the unwary". Anything "which would be likely to deceive or mislead an ordinary unsuspecting customer is obnoxious to the law", Mr. Justice Bradley in *Celluloid Mfg. Co.* v. *Cellonite Mfg. Co.*, 32 Fed. 94, 97; in *Florence Mfg. Co.* v. *J. C. Dowd Co.*, 178 Fed. 73 (C. C. A. 2), it is said that the law is made for the protection of the "ignorant, the unthinking and the credulous, who, in making purchases, do not stop to analyze, but are governed by appearances, and general impressions." This court has held that the test is "* * * the eye of an ordinary observer giving such attention as a purchaser usually gives", Mr. Justice Strong in *Gorham Co.* v. *White*, 14 Wall. 511, 528. It has been held that a purchaser has a right to be careless. *Pillsbury* v. *Pillsbury*, 64 Fed. 841, 847 (C. C. A. 7):

> "Indeed, some cases have gone to the length of declaring that the purchaser has a right to be careless, and that his want of caution in inspecting brands of goods with which he supposes himself to be familiar ought not to be allowed to uphold a simulation of a brand that is designed to work a fraud upon the public. However that may be, the imitation need only to be slight if it attaches to what is most salient, for the usual inattention of a purchaser renders a good will precarious if exposed to imposition."

false trade description. It seems as if the court below substituted its own conjecture for proved facts.

In reference to the respondents, the court says (Rec., 1896):

> "With the exception of the possible question of durability, the materiality of which has not been established, it does not otherwise appear the public is injured by action of such manufacturers."

If this statement means what it unmistakably says, it is incredible that any court should hold that the inferior quality of the article passed off on a purchaser for and under the name of a superior one is not material. To say that in such circumstances the public is not injured is to deny the obvious. The injury is two-fold: (1) The article passed off is not the one expected; (2) It is not as good.

The court then refers to the *Winsted* case which it distinguishes by saying (Rec., 1897):

> "The sale or purchase of a material as all wool which in fact is in large part cotton presents a situation which may not be said to be parallel to that presented upon the facts in this case. If a material from a gray wool from some other breed of sheep than a Merino were dealt with in commerce under the name of 'Merino' or 'Gray Merino', then there might be some parallel between the two cases."

To apply this reasoning to the present case, no one could be deceived unless, on specifications for White Pine, there should be furnished not wood, but imitation wood. In short, it seems to have been held below that deception must be by nouns and cannot be by adjectives. This court has held the exact opposite: In *Brougham* v. *Blanton Mfg. Co.* 249 U. S. 495, Mr. Justice McKenna said, 502:

> "There may be value in the use of the trade-mark 'Creamo', as the company asserts, and detriment, it may be, in any change or qualification of it; but its value may be in its deception—its suggestion of cream appealing to the popular preference for that article

over skimmed milk, though the scientific judgment may be in favor of the latter, a judgment possibly not known, or if known not appreciated or accepted." * * *

"If 'Creamo Oleomargarine' is to be regarded as the name of the product it is false and deceptive * * *".

The product was in fact oleomargarine.

After further discussion, the court below continues (Rec., 1897):

"It may be conceded that the evidence establishes hat Northern White Pine lumber from the forests of Minnesota and Idaho White Pine lumber possess certain qualities which make those lumbers a superior grade to lumber produced and sold as California White Pine. When we compare Idaho White Pine with Northern White Pine we find that the Department of Agriculture (Exhibit 21) records the former as possessing greater strength and stiffness, but with all a softer quality."

Thus again admitting that the imitation is not as good as the genuine.

The court concludes thus (Rec., 1898):

"The supply of the botanical true white pine is far more limited than that of Ponderosa. The public is not only interested in not being deceived in the material it purchases under a certain nomenclature, but possibly in an even larger sense in the conservation of the forests."*

*The court below, in discussing the production of white pine (Rec. 1890) mentions that part of the supply of white pine is taken from "second growth from the original forests stretching throughout the northern and eastern sections of the United States from Minnesota to the Atlantic coast." Later the court said "the fact may not be overlooked that the greater portion of the annual production of (white pine) comes from second growth timber." This was taken to be "suggestive of the fact that the public interest is not promoted by the premature cutting of second growth timber." (Rec. 1898). However, a recent publication of the Forest Service indicates that production in California is just reaching the stage where second growth is of commercial significance: It is there stated that "the area of virgin timber constitutes about 41 per cent of the area of all commercial timber in California, including redwood." The Forest Service points out that "with the continued depletion of old-growth stands" in California there is "increasing need" for study and recognition of the commercial importance "of the second-growth timber that is rapidly coming in on many cut-over areas in this region." *Preliminary Yield Tables for Second-Growth Stands in the California Pine Region*, Technical Bulletin No. 354, Department of Agriculture, June 1933, pp. 4, 20.

Therefore, the conclusion seems to have been reached that in the interest of forest conservation, misrepresentation, deception, unfair methods of competition, and any sort of commercial depravity, should not be interfered with.

## Conclusion.

The parties on whose behalf this brief is filed have a real interest in this case. As previously stated, they comprise those who produce lumber from true White Pine and truthfully describe it, and those who produce lumber from Ponderosa pine and do not misdescribe it. The importance of this case to them is plainly deduced from the record.

The volume of Ponderosa lumber in former years of normal production was 2,800,000,000 feet b. m. That of the three true White Pines was 1,600,000,000 feet. (Findings, Par. 28; Rec., 33, Statistical Bulletin 21, Dept. of Agriculture; Commission's Ex. 34-G, Rec., 945; Commission's Ex. 27, maps; Commission's Ex. 39 A & B, Rec., 957, 958.) Of the latter about 467,000,000 feet was of second growth White Pine (Commission's Ex. 27), used for inferior purposes not of interest in this case. On the other hand more than half of the Ponderosa production is now given names (chiefly 'pondosa") which do not include the words "White Pine". (Findings, Par. 33; Rec., 34; cf. state by state Forestry Service figures in Commission's Ex. 27 with Commission's Ex. 34-F and 35, Rec., 945.)

Hence the aggregate of the "pondosa pine" and true White Pine (the producers of both of which are injured by the use of the term "California White Pine") is in volume approximately twice as great as the volume of Ponderosa sold as "California White Pine", or under

similar misdescriptions. When the difference in price is taken into account, the value of the product of competitors injured by respondents' unfair methods is substantially more than twice the value of the products sold by respondents under the misleading names used by them.

With respect to the damage to competitors resulting from respondents' trade term it is, of course, unnecessary under the authorities to prove that dealers who do not misdescribe their lumber have lost specific orders to "California White Pine" producers, or that particular purchasers have been deceived.

The evidence in this record shows injury more positively than this. It shows that diversion of business from true White Pine and from Ponderosa Pine sold as such, to "California White Pine" is **a practice** on the part of a substantial portion of dealers at various typical centers of trade. The court below quoted testimony which estimated this substitution as 95 per cent. (Rec., 1896.)

The trade practice complained of in this case is of precisely the same sort as that condemned by this court in *Federal Trade Commission* v. *Winsted Hosiery Co.* 258 U. S. 483. It is unfair to the public because the description is untrue and misleading. It is unfair to the parties on whose behalf this brief is filed because it subjects them to a kind of competition which they should not have to meet. The decree below deprives the producers of true White Pine of the higher price legitimately obtainable for it and takes from them the value of the good will which this wood has earned during the past two centuries. The decree will compel the producers who now sell Ponderosa lumber on its merits to apply a false designation to it before they can compete in the same product on equal terms with respondents. The public will have to take care of itself.

These are the conditions forced upon the industry by respondents' persistent misuse of the term White Pine and the decision of the court below sanctioning it.

Respectfully submitted,

EDWARD S. ROGERS,
*Amicus Curiae.*

No. 240

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# In the Supreme Court
OF THE
# United States

OCTOBER TERM, 1933.

FEDERAL TRADE COMMISSION,
*Petitioner,*

vs.

ALGOMA LUMBER COMPANY, et al.,
*Respondents.*

On Writ of Certiorari to the United States Circuit Court of Appeals for the Ninth Circuit.

## RESPONDENTS' PETITION FOR REHEARING.

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# Citations

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*Respondents.*

**On Writ of Certiorari to the United States Circuit Court of Appeals for the Ninth Circuit.**

## RESPONDENTS' PETITION FOR REHEARING.

Come now the respondents and respectfully petition for a rehearing herein and for grounds thereof show:

I.

*That there has been no ruling by the Court upon the jurisdiction of the Federal Trade Commission over the subject matter of the complaints.*

II.

*That the Court has mistakenly ascribed to respondents a contention that misleading trade nomenclature is excusable in consideration of forest conservation.*

III.

*That the findings of the Commission are insufficient to establish a case of unfair competition against respondents, since neither fraudulent or deceptive motive nor fraud or deception in fact has been shown.*

---

## *Foreword.*

Respondents conceive it to be their duty to direct the Court's attention to the fact that the opinion rendered in this cause upon the 8th day of January, 1934, (1) omits to rule upon the point of jurisdiction, which was aptly raised and presented, and (2) ascribes to respondents a dubious contention which they have not in fact advanced. In addition we cannot but feel that (3) the Court's conclusions as to the facts go beyond anything that is fairly warranted either by the record or by the findings of the Commission. We shall seek brevity in urging these matters upon the consideration of the Court, but shall trust that such brevity of treatment may not be taken to evidence lack of confidence in the merit of this petition.

## *Argument in Support of Petition.*

### I.

### THERE HAS BEEN NO RULING BY THE COURT UPON THE JURISDICTION OF THE FEDERAL TRADE COMMISSION OVER THE SUBJECT MATTER OF THE COMPLAINTS.

The third point presented by respondents upon brief (p. 56) was directed to the jurisdiction of the Commission and was phrased in the following terms:

> "'Unfair methods of competition' within the meaning and intendment of the Federal Trade Commission Act have not been established against the respondents upon the record or by the Commission's findings."

There followed three subsidiary propositions, phrased in the language of the Supreme Court in

> *Federal Trade Commission v. Raladam Co.*, 283 U. S. 643, 51 S. Ct. Rep. 587, 75 L. Ed. 1324.

It seemed to respondents, and it still appears to them, that they had aptly invoked the decision of this Court in the *Raladam* case in order to make clear the Commission's excess of jurisdiction. The opinion of the Court in that case affords a complete exposition of the genesis and purpose of the Federal Trade Commission Act, and it was specifically held therein that "unfair methods" are those resorted to for the purpose of destroying competition or of introducing a monopoly. It was there shown that the aim of the statute is to reach through administration the evils condemned generally by the Sherman Anti-Trust Act and the Clayton Act. Respondents relied with confidence upon this authoritative pronouncement. They undertook to demonstrate that the findings of the Commis-

sion could not serve to make out a case within the meaning or intendment of the statute. The discussion is found upon pages 56 to 60, inclusive, of respondents' brief. We need not again traverse the ground. The point was urged upon the Court in oral argument.

Respondents had faith in the validity of their contention that the Commission's orders proceeded from an excess of jurisdiction. True, the point attracted little notice on the part of the Commission, but it could not be thus lightly waved aside. The issue was necessarily in the case, and respondents anticipated that it would be the subject of a ruling by the Court.

There has been no such ruling. The point is not mentioned in the opinion. There is no reference to *Federal Trade Commission v. Raladam Co.*, the only case in which this Court has spoken specifically respecting the nature and objects of the statute, and defined the limits within which the jurisdiction of the Commission must be exercised.

Respondents seek a ruling upon the jurisdictional issue.

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## II.

### THE COURT HAS MISTAKENLY ASCRIBED TO RESPONDENTS A CONTENTION THAT MISLEADING TRADE NOMENCLATURE IS EXCUSABLE IN CONSIDERATION OF FOREST CONSERVATION.

The fourth point noticed in the opinion of this Court is phrased and considered in the following terms:

> "*Fourth.* Finally, the argument is made that the restraining orders are not necessary to protect the public interest (see *Federal Trade Commission v. Royal Milling Co., supra*), but to the contrary that the public interest will be promoted by increasing the demand for *pinus ponderosa,* though it be sold with a misleading label, and thus abating the destruction of the pine forests of the east.
>
> "The conservation of our forests is a good of large importance, but the end will have to be attained by methods other than a license to do business unfairly."

The language employed by the Court seems clearly to imply that respondents have argued that "a misleading label" may be excused because thereby the sale of their lumber will be advanced and destruction of the eastern pine forests will be abated. Surely the reader would so understand. But the fact is that no such argument has been tendered on the part of respondents. We have not urged, nor intimated, that improper trade nomenclature is excusable, either in aid of forest conservation or otherwise. We have offered no argument whatever directed to forest conservation.

The Court apparently took note of the argument founded by our adversaries upon an observation of the lower court respecting the interest of the public in forest conservation. Apparently it has been assumed that this observation was responsive to a contention advanced by respondents. But respondents in fact advanced no such contention, as our adversaries will doubtless concede.

As it now stands, the opinion of the Court ascribes to respondents and to their counsel an argument which they have not advanced, and visits upon them a censure which is undeserved. Whatever may be the measure of the resulting obloquy, the respondents may justly petition for acquittance.

---

## III.

### THE FINDINGS OF THE COMMISSION ARE INSUFFICIENT TO ESTABLISH A CASE OF UNFAIR COMPETITION AGAINST RESPONDENTS, SINCE NEITHER FRAUDULENT OR DECEPTIVE MOTIVE NOR FRAUD OR DECEPTION IN FACT HAS BEEN SHOWN.

Respondents feel that in many important respects the Court's review of the facts goes beyond anything that is warranted by the Commission's findings. As a result respondents are in effect convicted of purposes and practices which the Commission itself, in view of the record, would hardly feel free to charge against them.

We cannot expect that the Court will now entertain a specification of the respects in which respondents feel that the terms of the decision transcend the Commission's findings, but at least we may point out that there cannot be discovered in the Commission's findings

(1) Fraudulent motive or purpose;

(2) Misrepresentation by respondents of their lumber, either as to identity, quality or utility;

(3) Substitution by respondents of their lumber upon orders for so-called "true white pine";

(4) The "passing off" by respondents of their lumber as and for a different product.

The opinion of the Court refers to "the woods that the respondents are selling as a substitute." (p. 7.) The Commission itself has not found that respondents are selling their lumber as a "substitute" for other lumber, at least in any culpable sense.

The opinion of the Court recites:

> "The consumer is prejudiced if upon giving an order for one thing, he is supplied with something else." (p. 8.)

It is further said:

> "Dealers and manufacturers are prejudiced when orders that would have come to them if the lumber had been rightly named, are diverted to others whose methods are less scrupulous." (pp. 8, 9.)

These and cognate statements found in the opinion of the Court are unexceptionable as declarations of principle, but we protest that they may not fairly be directed to any of the practices of respondents, either as recited in the Commission's findings or as shown of record. These respondents are not chargeable with "substitution", nor can they justly be placed in the category of "the careless and the unscrupulous".

In these respects, and in others, we think the statements found in the opinion of the Court go beyond the facts and that respondents are thereby subjected to unwarranted condemnation.

We think that the attention of the Court should again be directed to the fact that no witness in the proceedings before the Commission testified that he had been deceived or misled by this trade name into the purchase or use of

respondents' lumber. (Respondents' brief, p. 55.) It would seem that if deception or a substitution were as prevalent as the Commission's findings may superficially imply, some witness could have been obtained who would testify that he had been deceived.

It would not be appropriate here to seek either to renew or extend the argument, but we may summarize this feature of our protest in the confident declaration that there is neither evidence nor finding that respondents have employed their trade name as an instrument of fraud or deception. In this respect the case is wholly dissimilar to *Federal Trade Commission v. Winsted Hosiery Co.*, 258 U. S. 483, 42 S. Ct. Rep. 384, 66 L. Ed. 729, in which the falsity of labels was palpable, and fraud and deception were intended and achieved.

Throughout the opinion of the Court there is evident a misapprehension as to the nature of respondents' defense. It is not that respondents seek to retain a name which is false, misleading or deceptive or which will permit their lumber to pass into trade or industry as something which it is not. It is not that they seek to take trade unjustly from a competitor or to supply to a consumer a product which, except for the particular trade name, would not be accepted. It is rather the position of respondents that this lumber, in essential mechanical properties and commercial qualities, belongs in the white pine group of pine lumbers, where it has always been placed by the consensus of the trade; that this trade name has no botanical connotation—in other words, that it does not represent or imply that the lumber is yielded by a tree which botanists have assigned to their "white pine

group''; and that it has not been used in contravention of the terms or purpose of the statute. Whether or not this defense be sufficient, it has at least been honorably advanced.

---

## *Conclusion.*

Respondents seek a rehearing to the following ends:

1. That the issue as to the Commission's jurisdiction over the subject matter of the complaints may be determined;

2. That respondents may be acquitted of a contention, not advanced on their part, which the Court has mistakenly ascribed to respondents and thereupon visited upon them an undeserved rebuke;

3. That respondents may be relieved of all charges or implications of fraudulent or unscrupulous dealing.

Respectfully submitted,

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1500 Balfour Building,
San Francisco, California.
*Attorneys for Respondents.*

Dated: San Francisco, California,
January 27, 1934.

CERTIFICATE OF COUNSEL.

The undersigned hereby certifies that he is one of the counsel for the respondents herein, and that the foregoing Petition for Rehearing is presented in good faith and not for delay.

ALLAN P. MATTHEW.

Dated: San Francisco, California,
January 27, 1934.

# SUPREME COURT OF THE UNITED STATES.

No. 240.—October Term, 1933.

Federal Trade Commission, Petitioner,
*vs.*
Algoma Lumber Company, Big Lakes Box Company, California Fruit Exchange, et al., Respondents.

On Writ of Certiorari to the Circuit Court of Appeals for the Ninth Circuit.

[January 8, 1934.]

Mr. Justice Cardozo delivered the opinion of the Court.

In May, 1929, the Federal Trade Commission filed and served complaints against a group of fifty manufacturers on the Pacific Coast charging "unfair competition in interstate commerce" in violation of § 5 of the Federal Trade Commission Act. 38 Stat. 717, 719, c. 311, § 5; 15 U. S. C. § 45.

After the service of answers the proceedings were consolidated and many witnesses examined. The outcome was a series of reports sustaining the complaints as to thirty-nine manufacturers, with orders to "cease and desist" from the practice challenged as unfair. Twelve companies thus enjoined petitioned the Circuit Court of Appeals for the Ninth Circuit to review the orders of the Commission. Such review being had, the orders were annulled. 64 F. (2d) 618. A writ of certiorari brings the case here.

The practice complained of as unfair and enjoined by the Commission is the use by the respondents of the words "California white pine" to describe lumber, logs or other forest products made from the pine species known as *pinus ponderosa*. The findings as to this use and its effect upon the public are full and circumstantial. They are too long to be paraphrased conveniently within the limits of an opinion. We must be content with an imperfect summary.

The respondents are engaged in the manufacture and sale of lumber and timber products which they ship from California and Oregon to customers in other states and foreign lands. Much of what they sell comes from the species of tree that is known among

botanists as *pinus ponderosa*. The respondents sell it under the name of "California white pine," and under that name, or at times "white pine" simply, it goes to the consumer. In truth it is not a white pine, whether the tests to be applied are those of botanical science or of commercial practice and understanding.

Pine trees, the genus "pinus," have for a long time been divided by botanists, foresters and the public generally into two groups, the white pine and the yellow. The white pine group includes by common consent, the northern white pine (*pinus strobus*), the sugar pine and the Idaho white pine. It is much sought after by reason of its durability under exposure to weather and moisture, the proportion of its heartwood as contrasted with its sapwood content as well as other qualities. For these reasons it commands a high price as compared with pines of other species. The yellow pine group is less durable, harder, heavier, more subject to shrinkage and warping, darker in color, more resinous, and more difficult to work. It includes the long leaf yellow pine (*pinus palustris*), grown in the southern states, and the *pinus ponderosa*, a far softer wood, which is grown in the Pacific coast states, and in Arizona and New Mexico as well as in the "inland empire" (eastern Washington, Oregon, Idaho, and western Montana).

Of the varieties of white pine, the northern or *pinus strobus* has been known better and longer than the others. It is described sometimes as northern white pine, sometimes as white pine simply, sometimes with the addition of its local origin, as Maine white pine, Michigan, Wisconsin, Minnesota, Canadian, New Brunswick. It is native to the northeastern states and to the Great Lakes region, as far west as Minnesota. It is found also in Canada and along the Appalachian highlands. It was almost the only building material for the settlers of New England, and so great is its durability that many ancient buildings made from it in the seventeenth and eighteenth centuries survive in good condition. The sugar pine is native to the upland regions of California, southern Oregon and parts of Nevada. The Idaho white pine grows in the mountainous sections of Idaho, Washington and Oregon and in parts of British Columbia. The white pine species "still holds an exalted reputation among the consuming public" and "in general esteem is the highest type of lumber as respects the excellences desired in soft wood material." "It is coming more and more to be

a specialty wood, largely devoted to special purposes, as it becomes scarcer and higher in price. It is in great demand."

About 1880 the *pinus ponderosa*, though botanically a yellow pine, began to be described as a white pine when sold in the local markets of California, New Mexico, and Arizona, the description being generally accompanied by a reference to the state of origin, as "California white pine," etc. By 1886, sales under this description had spread to Nevada and Utah with occasional shipments farther east. About 1900, they entered the middle western states, and about 1915 had made their way into New England, though only to a small extent. The pines from the inland empire traveled east more slowly, and when they did were described as western white pine, a term now generally abandoned. The progress of the newcomers both from the coast and from the inland empire was not wholly a march of triumph. In their movement to the central and eastern markets they came into competition more and more with the genuine white pine with which those markets had been long familiar. Mutterings of discontent were heard. In 1924, partly as a result of complaints and official investigations, many of the producers, notably those of the "inland empire", as well as some producers in California and Arizona, voluntarily gave up the use of the adjective "white" in connection with their product, and adopted the description "pondosa pines," pondosa being a corruption or abbreviation of the ponderosa of the botanists. "Pondosa pine is the term employed for ponderosa by the representatives of producers of slightly more than half of the ponderosa marketed." The respondents and others, however, declined to make a change. During the next five years California white pine and its equivalents became an even more important factor in the lumber markets of the country. Accumulating complaints led to an inquiry by the Commission, which had its fruit in this proceeding.

The confusion and abuses growing out of these interlocking names have been developed in the findings. Many retail dealers receiving orders for white pine deliver California white pine, not knowing that it differs from the lumber ordered. Many knowing the difference deliver the inferior product because they can buy it cheaper. Still others, well informed and honest, deliver the genuine article, thus placing themselves at a disadvantage in the

race of competition with the unscrupulous and the ignorant. Trade has thus been diverted from dealers in white pine to dealers in *pinus ponderosa* masquerading as white pine. Trade has also been diverted from dealers in pinus ponderosa under the name pinus pondosa to dealers in pinus ponderosa under the more attractive label. The diversion of trade from dealers of one class to dealers of another is not the only mischief. Consumers, architects and retailers have also been misled. They have given orders for the respondents' product, supposing it to be white pine and to have the qualities associated with lumber of that species. They have accepted deliveries under the empire of that belief. True indeed it is that the woods sold by the respondents, though not a genuine white pine, are nearer to that species in mechanical properties than they are to the kinds of yellow pine indigenous to the south. The fact that for many purposes they are half way between the white species and the yellow makes the practice of substitution easier than it would be if the difference were plain. Misrepresentation and confusion flourish in such a soil. From these findings and others the Commission was brought to the conclusion that the respondents compete unfairly in transacting business as they do, and that in the interest of the public their methods should be changed.

"The findings of the Commission as to facts, if supported by testimony, shall be conclusive." 15 U. S. C. § 45. The Court of Appeals, though professing adherence to this mandate, honored it, we think, with lip service only. In form the court determined that the finding of unfair competition had no support whatever. In fact what the court did was to make its own appraisal of the testimony, picking and choosing for itself among uncertain and conflicting inferences. Statute and decision (*Federal Trade Commission* v. *Pacific States Paper Trade Association*, 273 U. S. 52, 61, 63) forbid that exercise of power.

*First.* The argument is made that unfair competition is disproved by the "simplified practice recommendations" of the Bureau of Standards when read in conjunction with the testimony as to the comparative utility of the genuine white pine and *pinus ponderosa.*

The Court of Appeals concedes that the recommendations of the Bureau will not avail without more to control the action of the

Commission. Cf. *Brougham* v. *Blanton Mfg. Co.*, 249 U. S. 495, 499; *Piedmont & Northern Ry. Co.* v. *Interstate Commerce Commission*, 286 U. S. 299, 312. The view was expressed, however, that alone they are in a high degree persuasive, and that in conjunction with other evidence they are even controlling. In particular that result was thought to follow in this case because the substituted wood, in the judgment of the court, is so nearly equal in utility that buyers are not injured, even though misled.[1]

Such a holding misconceives the significance of the Government's endeavor to simplify commercial practice. It misconceives even more essentially the significance of the substitution of one article for another without notice to the buyer.

(a) The Bureau of Standards is a branch of the Department of Commerce. At its instance representatives of manufacturers, sellers, and users of lumber, as well as architects, engineers and others, met in conference at various times between 1922 and 1928 in an endeavor to simplify methods of business in the lumber industry. Following these conferences the Bureau in 1929 issued a report entitled "Lumber, Simplified Practice Recommendations." Many subjects that were considered are without relation to this case. The report dealt with standards of size, of inspection, of structural material, and other cognate themes. One of its subdivisions, however, enumerates the standard commercial names for lumber of many types. Sixteen names of pines are stated in the list, and among them is the name "California white pine" with its botanical equivalent, *pinus ponderosa*.

The recommendations of the Bureau of Standards for the simplification of commercial practice are wholly advisory. Dealers may conform or diverge as they prefer. The Bureau has defined its own function in one of its reports. The Purpose and Application of Simplified Practice, National Bureau of Standards, Department of Commerce, July 1, 1931, pp. 2, 7, 10, 17. "Simplified

[1] "It would not necessarily follow . . . that a yellow pine might be sold as a white pine if such sales were unfair to the trade and injurious to the public, notwithstanding the Bureau of Standards had specified a name such as 'California white pine' in a list of 'Standard commercial names' for pine lumber. It would be different, however, if the particular lumber sold under such name possessed substantially the same qualities possessed by the white pines of commerce as distinguished from certain well known commercial yellow pines." 64 F. (2d) 618 at p. 620.

practice is a method of eliminating superfluous variety through the voluntary action of industrial groups." "The Department of Commerce has no regulatory powers" with reference to the subject, and hence "it is highly desirable that this recommendation be kept distinct from any plan or method of governmental regulation or control." There is nothing to show that in making up the list of names the Bureau made any investigation of the relation between *pinus ponderosa* and the white pines of the east. Certainly it had no such wealth of information on the subject as was gathered by the Commission in the course of this elaborate inquiry. There is nothing to show to what extent its advice has been accepted by the industry. The record does show that the recommendation does not accord with the practice of other governmental agencies. For example, the United States Forest Service in its publications and forest signs describes the ponderosa species as western yellow pine. In such circumstances the action of the Bureau was at most a bit of evidence to be weighed by the Commission along with much besides. It had no such significance as to discredit in any appreciable degree a conclusion founded upon evidence otherwise sufficient. The powers and function of the two agencies of government are essentially diverse. The aim of the one is to simplify business by substituting uniformity of methods for wasteful diversity, and in the achievement of these ends to rely upon cooperative action. The aim of the other is to make the process of competition fair. There are times when a description is deceptive from the very fact of its simplicity.

(b) The wood dealt in by the respondents is not substantially as good as the genuine white pine, nor would sales under the wrong name be fitting if it were

The ruling of the court below as to this is infected by a twofold error. The first is one of fact. The supposed equivalence is unreal. The second is one of law. If the equivalence existed, the practice would still be wrong.

The Commission found as a fact that the genuine white pine is superior for many reasons to *pinus ponderosa*, and notably because of its greater durability. The court held the view that the difference in durability had not been proved so clearly as to lay a basis for the orders, and this, it seems, upon the ground that though the superiority exists, the evidence fails to disclose its precise degree. "What the testimony appears to establish is that

Northern white pine has relatively a greater durability for exterior use without establishing any comparative degree of such durability." 64 F. (2d) 618 at p. 622.

Court and counsel for the respondents lean heavily at this point upon the testimony of the Director of the United States Forest Products Laboratory at Madison, Wisconsin, and his assistant Mr. Hunt. The Director testified that he did not know the comparative durability of the pines, and would refer any inquirer to specialists, of whom Mr. Hunt was one. The testimony of Mr. Hunt is that there have been no tests in a strict sense, but that the comparison between the white pines and *pinus ponderosa* has been based upon observation and opinion. He continues: "The general experience with the use of the white pines, during the two hundred years since they began to be used, indicated that those pines had moderately high durability. The general experience with *pinus ponderosa* indicated that that wood had low durability in contact with the ground or any place favoring the growth of decay. That is a matter of common knowledge." Inquirers at the Laboratory were accordingly advised that "the heartwood of the white pine has more decay resistence, will give longer service under conditions favoring decay than the heartwood of pinus ponderosa," and "the mill run of the white pine probably would average higher in durability under decay producing conditions."

This testimony, even if it stood alone, would tend to sustain rather than to discredit the findings by the Commission that the genuine white pines are materially superior to the woods that the respondents are selling as a substitute. It is fortified, however, by evidence from many other sources. To be sure there is contradiction which we have no thought to disparage. For present purposes we assume the credibility of those who spoke for the complainants. Wholesalers, retailers, manufacturers, lumber graders, laboratory experts and others bore witness to the comparative merits of the woods, stating their own experience as well as common opinion among their fellows in the industry. If all this may be ignored in the face of the findings of the Commission, it can only be by turning the court into an administrative body which is to try the case anew.

What has been written has been aimed at the position that *pinus ponderosa* is as good or almost as good as the white pines of the

east. We have yet to make it plain that the substitution would be unfair though equivalence were shown. This can best be done in considering another argument which challenges the finding of the Commission that there has been misunderstanding on the part of buyers. To this we now turn.

*Second.* The argument is made that retailers and consumers are not shown to have been confused as to the character of the lumber supplied by the respondents, and that even if there was confusion there is no evidence of prejudice.

Both as to the fact of confusion and its consequences the evidence is ample. Retailers order "white pine" from manufacturers and take what is sent to them, passing it on to their customers. At times they do this knowing or suspecting that they are supplying California white pine instead of the genuine article, and supplying a wood that is inferior, at least for the outer parts of buildings. Its comparative cheapness creates the motive for the preference. At times they act in good faith without knowledge of the difference between the California pines and others. Architects are thus misled, and so are builders and consumers. There is a suggestion by the court that for all that appears the retailers, buying the wood cheaper, may have lowered their own price, and thus passed on to the consumer the benefit of the saving. The inference is a fair one that this is not always done, and perhaps not even generally. If they lower the price at all, there is no reason to believe that they do so to an amount equivalent to the saving to themselves.

But saving to the consumer, though it be made out, does not obliterate the prejudice. Fair competition is not attained by balancing a gain in money against a misrepresentation of the thing supplied. The courts must set their faces against a conception of business standards so corrupting in its tendency. The consumer is prejudiced if upon giving an order for one thing, he is supplied with something else. *Federal Trade Commission* v. *Royal Milling Co.*, 288 U. S. 212, 216; *City of Carlsbad* v. *W. T. Thackeray & Co.*, 57 Fed. 18. In such matters, the public is entitled to get what it chooses, though the choice may be dictated by caprice or by fashion or perhaps by ignorance. Nor is the prejudice only to the consumer. Dealers and manufacturers are prejudiced when orders that would have come to them if the lumber had been rightly

named, are diverted to others whose methods are less scrupulous. "A method inherently unfair does not cease to be so because those competed against have become aware of the wrongful practice." *Federal Trade Commission* v. *Winsted Hosiery Co.*, 258 U. S. 483, 494.[2] The careless and the unscrupulous must rise to the standards of the scrupulous and diligent. The Commission was not organized to drag the standards down.

*Third.* The argument is made that the name for the respondents' lumber was adopted more than thirty years ago without fraudulent design, and that a continuation of the use is not unfair competition, though confusion may have developed when the business, spreading eastward, attained national dimensions.

The Commission made no finding as to the motives animating the respondents in the choice of the contested name. The respondents say it was chosen to distinguish their variety of yellow pine from the harder yellow pines native to the southern states. We may assume that this is so. The fact remains, however, that the pines were not white either botanically or commercially, though the opportunity for confusion may have been comparatively slight when the sales were restricted to customers in local markets, buying for home consumption. Complaints, if there were any, must have been few and inarticulate at a time when there was no supervisory body to hold business to its duty. According to the law as then adjudged, many competitive practices that today may be suppressed (*Federal Trade Commission* v. *Winsted Hosiery Co., supra*), were not actionable wrongs, the damage to the complainants being classified often as collateral and remote. *American Washboard Co.* v. *Saginaw Mfg. Co.*, 103 Fed. 286.[3] The Federal Trade Commission was not organized till 1914, its jurisdiction then as now confined to interstate and foreign commerce. Silence up to that time is not even a faint token that the misapplied name had the approval of the industry. It may well have meant no more than this, that the evil was not great, or that there was no champion at hand to put an end to the abuse. Even silence there-

[2]The many cases in which the Federal Trade Commission has acted to prevent misbranding or like misrepresentation will be found collected in Henderson, The Federal Trade Commission, p. 182, *et seq.*

[3]The cases are reviewed by Henderson, The Federal Trade Commission, p. 179, *et seq.*

after will not operate as an estoppel against the community at large, whatever its effect upon individuals asserting the infringement of proprietary interests. *French Republic* v. *Saratoga Victor Co.*, 191 U. S. 427. There is no bar through lapse of time to a proceeding in the public interest to set an industry in order by removing the occasion for deception or mistake, unless submission has gone so far that the occasion for misunderstanding, or for any so widespread as to be worthy of correction, is already at an end. Competition may then be fair irrespective of its origin. This will happen, for illustration, when by common acceptation the description, once misused, has acquired a secondary meaning as firmly anchored as the first one. Till then, with every new transaction, there is a repetition of the wrong.

The evidence here falls short of establishing two meanings with equal titles to legitimacy by force of common acceptation. On the contrary, revolt against the pretender, far from diminishing, has become increasingly acute. With the spread of business eastward, the lumber dealers who sold pines from the states of the Pacific coast were involved in keen competition with dealers in lumber from the pines of the east and middle west. In the wake of competition came confusion and deception, the volume mounting to its peak in the four or five years before the Commission resolved to act. Then, if not before, misbranding of the pines was something more than a venial wrong. The respondents, though at fault from the beginning, had been allowed to go their way without obstruction while the mischief was not a crying one. They were not at liberty to enlarge the area of their business without adjusting their methods to the needs of new conditions. An analogy may be found in the decisions on the law of trade marks where the principle is applied that a name legitimate in one territory may generate confusion when carried into another, and must then be given up. *Hanover Milling Co.* v. *Metcalf*, 240 U. S. 403, 416; *United Drug Co.* v. *Rectanus Co.*, 248 U. S. 90, 100. More than half the members of the industry have disowned the misleading name by voluntary action and are trading under a new one. The respondents who hold out are not relieved by innocence of motive from a duty to conform. Competition may be unfair within the meaning of this statute and within the scope of the discretionary powers conferred on the Commssion, though the practice

condemned does not amount to fraud as understood in courts of law. Indeed there is a kind of fraud, as courts of equity have long perceived, in clinging to a benefit which is the product of misrepresentation, however innocently made. *Redgrave* v. *Hurd,* L. R. 20 Ch. D. 1, 12, 13; *Rawlins* v. *Wickham,* 3 De G. & I. 304, 317; *Hammond* v. *Pennock,* 61 N. Y. 145, 152. That is the respondents' plight today, no matter what their motives may have been when they began. They must extricate themselves from it by purging their business methods of a capacity to deceive.

*Fourth.* Finally, the argument is made that the restraining orders are not necessary to protect the public interest (see *Federal Trade Commission* v. *Royal Milling Co., supra*), but to the contrary that the public interest will be promoted by increasing the demand for *pinus ponderosa,* though it be sold with a misleading label, and thus abating the destruction of the pine forests of the east.

The conservation of our forests is a good of large importance, but the end will have to be attained by methods other than a license to do business unfairly.

The finding of unfair competition being supported by the testimony, the Commission did not abuse its discretion in reaching the conclusion that no change of the name short of the excision of the word "white" would give adequate protection.

The judgment is

*Reversed.*

A true copy.

Test:

*Clerk, Supreme Court, U. S.*